

FAMILY LAW PROPERTY SETTLEMENT Where the parties two main assets are jointly owned assets where the relationship lasted for 19 years, during which time two children were born and assets were generated where it is appropriate to consider an adjustment to the interests to recognise the separation and for each party to have access to their legitimate interests where the husband was more focused on more direct financial contributions and the wife was more focused on a contribution to the care of the children and the domestic work of the household where at the conclusion of the relationship the parties contributions should be considered equal where there should be an adjustment in favour of the wife, with particular reference to her restricted capacity for paid employment and her obligation to provide most of the care and supervision for the parties youngest child wife entitled to 60 per cent of the parties assets husband entitled to 40 per cent of the assets where the husband agreed with the proposition that interest in superannuation should be split equally and an order has been made by consent on that basis Family Law Act 1975 (Cth) ss 75, 79, 90MT Family Law (Superannuation) Regulations 2001, reg 13 Superannuation Industry (Supervision) Regulations 1994, regs 7A.03, 7A.06, 7A.12 Stanford v Stanford [2012] HCA 52; (2012) 247 CLR 108 APPLICANT: Mr Kerby RESPONDENT: Ms Kerby FILE NUMBER: NCC 1279 of 2012 DATE DELIVERED: 13 October 2014 PLACE DELIVERED: Newcastle PLACE HEARD: Newcastle JUDGMENT OF: Cleary J HEARING DATES: 14, 15 & 16 July 2014 REPRESENTATION APPLICANT: In person COUNSEL FOR THE RESPONDENT: Mr Duane SOLICITOR FOR THE RESPONDENT: Kinnear & Co ORDERS BY CONSENT: (1) A base amount of \$28,297 is allocated as required by s 90MT(4) of the Family Law Act 1975 (the Act) to the wife out of the interest of the husband in B Super Fund (the Fund). (2) In accordance with para 90MT(1)(a) of the Act: (a) The wife is entitled to be paid the amount calculated in accordance with Pt 6 of the Family Law (Superannuation) Regulations 2001; and (b) The entitlement of the husband and the entitlement of such other person to whom a splittable payment may be made to payments out of the interest of the husband in the Fund is correspondingly reduced by force of this order. (3) The trustee of the Fund (the Trustee) shall do all such acts and things and sign all such documents as may be necessary to: (a) Calculate in accordance with the requirements of the Act and the Family

Law(Superannuation) Regulations 2001 the entitlement for the wife created by these orders; and (b) Pay the entitlement whenever the Trustee makes a splittable payment out of the interest of the husband in the Fund. (c) These orders have effect from the operative time and the operative time is four business days after service of a sealed copy of these orders on the Trustee. (4) After service of the payment split notice pursuant to r 7A.03 of the Superannuation Industry (Supervision) Regulations 1994 the wife shall do all such things and sign all such documents as may be necessary, including but not limited to exercising her request pursuant to r 7A.06(1) of the Superannuation Industry (Supervision) Regulations 1994, for the rollover or transfer of the transferable benefits out of the husband's interest in the Fund to a fund of the wife choosing in accordance with r 7A.12 of the Superannuation Industry (Supervision) Regulations 1994. (5) Pending the transfer of the transferable benefits from the husband to the wife: (a) The husband is restrained from giving any instructions to the Trustee or otherwise doing any other act having the effect of transferring, assigning or encumbering his interest in the Fund other than in accordance with the terms of this order; and (b) The husband must immediately revoke any binding death benefit nomination already made and is hereby restrained from: (i) making any binding death benefit nomination in favour of a child described in regulation 13 of the Family Law (Superannuation) Regulations 2001; (ii) making any other nomination where the effect of such nomination would be to render any splittable payment not splittable; and (iii) doing any such act or thing which would defeat, extinguish or deduct the entitlement of the wife under this order. IT IS FURTHER ORDERED: (6) The parties must forthwith do all acts and things necessary to effect a sale of the property known as and situate at C Street, Suburb H in the State of New South Wales being the whole of the land comprised in Certificate of Title Folio Identifier ... (the property). (7) Upon completion of the sale of the property, the husband and wife are to hold the proceeds of sale upon trust to pay from the proceeds thereof in the following manner and priority: (a) All legal costs, auction costs, if any, agents commissions and all other expenses connected with the sale of the property; (b) Rates and adjustments; (c) The amount required to repay the National Australia Bank Limited loan account numbers **...44, **...76 and **...56 and to discharge the mortgage to the National Australia Bank registered dealing number

