

40/76

FAMILY COURT OF AUSTRALIA at SYDNEY

In the Marriage of MACSOK

Watson J

13 May 1976 — (1976) 25 FLR 150; 9 ALR 479; [1976] FLC 75,193 (¶90-045)

FAMILY LAW – EFFECT OF *RUSSELL v RUSSELL* [1976] HCA 23; (1976) 134 CLR 495 – WHETHER COURT HAS POWER TO APPROVE A MAINTENANCE AGREEMENT DESPITE THERE BEING NO CURRENT PROCEEDINGS: *FAMILY LAW ACT* 1975, SS39, 87.

HELD:

1. The Family Court has jurisdiction to entertain an application for approval of a maintenance agreement notwithstanding the fact that there are no proceedings current nor can there be for dissolution from nullity of the marriage. That jurisdiction was drawn from s39(d) in the definition of 'matrimonial cause', and from s87 which specifically provided that the Family Court may approve of a maintenance agreement of the type before the Court.

Russell v Russell [1976] HCA 23; (1976) 134 CLR 495, followed.

2. Satisfied that the agreement is a proper one, it was approved under s87.

WATSON J: There is before the court an application filed on the 27th February which seeks custody, maintenance and certain orders concerning the matrimonial home at 18 Ross Street, Toongabbie. The application is now withdrawn having regard to the decision of the High Court in *Russell v Russell* [1976] HCA 23; (1976) 134 CLR 495 (11th May, 1976). I therefore dismiss that application.

However, the parties have made orally before me an application that I approve under s87 of the *Family Law Act*, a maintenance agreement entered into between the parties. That agreement relates to property and seeks to define for all time the financial obligations of the parties.

As I understand *Russell v Russell* that definition in 'matrimonial cause' being paragraph (d) which refers to proceedings between the parties to a marriage for the approval by a court of a maintenance agreement has in no way been cut down. 'Maintenance agreement' is defined in s4(1) of the Act as being an agreement that makes provision with respect to financial matters.

'Financial matters' in the same section in relation to the parties to a marriage means matters with respect to maintenance the property of those parties or of either of them or the maintenance of children of the marriage.

I consider therefore that I have jurisdiction to entertain this application for approval of a maintenance agreement notwithstanding the fact that there are no proceedings current nor can there be for dissolution from nullity of this marriage. I draw that jurisdiction from paragraph (d) in the definition of 'matrimonial cause', from s39 relating to jurisdiction in matrimonial causes and from s87 which specifically provides that this court may approve of a maintenance agreement of the type now before me. I am satisfied that the agreement is a proper one and I approve it under s87.