



## HIGH COURT OF AUSTRALIA

15 November 2012

### STANFORD v STANFORD

[2012] HCA 52

Today the High Court unanimously allowed an appeal from two decisions of the Full Court of the Family Court of Australia concerning the settlement of property owned by a husband and wife. The High Court held that there was no basis to conclude that it was just and equitable to make an order altering interests in the marital property between them.

The husband and wife married in 1971. In December 2008, the wife suffered a stroke and moved into full time residential care. She was later diagnosed with dementia. The husband continued to provide for her care and set aside money in a bank account to meet the costs of her medical needs or requirements. He continued to live in the matrimonial home.

In 2009, the wife (by one of her daughters as case guardian) applied to the Family Court for orders altering interests in the marital property between the wife and her husband. Under the *Family Law Act 1975* (Cth), a court can make a property settlement order if it is "just and equitable" to do so. At first instance, a magistrate ordered that the husband pay his wife \$612,931, which represented the amount assessed as her contribution to the matrimonial assets.

The husband appealed to the Full Court of the Family Court. After the appeal had been heard but before judgment was delivered, the wife died and her daughters continued the proceedings as her legal personal representatives. Under the *Family Law Act*, if a party dies before the conclusion of proceedings, a court may make a property settlement order if it would have made an order had the party been alive and if it is still appropriate despite the party's death to make an order.

In its first judgment, the Full Court allowed the husband's appeal, holding that the magistrate erred in considering whether it was just and equitable to make a property settlement order. In a second judgment, the Full Court ordered that \$612,931 be paid to the wife's legal personal representatives upon the husband's death to reflect her contributions to the marriage and the husband's moral obligations to her. By special leave, the husband appealed to the High Court.

The High Court unanimously allowed the appeal. The Court held that there was no basis to conclude that it would have been just and equitable to make a property settlement order had the wife been alive. She had not expressed a wish to divide the property, a property settlement order would require the husband to sell the matrimonial home, in which he still lived, and the Full Court had found, on the material before the magistrate, that her needs were being met or could be met by a maintenance order. The bare fact of physical separation, when involuntary, does not without more show that it is just and equitable to make a property settlement order.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*