...; (d) To the wife the balance then remaining. NOTING that in the event that the sale price of the property exceeds \$570,000 then the division of the amount in excess of that figure shall be 60 per cent to the wife and 40 per cent to the husband. (8) Pending completion of the sale of the property: (a) The husband must pay the regular loan repayments (and if applicable, preserve any existing advance payments) in relation to National Australia Bank Limited loan account numbers **...44, **...76 and **...56, the water usage charges, the Council and water rate instalments and electricity charges and like outgoings of the property as they fall due and the home building insurance premiums pertaining to the property. (b) Neither party shall cause or permit the amount of indebtedness whether by way of mortgage, line of credit, overdraft or otherwise secured against the title to the property to increase. (c) Neither party is to further encumber the property without the consent of the other party in writing. (9) In order to give effect to Order 6 it is further ordered: (a) The husband and wife must forthwith list the property for sale with a real estate agent appointed by the wife. (b) Both parties are to instruct the wife's solicitor to prepare the contract for sale of the property; (c) The listing price and sale price of the property for the purposes of such sale are to be determined by the wife. (d) The parties must: (i) execute all documents requested by the agent for the sale of the property; (ii) execute the contract for sale; (iii) cooperate in every way with the agent in relation to the sale of the property; (iv) instruct the agent to give each of the parties such information as they or either of them may reasonably require concerning the progress made from time to time with respect to effecting the sale of the property; (v) not do any act or thing to adversely affect the timely sale of the property at the best price reasonably attainable; (vi) vacate the property in a timely manner prior to completion of the sale. (e) If binding unconditional contracts for the sale of the property have not been exchanged within 3 months after the making of the Orders herein the husband and wife are to forthwith list the property for sale by public auction with an auctioneer appointed by agreement by the husband and wife and failing agreement with the auctioneer nominated by the listing agent. (f) The husband and wife must agree on the reserve price of the property and in the absence of agreement, the reserve price will be the sum nominated as a fair value by the single expert, Mr D. (g) The husband must pay equally the advertising and associated costs of the auctioneer. (h) The

husband and wife are to either personally attend the auction or be available at the auction and in the event that the bidding at the auction does not reach the reserve price the parties may negotiate with the highest bidder or any other interested person and effect a sale of the property at a price which is not more than 20 per cent below the reserve price. (i) In the event that the property is not sold at auction, the parties are to leave the property on the market for sale for three months and at the expiry of that time the parties must arrange for a further auction of the property to be held forthwith and the provisions of these orders will apply mutatis mutandis in relation to such further auction. (j) Whenever a valuer is engaged for an opinion or valuation of the property under these orders then the valuer is to be treated by the parties as acting as an expert whose decision is binding upon the parties but who does not act as an arbitrator. (k) The parties are to pay equally between them any fees or charges incurred to any real estate agent or to any valuer engaged by the parties in relation to the provisions herein relating to the sale of the property. (l) Liberty is reserved to either party to apply upon seven days notice to the other party with respect to the terms and conditions contained herein relating to the sale of the property. (10) The husband must do all acts and things and execute all documents so as to cause the company J Pty Ltd to transfer to the wife all its right, title and interest in the Ford ... motor vehicle registration number ... in the possession of the wife. (11) Unless otherwise specified in these Orders and as between the parties: (a) Each party shall be solely entitled to the exclusion of the other to all other property and chattels of whatsoever nature and kind in the possession of such party as at the date of these Orders and that for this purpose bank accounts are deemed to be in the possession of the person whose name appears on the bank's record thereof, insurance policies are deemed to be in the possession of the beneficiary thereof, superannuation entitlements are deemed to be in the possession of the person who is named as the worker whose age or working future provides the conditions for payment out of such entitlements. (b) Unless otherwise agreed herein each party shall be solely liable for and indemnify the other against any liability encumbering any item of property to which that party is entitled pursuant to these Orders. (12) If either party refuses or neglects to sign within 14 days of a written request to do so any documents necessary to put into effect to all or any of the terms of these orders, the Registrar of the

