



family flyer



Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Welcome!
- People and Property
- But the Judge fell asleep?
- Alcohol and Property Settlement
- Disclosing Information
- Child Support Investigations
- Assistance

WELCOME!

Family and Relationship Law includes many different things, divorce, children's arrangements, child support, property settlement, spouse maintenance. In one way or another it impacts almost everyone's life.

For over 11 years we have been keeping more than 5,000 readers up to date on Family Law issues for FREE with our monthly e-newsletter the Family Flyer.

This Special Edition is prepared for you with a specific focus on financial matters.

PEOPLE AND PROPERTY

We have published many articles providing guidance and information on how financial matters are dealt with in Family Law.

We have now collated a list of some of these topics, we trust you find them of interest. To read the complete article, please visit our website at www.mlfl.com.au and click on "Family Flyer":

- How does the Court deal with Inheritances in Property Settlement? - Issue 41
- Child Support - What is "income earning capacity"? - Issue 41
- What is a Pre-Nuptial Agreement? - Issue 42
- Personal Injury payments in Property Settlements - Issue 42
- How are "gifts" determined in a Property Settlement? - Issue 43
- Property Settlements in a short marriage - Issue 45
- Who occupies the home? - Issue 45
- Big changes in Child Support - Issue 47

- How to split Super? - Issue 47
- A drop in house value after Court Hearing - Issue 48
- Measuring the homemaker contribution - Issue 50
- Capital Gains Tax in Property Settlements - Issue 51
- Splitting Superannuation in Property Settlements - Issue 53
- Pensions and Property Settlement - Issue 55
- Tips on coping financially after Divorce - Issue 58
- Property values - Issue 62
- Furniture and jewellery values - Issue 63

BUT THE JUDGE FELL ASLEEP?

The New South Wales Court of Appeal has decided in a 2-1 majority that two men convicted of drug charges should not have their judgment set aside on the mere fact that the Trial Judge had from time to time fallen asleep.

The Court heard that the two men were found guilty of drug charges and jailed 13 years and 11 years respectively.

The Appeal Court was told that the Trial Judge suffered from sleep apnoea and at times had nodded off and was heard to snore and that some jurors had been seen "smiling, rolling their eyes and laughing" at times when the Judge was asleep. The Court also heard that the Judge would wake up either "by the operation of his own body mechanisms" or by the "provocation" of someone creating a noise by clearing their throat or moving a book.





The majority of the Court of Appeal stated that "for a Judge to be constantly attentive is not a fundamental requirement" although sleeping was "regrettable". Intervention by the Appeal Court was only justified if it could be shown the sleeping resulted in error.

The dissenting Judge accepted that one of the accused men became "distracted" when the Judge snored while he was giving evidence. He concluded that a Judge was required to be "present and conscious" during the whole of a Trial before a jury.

ALCOHOL AND PROPERTY SETTLEMENT

The Family Court recently considered a Wife's argument that her Husband's excessive alcohol consumption should entitle her to a greater property settlement.

The Wife contended that her Husband wasted matrimonial finances by purchasing alcohol and that her contributions were made harder because of his abuse after having drunk alcohol.

The Court stated that for "financial loss" to be relevant one party must have acted recklessly to reduce the value of the assets.

The Judge found that the evidence was clear that the Husband and the Wife had both spent money on alcohol for themselves and there was no evidence that one or the other had recklessly reduced the value of the assets. He concluded that the Wife's suggestion that the Husband spending \$30 per week was wastage, was a "nonsense argument".

The Court was also not satisfied that there should be any greater percentage entitlement to the Wife for her contributions. The Court found that not only had the Wife not proven that the

Husband's alleged violent conduct had a significantly adverse impact upon her contributions but the evidence showed that both of them had frequently become intoxicated and had argued between themselves.

DISCLOSING INFORMATION

The Family Law Act provides that each party must always provide full and frank disclosure of their financial circumstances.

This was recently restated by the Full Court of the Family Court where it said that:

"Whether a non-disclosure is wilful or accidental is beside the point. The duty to disclose is absolute. Where the Court is satisfied the whole truth has not come out it might readily conclude the asset pool is greater than demonstrated. In those circumstances it may be appropriate to err on the side of generosity to the party who might be disadvantaged by the lack of disclosure".

CHILD SUPPORT INVESTIGATIONS

The Child Support Agency advises that it has employed an extra 120 financial investigators so that it can investigate 2,400 separated parents across Australia.

The investigations are designed to identify parents who minimise their income and thereby minimise Child Support payments.

The Agency says it is focussing on parents who live in "affluent suburbs" but have reported low incomes to pay the minimum Child Support.

ASSISTANCE

If you need assistance (or know someone who requires assistance) with a Family or Relationship Law matter, call us on (07) 3221 4300 or visit us at www.mlfl.com.au.

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