

FAMILY LAW PROPERTY Superannuation Application by wife seeking property adjustment against the husband Orders made splitting superannuation in favour of wife Family Law Act 1975 (Cth)

APPLICANT: Mr Parrish RESPONDENT: Ms Parrish FILENUMBER: MLC 1349 of 2012 DATE DELIVERED: 19 August 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Benjamin J HEARING DATE: 19 August 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: In Person SOLICITOR FOR THE APPLICANT: COUNSEL FOR THE RESPONDENT: In Person SOLICITOR FOR THE RESPONDENT: ORDERS The base amount allocated to Ms Parrish (the wife) in these proceedings out of the interest of Mr Parrish (the husband) and his superannuation account (...) with Cbus Industry Super is forty thousand dollars (\$40,000). Pursuant to s 90MT (1) of the Family Law Act 1975 (Cth) whenever a splittable payment becomes payable in respect of the interest of the husband in Cbus Industry Super the wife shall be entitled to be paid an amount calculated in accordance with Part VI of the Family Law (Superannuation) Regulation 2001, using the base amount and there would be a corresponding reduction in the entitlement of the person to whom the splittable payment would have been made but for these orders. A copy of these Orders must be served on the Trustee of the husband's superannuation account with Cbus Industry Super within twenty eight (28) days of the date hereof. If no objection is received from the Trustee, and no application is made by the trustee to vary these orders within 30 days after service of such document then the orders shall become binding upon the Trustee. Order 2 has effective date from the operative time. The operative time for the purpose of Order 5 is four (4) business days after the expiry of the time specified in Order 4. A copy of an affidavit of service of these Orders on the Trustee of Cbus Industry Super shall be filed by the husband and a copy served on the wife within seven (7) days of the document being served on the said Trustee. Leave be granted for the husband and wife to apply to the Court in the event that the Trustee is unable to comply with this Order, such leave to be available for six (6) months from the date of this Order. All extant applications be dismissed. IT IS NOTED that publication of this judgment by this Court under the pseudonym Parrish & Parrish 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 MELBOURNE

FILE NUMBER:MLC 1349 of 2012 Mr Parrish Applicant And Ms Parrish Respondent REASONS FOR JUDGMENT Introduction This is a proceeding commenced by Ms Parrish (the wife) seeking a property adjustment against Mr Parrish (the husband). It is an unusual matter in this Court, as the amounts involved are relatively modest and I would normally have expected this to have been determined in the Federal Circuit Court. It is also unusual in that neither of the parties have filed significant affidavit material as to the matters that the Court would normally have needed to determine a property settlement. However, the parties were involved in parenting proceedings which were resolved earlier today, and the amounts involved were of such a relatively modest level that to send the parties away to come back would have simply added to the conflict and cost to which they have already been engaged over a number of years, these proceedings having commenced in one form or another in about February 2012, and it is now coming up to two and a half years of constant litigation. The wife accepts that the husband has a superannuation entitlement of about \$131,000 and seeks an order for a split of that superannuation into half, which would give her about \$65,500. The wife also says that at separation, the husband sold the car and received about \$8,000, and she wants \$4,000 of that. She complains that the house was full of furniture at the time of separation, and that most of that has been retained or kept by the husband. The wife seeks, as I said, a total non-superannuation property settlement of \$4,000. The husband tendered superannuation statements, being Exhibits H1, H2 and H3, which shows that as at 1 July 2004, he had superannuation entitlements of about \$18,700, and this was about 18 months after the parties commenced cohabitation. The second document, which is Exhibit H3, shows that the husband's superannuation as at 30 June 2011, which was about five months after they separated, had a value of about \$72,100. He has tendered a third document, which is Exhibit H1, which shows that his current superannuation entitlements are about \$131,000 being an increase from \$105,000 in June the preceding year. The husband acknowledges that the wife should receive some superannuation, but submits that it ought to be \$20,000 and there ought not to be a payment of \$4,000. Issues The issue is primarily what adjustment ought to be made to the superannuation asset, the wife having no superannuation to which she has disclosed at this stage. The Background The wife is aged 43.