Newcastle Registry of the Family Court of Australia is appointed pursuant to the provisions of s 106A of the Act to execute such documents on behalf of the defaulting party and the Registrar shall do all necessary acts and things to give force and effect to these orders. NOTED that publication of this judgment by this Court under the pseudonym Kerby & Kerby has been approved by the Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth).

FAMILY COURT OF AUSTRALIA AT
NEWCASTLE FILE NUMBER: NCC1279 of 2012 Mr Kerby Applicant And Ms Kerby Respondent

REASONS FOR JUDGMENT INTRODUCTION

These are competing applications for adjustment of interests in matrimonial property. The applicant is the husband, aged 43. The respondent is the wife, aged 42. The parties began living together in early 1992 and married the following year. There were two children born of their marriage, one of whom is a young adult. The other child is now aged 11 years. Parenting arrangements have been made for him by the resolution of that part of the proceedings by consent orders. The child lives with his mother and spends time with his father. In March 2011 the parties separated after a 19 year relationship. Husband becomes self-representing. At the commencement of the hearing the husband was represented by solicitor and counsel, as was the wife. There were some discussions in an attempt to resolve the matter on the first day. The matter was unable to be resolved. There followed an application by solicitor and counsel for the husband to withdraw. That application was granted. The husband thereafter represented himself. He did not wish to apply to adjourn the proceedings but to continue to determination.

THE APPLICATIONS

The husband filed an Initiating application on 17 May 2012. By the time of the final hearing, he relied on a Third Amended Initiating Application filed 6 September 2013.[1] The wife relied on her Response filed 3 July 2012 and the Minute of Order handed up during the final hearing.[2]

SHORT HISTORY OF EVENTS RELEVANT TO THE ADJUSTMENT OF PROPERTY INTERESTS

In 1994 the parties purchased a property in Suburb H in joint names for \$117,000. The parties borrowed the whole of the funds for the purchase. After the purchase of the property the wife returned to work and her mother assisted the parties by caring for their child, then less than one year old. In 1998 the parties paid contractors to renovate their home at a cost of about \$90,000 to \$100,000. In 1999 the older child started school and the wife obtained work at that

school during school hours. In 2002 the parties purchased investment properties. The husband bought a property in Suburb L (the Suburb L property) in his sole name for \$200,000. The wife purchased a property in Suburb M (the Suburb M property) in her sole name for \$200,000. In March 2003 the parties second child was born and the wife took 18 months maternity leave from work. Also in that year, the wife was diagnosed with a mental illness, namely Bipolar Disorder. In 2004 the parties borrowed \$100,000 to start a business, Business J (the business) operated by a company of the same name. Both parties were shareholders. In November 2006 the wife experienced an episode of mental illness and was treated in hospital. She then commenced consultation with a psychiatrist. In 2008 the parties undertook further renovation to the home and property. In that year also the wife was again admitted to hospital. In 2009 the younger child commenced school. In 2010 the parties purchased shares on their own behalf and for the wife's mother for \$16,000. In March 2011 the parties separated. The husband moved out of the matrimonial home, first living with his sister and then in private rental accommodation locally. On 13 April 2011 some NAB shares were sold for \$8,680. In May 2011 the husband sold the Suburb L property for \$282,000. From the sale proceeds \$210,000 was used to discharge the mortgage on the property and the balance was used to reduce the mortgage on the Suburb H property (the property). In mid-2011 the wife sold the Suburb M property for \$350,000. The net proceeds were used to pay out the mortgage secured on that property, approximately \$220,000 and the balance was used to repay debts. On 14 October 2011 the wife's employment in the family company was terminated. In October 2011 the husband sold a further parcel of shares. In November 2011 the wife discovered that her visa card had been cancelled by the husband. In January 2012 the husband formed a new relationship with his current partner. In 2012 the wife withdrew \$9,000 from the mortgage account on the property which she paid to her mother as the return on shares in which her mother had invested with the parties. In January 2012 the wife found that the account for her telephone had been cancelled by the husband and all information on it subsequently lost. On 3 February 2012 the husband removed certain items from the property. He took steps to cause the company to issue further shares such that the husband thereafter had control of the company, whereas previously there were 20 ordinary shares, 19 of which were owned by the

