

## Appeals in family proceedings – they are not without risk



A fundamental part of our legal system is the right to appeal a court's decision, if that court has made an error as to the application of the law. This can include an error as to the weight given to certain pieces of evidence. Generally, however, an appeal won't be allowed if you simply don't like the judge's decision.

This is especially true in the family courts in England and Wales, in which the judges have broad discretionary powers. One judge may well make a different decision to another judge, but an appeal will not be successful unless the appellant is able to point to an error in how the judge has applied the law. Appeals should not be embarked on lightly; the appeal court can decide to reverse the original decision and order the appellant to pay the other party's costs if the appeal is unsuccessful.

The wife in the recent case of *Standish v Standish* [2024] EWCA Civ 567 decided that she didn't like the judge's decision and that she would try her luck at appealing. Unfortunately, this did not go in her favour and what follows is a cautionary tale.

The first judge had awarded the wife 34% of the assets in the marriage, amounting to around £45,000,000. The judge departed from the equal sharing principle because the husband had brought certain assets into the marriage and so those were classified as "non-matrimonial". As a result of the judge's award, the wife was to retain investments which originated from prior to the marriage, and also shares in the husband's company, again existing prior to the marriage. Both the investments and shares had been transferred to the wife during the marriage in an attempt to avoid tax. The first judge found that, notwithstanding the reason for the transfers, those assets had become "matrimonial" when placed in the wife's name, even though the source of the assets was

outside of and long prior to the marriage.

The wife decided to appeal. She said that the investments and shares had become “her” property after the transfer and should not be considered “non matrimonial” and therefore not shared. Her case was therefore that she should receive more overall. The husband also appealed, himself dissatisfied that the judge had considered the transferred assets to be “matrimonial” and contending that they remained “his” assets notwithstanding being held in the name of the wife. A complex and messy position for them both.

The Court of Appeal, comprised of three leading family judges, unanimously decided that the first judge had got it wrong. It mattered less who was holding the title to certain assets, and weight was to be placed on the origin of those assets. The investments and shares had not become “matrimonial” simply because they had been transferred to the wife, nor had they become her “non-matrimonial” property. As the evidence clearly demonstrated that the husband had generated the assets prior to the marriage, they should fairly be classified as “non-matrimonial” and retained by the husband.

The wife’s award was slashed by 44% to £25,000,000 and the husband’s appeal was allowed. The court has not yet determined the position on costs, although they are empowered to make a punitive costs order against the wife as a result of her having failed to succeed in her appeal.

A cautionary tale. Any appeal should be carefully considered. Instead of succeeding in her attempt to achieve a greater share of the assets in the divorce, the wife instead lost out on £25,000,000 plus her own costs and most likely an order to pay towards those of the husband.

## How we can help

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