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## FAMILY COURT OF AUSTRALIA at MELBOURNE

*In the Marriage of LOCK*

Watson SJ, Fogarty and Gunn JJ

19 August 1977

29 FLR 433; [1977] FLC 76,515 (¶90-282)

**MAINTENANCE AGREEMENT – DUTY OF COURT ON THE HEARING OF AN APPLICATION FOR APPROVAL: FAMILY LAW ACT 1975, S87.**

H. & W. executed a maintenance agreement and sought to have it approved by a judge of the Supreme Court of Victoria. Both parties were represented and there was a full disclosure of each party's financial position. The agreement was approved. Upon appeal to Full Court of Family Court alleging there was not adequate evidence for the judge to be satisfied of the provisions regarding financial matters were proper.

**HELD: Appeal dismissed.**

1. The duties of the legal professions and the court when an agreement under s87 is before the court for approval include: (a) has there been sufficient and adequate disclosure of relevant financial resources? (b) does the agreement appear to be a fair adjustment between the parties; (c) is the agreement one which it is proper that the court should enforce? (d) do the parties have the capacity to perform their obligations under the agreement? (e) are the interests of any minor children properly protected? (f) do the parties fully understand their rights and duties under the agreement and that it is in substitution of rights under Pt.VIII ?

*In the Marriage of Wright* (1977) 29 FLR 10, applied.

2. The trial judge was entitled to take into account the material pieced before him, take into account the fact that experienced counsel was propounding that the deed be approved, take into account the benefits offered to the wife and, having regard to all the matters before him, exercise his discretion in accordance with the elements suggested in *Wright's case*. The judge has not erred in the exercise of that discretion. The appeal must fail.

**WATSON SJ:** (together with Fogarty and Gunn JJ). In my mind the case turns on the proper approach to approval of deeds and I will refer to my judgment in *In the Marriage of Wright* (29 (1977) FLR at p10):

'What then are the duties of the legal professions and the court when an agreement under s87 is before the court for approval? It seems to me that the following elements require consideration: (a) has there been sufficient and adequate disclosure of relevant financial resources? (b) does the agreement appear to be a fair adjustment between the parties; (c) is the agreement one which it is proper that the court should enforce? (d) do the parties have the capacity to perform their obligations under the agreement? (e) are the interests of any minor children properly protected? (f) do the parties fully understand their rights and duties under the agreement and that it is in substitution of rights under Pt.VIII ?'

Notwithstanding the changed concepts expressed by the *Family Law Act*, the above principles should prevail. As to the nature of the inquiry to be conducted by the court, I respectfully adopt what Hutley JA said in *Gipps v Gipps* (1977) 23 FLR at p447.

Inevitably the judge relies upon the legal advisers of the parties to protect them against deception, imposition and improvidence. He has, besides the instrument he is asked to approve, the pleadings, which should disclose their respective statements of their respective assets, oral evidence and statements from the bar table. In other words sanctioning does not, except in the rarest cases, involve the judge investigating anything. (1974 23 FLR at p453).

The financial resources of one spouse are not always known to the other and it seems to me that in most cases where s87 is involved the parties have to be in a proper bargaining position. One of

the elements involved in that is that each of them has a full and adequate understanding of the financial resources of the other. There is no doubt that in this present case the parties did have that understanding and bargained accordingly. Therefore the only issue really left in the appeal is; does the agreement appear to be a fair adjustment between the parties? This lady received the full value of a home, she received a motor car, she received a sum of money and she shortly will be entitled to an old-age pension. The husband will not have the old-age pension for some years. He is older than the wife.

The trial judge was entitled to take into account the material pieced before him, take into account the fact that experienced counsel was propounding that the deed be approved, take into account the benefits offered to the wife and, having regard to all the matters before him, exercise his discretion in accordance with the elements suggested in my judgment in *Wright's case*. I cannot see that he erred in the exercise of that discretion. The appeal must fail.

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