wife and one by the husband. After the share issue the position became 119 ordinary shares, 19 of which were owned by the wife and 100 by the husband. The husband issued a fuel card and telephone to his new partner. On 8 February 2012 the wife withdrew \$49,000 from the mortgage account and soon after moved out of the matrimonial home. She set out with particularity how those funds were used.^[3] I accept that the monies were used for removal fees, legal costs, expenses for the children and otherwise living expenses. In late February to early March 2012, after the wife and the younger child moved out of the matrimonial home, the husband and his new partner moved into it. The husband alleged, and the wife denied, that there was damage to the property caused by her. On 17 May 2012 these proceedings were commenced. THE EVIDENCE The parties relied on the following documents: Husband: Third Amended Initiating Application filed 06/09/2013; Affidavit of husband filed 06/09/2013; Affidavit of husband filed 04/07/2014; Document titled Third Amended Financial Statement filed 04/07/2014; Affidavit of Ms E filed 06/09/2013; Wife: Response to Initiating Application filed 03/07/2012; Affidavit of wife filed 11/09/2013; Affidavit of wife filed 12/06/2014; Second Amended Financial Statement of wife filed 12/06/2014; Affidavit of Dr F filed 11/09/2013; Affidavit of Ms G filed 11/09/2013; Affidavit of Mr K filed 20/09/2013; and Affidavit of Single Expert witness Ms N filed 05/11/2012. ORAL EVIDENCE THE HUSBAND The husband was somewhat agitated throughout his cross-examination. He had not expected to be unrepresented. Further he had come to understand that despite his personal views about that matter, he was bound by the joint valuation of the business operated by the family company. By the conclusion of the hearing he appeared to understand that his approach to preparation had been unhelpful to him. He was not inclined to make concessions about the wife's role as primary caregiver for the two children. The husband commented on the fact that the wife was not in paid employment, for a lot of years. Her life was going to the gym. Likewise in relation to the Suburb M investment property purchased by the wife, he was reluctant to concede the work done by the wife and her mother towards conversion of that property into two flats. In relation to the parties' younger child, the husband did not agree that he had failed to take the opportunity to spend all the time he could have with him. He did concede that he had not spent more than one week with the child in the Christmas school holidays 2011 and 2012.

The parties agree that the husband made the financial decisions during the marriage. His evidence suggested that the husband had found the transition to separation difficult. He did not consult with the wife or give notice before cancelling her visa card. He withdrew the balance of funds from a joint account, after the wife had withdrawn some of those funds. The car used by the wife, but owned by the family company, was allowed to become unregistered. The explanation for arranging to have the wife's mobile telephone blocked so as to be unusable was that the wife was not allowing him to see or talk to their younger child. He conceded that the issuing of the additional shares was to regain control and prevent the wife from having access to company funds. It is clear to me that in 2011, the wife struggled to support herself and the parties' younger child. I accept that she was ineligible for Government benefits because of her assets and income through the company. Her credit card was withdrawn for a period of time; she was also without a telephone. These factors contributed to her decision to move out of the family home to live with her parents. I accepted as an explanation of the wife that her decision to withdraw \$49,000 in February 2012 was a pragmatic one, done in order to meet the necessary expenses of herself and the child. The husband conceded that post-separation, he had control over the assets of the company, the sale of shares and joint bank accounts. The husband agreed with the proposition that interest in superannuation should be split equally and an order has been made by consent on that basis. The husband's partner. The husband's partner was not required for cross-examination, no doubt because her affidavit related mainly to parenting matters. She is aged 35 and has been living with the husband in the former matrimonial home of the parties for about two and a half years. She has two children aged 12 and 11, whose care is shared between herself and the children's father. She is in full-time employment as a consultant. Her average weekly income disclosed by the husband is \$550 per week. THE WIFE. The wife is living in the Hunter area with her parents and the younger child. She has had a new partner since about October 2012. In March 2014, after the sale of his own home, her partner moved in to live with her in her parents' home. This is a short-term measure. The wife is planning to live with her partner and the younger child in the home that he has already purchased for them. He has two children; one of them who is an older teenager and will be an occasional member of that household.