The husband is aged 42. They met and commenced cohabitation in about January 2003. They married in January 2004 and separated in January 2011. Their marriage still subsists, although the husband now lives in a de facto relationship with Ms B and her three children, aged 16, 13 and eight. At the time of commencing cohabitation, the wife had three children of a previous relationship: K now aged 15, J now aged 17, and N who is now aged 20. N does not live with the wife. J lives with the wife and is currently endeavouring to obtain employment. K, the wife's younger child, lives with the husband, and orders were made earlier today that she continue to live with him, and I approved those orders at that time. In addition, the parties have a child of their relationship, Y who was born in January 2005 and is now aged nine and a half. She lives primarily with the husband, and pursuant to the orders made by me today, she will spend regular time with her mother, the wife, on alternate weekends and parts of school holidays and special occasions. The husband relied upon his affidavit sworn 6 August 2014. The wife relied upon her financial statement filed 15 April 2014 and her affidavit filed 7 March 2014. In her affidavit, the wife deposed that she earns about \$800 to \$900 per week as a casual, and she at that time was paying rent of \$400 per week; that has now increased to \$420 per week. The wife pays child support in relation to the children totalling \$91 per calendar month and arrears of some \$64 per calendar month. There was no evidence before me as to the full amount of those arrears. The wife suffered ill health prior to and subsequent to the breakup of the relationship. Part of that involved self-medication through alcohol and other substances. I need not go into that at this stage, as it does little in terms of the property aspect of it. The wife received a payout from an employer in a workers compensation type claim of some \$200,000, of which she eventually received about \$160,000. She deposes that this money became available to her after separation, and that she has applied all of that money in setting herself up again, living expenses and legal costs. The husband disputes that and says that he thought that there was some money put aside in a trust, but there is no evidence of those funds, although I have had regard to the wife having access to those funds since separation. It is likely that the funds were primarily contributed, in any event, by the wife, although not much information was provided in that respect. The wife otherwise has property totalling about \$25,000, which amounts to a Ford motor vehicle worth \$23,000

and household contents worth \$2000. As I said, she has the care of her second eldest child, who is aged 17. The husband works in the construction industry and worked throughout the marriage and since the marriage, earning a strong income. His current income is some \$1,827 per week. His partner earns about \$380 per week. From the husband's material, it appears that with his income, his partner's income and child support, they just barely manage on a week to week basis. He pays rent of about \$450 per week and pays health insurance. He has property totalling about \$38,000, which includes a Holden motor vehicle and a Ford motor vehicle. In addition the husband says that he has a motorbike, a Suzuki which has a value of \$5000, and tools to a value of about \$5000. However, I am told that the motorbike has gone. Each of the parties have modest non-superannuation assets. The superannuation assets I have dealt with. Approaching this matter in terms of the guidance given by the High Court in *Stanford*[1] and in the Full Court of this Court in *Bevan*[2], my first task is to work out whether I ought to make an adjustment of property as between the parties. I intend to divide this into two areas. Firstly, the non-superannuation property. Whilst I have some sympathy for the wife with regard to non-superannuation property, it seems that the only evidence I have as to the sale of the car is that when it was sold, the proceeds were used to payout a liability. The wife had a significant amount of money, part of which may have been money to which the husband may have been able to claim, but there is none of that left. Each of the parties is now working. The husband has a responsibility to care for the younger two children plus a responsibility to his present partner, who in turn has responsibility to care for her three children, aged 16, 13 and eight respectively. Given the small amount of property and the history of this matter, I am not satisfied insofar as the non-superannuation property is concerned that the Court ought to make any property order in that area. As to the superannuation property this is somewhat different. Over the course of the parties' relationship, each of them contributed in their own way. The wife cared for the four children in the household, albeit only one of those children was a child of the husband. The husband provided financial support for those children, although the level of that financial support is either not clear or not agreed. They received modest child support, but not significant child support. Over that period of time, the superannuation fund grew by about \$53,000 or \$54,000 thousand dollars. Following

separation, the husband ended up with more of the furniture and effects than perhaps that of the wife, but did not have access to the funds of the wife to which I alluded earlier. He has had the primary care of the younger children, given the illness of the wife to which I have referred to earlier. It seems to me that the wife has made significant contribution to those funds. In terms of future needs, each of the parties is in good health. Each has some responsibility to support others. The wife, J at least for the next 10 or nine months; the husband in relation to the younger two children, and, of course, a responsibility to his partner. His earning capacity is greater than that of the wife, but the drawings on those earnings, given his circumstances, are far greater. Given those contributions and those future needs, I am satisfied, as I said that there ought to be an adjustment, but it ought not to be 50 per cent. Nor, dare I say, should it be the simple mathematical figure raised by the husband on the basis that part of the increase in the value of the superannuation fund from separation to now arise by virtue of his contributions, but another part arises by virtue of the natural increase in the fund itself. I do not have evidence as to what those various figures may be. It may be that the stock market went well or it may be the stock market went badly; I do not know. Given all of those circumstances, I am satisfied that there ought to be an adjustment of the superannuation, but at a level less than that sought by the wife but greater than that sought by the husband. I intend to make an order that there be a split of the superannuation to the extent of \$40,000. I am going to make an order however I cannot make that as a final order at this stage. What I will be doing is formulating an order and directing the husband to forward a copy of that order to the superannuation fund, and giving them leave to make application if they consider the structure of the order needs to change. Once the superannuation fund replies, then the order will be made. I will otherwise dismiss the property proceedings between the parties, unless there is anything else the parties wish to add to that. I certify that the preceding seventeen (17) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Benjamin delivered on 19 August 2014. Associate: Date: 19 August 2014 [1] Stanford v Stanford [2012] HCA 52, (2012) 293 ALR 70. [2] Bevan & Bevan [2013] FamCAFC 116; (2013) FLC 93-545 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/851.html>