The wife has paid board to her parents, but at the time of trial, was also contributing to household expenses by buying groceries and other household items, averaging at a value of about \$230 per week. Since he has been a member of the household, her partner has also contributed to the household by paying board. The wife works on a permanent part-time basis, two to three days per week, in a retail role locally. She states, and there is no basis for not accepting, that the prescribed medication she takes for her mental illness makes her tired and unable to work fulltime. She has worked at the level stated above through the support of her parents doing the cooking, cleaning and domestic work for herself and the child. The wife readily made concessions when she was cross-examined by the husband. In particular that the husband had looked after the finances throughout the relationship and had made the investment decisions, including the decision to purchase the two investment properties. The wife was asked by the husband why she had moved with their younger child to live with her parents. I accept the answer she gave, which was, I had no support, no money, no child care. The evidence supports that proposition for the position of the wife in early 2012. When asked what she had done to contribute to the business operated by the family company, the wife answered in a considered way, that she had done the banking, entered all the goods into the records, done the filing, physically moved the goods around and had carried out checks on the goods. The evidence of the wife in her affidavit was not successfully challenged. The wife's partner The wife's partner presently pays about \$400 a week to the contribution of the household of the wife's parents, with whom he is living, until the property he purchased for himself, the wife, her younger child and his two children as and when they need to stay with him is ready. He is in fulltime employment as a tradesman. Although he was not a member of the wife's household at the time she filed her amended financial statement, he was included in that document as an income earner of gross \$2,500 per week. The wife's mother The wife's mother was asked only one question, no doubt because the majority of her affidavit related to parenting issues. That question related to the amount of board that was paid by the wife and her partner. The answer she gave was consistent with the evidence of the wife and her partner on that topic. The wife's doctor The wife's doctor was not required for cross-examination. She had provided a medical report.[4] The report attested to the wife

having received appropriate medical assistance from herself and the psychiatrist she consults and that her illness is well controlled, allowing her to gain employment and to care for her son.

APPROACH TO ALTERATION OF INTERESTS IN PROPERTY In considering applications for alteration of property interests and transfer of property the Court must: (i) Identify the existing legal and equitable interests of the parties in property; [5] (ii) Consider whether it would be just and equitable in the particular circumstances to make an alteration; and (iii) If an alteration should be made, to consider the matters contained in s 79(4) and s 75(2) of the Family Law Act 1975 (Cth) (the Act) in coming to an adjustment; and (iv) Analyse and consider whether the adjustment under consideration would be just and equitable. (i) Identify the assets and liabilities of the parties

The interests in property assets and liabilities of the parties were identified in a joint Balance Sheet [6] as set out below:

Oship	Description	Wifes value	Hband value
ASSETS			
1	J [C Street, Suburb H]	\$570,000.00	\$570,000.00
2	J [Business J]	\$267,498.00	222,197.00
Total		\$837,498.00	\$792,197.00
ADDBACKS			
3	W Monies wife withdrew from mortgage on 02.02.2012 See Note	\$49,000.00	
4	H Monies retained by husband from Joint NAB account ...67 on 31.01.12 See Note	(\$18,700)	
5	H Austpac Resources shares sold mid 2012 See Note	(\$1,520)	
Total		\$49,000.00	
LIABILITIES			
6	J NAB Mortgage ...44	\$78,376.00	\$78,376.24
7	J NAB Mortgage ...76	\$50,637.00	\$50,637.21
8	J NAB Mortgage ...59 [Should be 56]	\$99,999.00	\$99,999.00
9	H Commonwealth Mastercard See Note	\$16,039.01	
10	W Estimated Taxation Liability re: CGT on sale of [I] Street, [Suburb M]	\$24,024.00	\$24,024.00
11	W Loan to pay legal fees	\$118,367.00	
Total		\$371,072.00	\$269,075.46

SUPERANNUATION Member Name of Fund Type of Interest Wifes value Hband value

12	W [B] Super Accumulation	\$38,887.00	\$38,887.00
13	W [O] Super Accumulation	\$3,656.00	\$3,656.00
14	H [B] Super Accumulation TBA	\$99,136.67	
Total		\$144,379.67	

Notes Item 2. Husbands Contention The valuation is at least two years of age and the businesses Financial Statements provided show there has been a loss of \$108,111.11 over the past three financial years, as follows: Financial year ending 30 June 2014 loss of \$73,413.79; Financial year ending 30 June 2013 profit of \$3,481; Financial year ending 30 June 2012 loss of \$38,178.38 The loss is as a result of a general downturn trend that is occurring in the ... industry as a whole and we point to in particular [Business P] who

have ceased trading and the general ...industry as evidenced by the closure of the [Company Q] and [Company R] factories. The second hand wholesale market has been superseded by extremely affordable new [goods] being imported from overseas. The value of the business must be reduced by the fees paid to the Single Expert for the valuation report (\$10,000), the fee paid to the company accountant (\$4,301) and the goodwill attributed to the business by the valuer (\$31,000). The Goodwill should not be included as part of the valuation as the business is a Sole Trader and a Wholesaler Business, Goodwill should not be attached. Expert Valuation of business \$267,498 LESS Valuers fees of \$10,000 LESS Accountants Fees of \$4,301 LESS Goodwill \$31,000 Total: \$222,197

Wifes Contention: The Wife relies upon the Single Experts report of Ms. [N] dated 1 November 2012 as to the value of the Company and associated assets. (See Report [Ms N] Page 4, Para 2.3) The Husband has not asked questions of the Single Expert in relation to the value of the Company. Neither party has sought to instruct the Single Expert to update the valuation of the Company. 3. Husbands Contention: These are monies the Wife drew down on the Mortgage and retained following separation. Wifes Contention: Having regard to the decisions in Stanford [2012] HCA 52 and Bevan [2013] FamCAFC 116 the Wife submits that it is no longer appropriate for addbacks to be dealt with as balance sheet matters. 4-5 Wifes Contention: As above, the Wife contends that addbacks should not be treated as a balance sheet item. However, for the purpose of identifying the issue, the Wife contends that post separation, the Husband withdrew funds from the nominated joint account and sold shares. 9 Wifes contention: The Husband has produced no statements in relation to this account other than an account summary showing balance @ 7 June 2014 of \$15,697. The Wife does not concede that the liability should be taken into account.

Analysis Item 2: The value of item 2 was fairly and properly conceded by the wife to required deduction of the value of the vehicle transferred to her by the company and retained by her. An adjustment down, as advised, has been made. Item 3: I am satisfied that the monies withdrawn from the mortgage account by the wife were used for legitimate personal and family expenses at a time when the wife had no other source of income. Items 4 & 5: Likewise, the amounts in these items have not been added back. The husband had some expenses associated with separation both for himself and

the wife. The present interests of each of the parties are: The wife: (a) The wife has a motor vehicle transferred by the company and her interest in superannuation. She has a significant debt to her parents in relation to legal fees and an estimated capital gains tax liability for the sale of the Suburb M investment property. The husband: (b) The husband has occupation of the former matrimonial home, the company, the business that the company runs and his interest in superannuation. He has a master card debt, but there were no statements produced to support that credit card liability until the second day of this hearing, the position taken by the wife was that the debt was thereby established, although late, but there was no concession of it being a joint liability.

Revised Balance Sheet

ASSETS

1. J C Street \$570,000
2. J Business J * \$234,713
- Total \$804,713

LIABILITIES

6. NAB Mortgage **...44 \$78,376
7. NAB Mortgage **...76 \$50,637
8. NAB Mortgage Directors Loan **...56 \$99,999
9. Commonwealth Mastercard \$16,039
10. CGT Suburb M \$24,024
11. Debt to wife's family \$118,367
- Total \$387,442

SUPERANNUATION

12. W B Super \$38,887
13. W O Super \$3,656
14. H B Super \$99,137
- Total \$141,680

(ii) Would it be just and equitable to make an alteration? The parties' two main assets, the former matrimonial home and the company which runs the business operated during the marriage, are jointly owned assets. The marriage has come to an end; the parties have re-partnered. There was a relevant relationship for 19 years, during which two children were born to the parties and assets were generated. It is appropriate to consider an adjustment to the interests to recognise the separation and for each party to have access to their legitimate interests.

(iii) Consideration of contributions of each of the parties and of adjustments pursuant to Section 75(2) factors

Initial Contributions

The husband owned some furniture and personal effects. He also had some minor personal debts. The wife had a motor vehicle which she says was a two year old Mitsubishi worth about \$23,000, and which the husband asserted to be worth approximately \$9,000. There is no basis for choosing between those asserted values and given that the marriage endured for almost 20 years, there is no particular significance to the difference.

Contributions during the relationship

The husband worked fulltime, long hours, weekdays and sometimes weekends. His evidence suggests that it was a matter for regret later in life that he had worked in that way, with the consequence of spending little time with the children, particularly his

older child. His wages earned were applied to the benefit of the family by way of loan repayments, rates and bills, holidays and other family expenses. In 2004 the parties commenced the business run by a company in which they were both shareholders. The husband worked fulltime in that business. I am satisfied that the wife also worked in that business to the extent consistent with her care of the two children. During the relationship, the parties acquired either two or three investment properties and renovations and improvements were undertaken; the Suburb M investment property was divided into two flats. The husband did physical work including sanding, painting and other general maintenance tasks. The wife and her mother also did some physical work, including painting and soft furnishings. The husband attended to maintenance of the goods sold by the business and assisted at times with domestic work. The wife worked in the business and in paid employment, after periods of maternity leave, longer with the second child. There were periods of ill health where she was unable to work. To the welfare of the family it is not disputed that the wife was the primary homemaker and parent to the parties' two children. No matter how lovingly undertaken, that task was made more onerous by the husband's tendency to work up to 11 days per fortnight for long hours. Supervision of the children's education and extracurricular activities was largely undertaken by her.

Analysis This was a long marriage. Both parties worked hard; the husband more focused on more direct financial contribution; the wife more focused on a contribution to the care of the children and the domestic work of the household. They applied their income and labour to the benefit of the family. At the conclusion of the relationship in 2011, their contributions should be considered equal. Post-separation the wife withdrew \$49,000 from the mortgage account. This provided her with the finance she needed to support herself and the child. Accordingly, there need be no further adjustment in relation to the period of separation.

(iii) **Relevant s 75(2) factors for adjustment** Of the factors to be taken into consideration, I note the following. Age and state of health The husband is 43 and in good health. The wife is 42; her health is well managed by medication and appropriate consultation with a psychiatrist. An effect of her medication is fatigue, which reduces her capacity to work. She has been working two to three days per week and may work less when she begins living fulltime with her current partner and the younger child. Part of the reason for that is that

she expects to be attending to domestic work in the household, which has been undertaken by her parents post-separation, releasing her to paid employment. Income property and financial resources The husband's sole source of income is from the business. He has run that business with some assistance from the wife for the last 10 years. His current partner is paid a wage by him, as has been the case since that relationship began. The assumed earnings of the husband, \$87,200 per annum, are drawn from the valuation report.[7] It may be the case that they are not the actual earnings of the husband at this time. However there is no basis for finding that his capacity to earn at that level is reduced. The wife is earning approximately \$350 per week, or \$18,200 per annum, with little likelihood that she will earn more in the future given two restrictions on her capacity to work; the effect of prescribed medication and her need to continue to be present and supervise the younger child around school hours and holidays. Commitments of each of the parties necessary to enable the party to support him or herself The husband supports himself by way of his income and provides some support to his partner. His assertion that he provides some financial support to the two children of his partner[8] is not a matter that I take into account as having priority over the need to make provision for the wife. It is a reflection of the fact that the husband is able to provide that support to his new partner and her children. The wife supports herself by way of her income and has been supported financially by her family by way of loans for legal costs and assistance with domestic tasks and supervision of the younger child. Superannuation/Government Benefits Neither party receives a pension allowance or benefit. Each of them has an interest in superannuation, which will be adjusted by consent. Each will then have approximately \$70,000 in superannuation. There will be least 20 years before either party can access those funds through retirement. A standard of living in all the circumstances that is reasonable The husband wished to retain the home and make a payment to the wife; however he acknowledged the necessity of the house being sold in the circumstances. The wife seeks the sale of the property. In any event, both parties recognise that a cash adjustment is required to meet the wife's interest and given that the husband has been primarily responsible for conducting the business that it should stay with him. Duration of the marriage The parties cohabitated for a total of 19 years and there has been a period of about three and a half

years of separation. Where either party is cohabitating The husband has lived with his partner since January 2012. She is employed and contributes her income to household bills and the financial support of herself and her two children, who are regular part-time members of that household. The wife is presently living with her partner in the home of her parents, but will undoubtedly soon be living with her partner, together with the younger child and occasionally the late teenage and early adult daughters of her partner. He will contribute his income to household bills, general expenses and the financial support of himself and, to some extent by the provision of a house, the wife. Child support The husband pays and will likely continue to pay child support as assessed. (iv) Is the adjustment of interests under consideration just and equitable Taking these factors into account I consider there should be an adjustment in favour of the wife, with particular reference to her restricted capacity for paid employment and her obligation for at least the next seven years, to provide most of the care and supervision for the younger child. That adjustment should create a ratio of 60/40 in favour of the wife. Accordingly the parties shall each retain the following: (a) The wife would retain: 1. Proceeds of sale of C Street \$570,000 Less payment of mortgages \$229,012 and estimated sale costs \$ 20,000 \$249,012 \$320,988 2. Superannuation \$ 70,840 \$391,828 Less Capital Gains Tax \$ 24,024 \$367,804 Less payment of loans \$118,000 \$249,804 (b) The husband would retain: 1. Business J \$234,713 2. Superannuation \$ 70,840 \$305,553 Husband will pay personal debts \$ 16,514 \$289,039 The husband will have the income from his business, superannuation benefits and be debt free. The wife will have a cash sum towards accommodation, superannuation benefits and be debt free. I am satisfied that the adjustment of interests is just and equitable for the reasons stated.

SUPERANNUATION There was an agreement between the parties that interests in superannuation would be split in such a way as to share equally. The agreed figure for the base amount was \$29,000. However, I have found that there was an error in the addition of Items 12 to 14 inclusive (the three funds). Accordingly, the total of \$141,680 requires a base amount of \$28,297 to be allocated to the wife. (a) Wife: Item 12 \$38,887 Item 13 \$ 3,656 \$42,543 Plus allocated amount \$28,297 \$70,840 (b) Husband: Item 14 \$99,137 Less allocated amount \$28,297 \$70,840 I certify that the preceding ninety-six (96) paragraphs are a true copy of the reasons for judgment of the Honourable Justice

Cleary delivered on 13 October 2014. Associate: Date: 13 October 2014 [1] Third Amended Application filed 06/09/2013, Orders 12 to 25 [2] Exhibit 4 [3] Affidavit of wife filed 11/09/2014, par 180 [4] Affidavit of Dr F filed 11/09/2013, pp 10-11 [5] Stanford & Stanford [2012] HCA 52; (2012) 247 CLR 108 [6] Exhibit 1 [7] Affidavit of Ms N, Single Expert, filed 05/11/2012 [8] Exhibit 5, p 6, par (d)

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