



FEDERAL MAGISTRATES COURT OF AUSTRALIA

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19 Februaury 2010

Mr Peter Nolan
C/- Key-Work Consulting GmbH
Kriegsstrasse 100-76133 Karlsruhe
Germany

Dear Sir / Madam

RE: NOLAN AND NOLAN PAC6601/2007

I refer to the above and enclosed the Judgement and Orders delivered by Federal Magistrate Dunkley on 19 February 2009.

Yours sincerely

Therese Aroyan
Acting Deputy Associate to Federal Magistrate Dunkley

FAMILY LAW ACT 1975

**IN THE FEDERAL
MAGISTRATES COURT OF
AUSTRALIA**

AT PARRAMATTA

No. (P)PAC6601/2007

BETWEEN

PETER ANDREW NOLAN

(Applicant)

AND

JENNIFER MARGUERITE NOLAN

(Respondent)

Mr Peter Nolan
C/- Key-Work Consulting GmbH
Kriegsstrasse 100-76133 Karlsruhe
Germany

Sarah Bevan Family Lawyers
DX 28399
PARRAMATTA

ORDER 19/02/2010

FAMILY LAW ACT 1975

IN THE FEDERAL MAGISTRATES
COURT OF AUSTRALIA

FILE NO: (P)PAC6601/2007

BETWEEN:

PETER ANDREW NOLAN (Applicant)

AND:

JENNIFER MARGUERITE NOLAN(Respondent)

BEFORE:

FEDERAL MAGISTRATE DUNKLEY

DATE:

19 February 2010

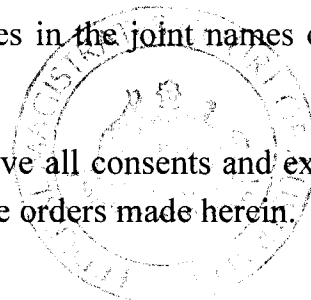
MADE AT:

PARRAMATTA

UPON APPLICATION MADE TO THE COURT by Applicant in person and Ms Bevan for the Respondent.


THE COURT ORDERS THAT:

- (1) The parties shall direct Watts McCray solicitors within 30 days of the date hereof to disburse the sale proceeds held on behalf of the parties in Watts McCray trust account in the following priority:
 - (a) In payment to the wife of the sum of \$12,931.00;
 - (b) In payment to the husband of the sum of \$20,767.00; and
 - (c) In payment to the wife of the balance.
- (2) The parties shall direct the real estate agent who acted on the sale of 8 Schofields Parade, Pennant Hills to disburse any monies held by that agent on behalf of the parties as to 70% thereof to Mrs Nolan and 30% thereof to Mr Nolan.
- (3) Mrs Nolan shall be solely responsible for the payment of the loan (formerly the overdraft) now in her name.
- (4) Mrs Nolan shall be entitled to the balance of the monies in the joint names of the parties in the Royal Bank of Canada.
- (5) That the husband and wife do all acts and things and give all consents and execute all documents and writings necessary to give effect to the orders made herein.

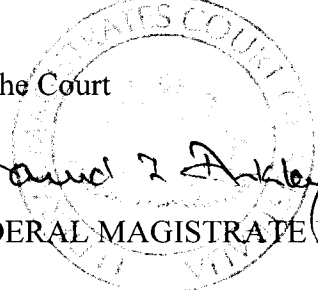


- (6) That in the event that either party refuses or neglects to execute any deed or instrument by any date provided herein or within fourteen (14) days of being requested to do so then the Registrar of the Court be appointed pursuant to section 106A to execute such deed or instrument in the name of such party and to do all acts and things necessary to give validity to the operation of the deed or instrument.
- (7) It is ordered that subject to the preceding the husband and wife are to have the sole right, title and interest in:
- (a) Any chattels, goods, furnishings and other property not previously dealt with as part of these orders which are, at the date hereof in their possession respectively;
 - (b) Any monies, shares, debentures and superannuation entitlements not previously dealt with as part of these orders which stand in their sole name respectively at the date hereof.

By the Court



FEDERAL MAGISTRATE DUNKLEY



FEDERAL MAGISTRATES COURT OF AUSTRALIA

NOLAN & NOLAN

[2010] FMCAfam 143

FAMILY LAW – property – non-disclosure by husband results in non-cautious Section 75(2) adjustment in the wife’s favour.

Family Law Act 1975, s.79, s75(2)

Hickey v Hickey v Attorney-General of Australia (Intervener) (2003) FLC 93-143

Giunti v Guinti (1986) FLC 91-757

Mezzacappa v Mezzacappa (1987) FLC 91-853 and *Black v Kellner* (1992) FLC 92-287

Weir v Weir (1993) FLC 92-338

Applicant:	PETER ANDREW NOLAN
Respondent:	JENNIFER MARGUERITE NOLAN
File Number:	PAC6601 of 2007
Judgment of:	Dunkley FM
Hearing date:	26 November 2009
Date of Last Submission:	26 November 2009
Delivered at:	Parramatta
Delivered on:	19 February 2010

REPRESENTATION

Applicant appearing in person.

Solicitors for the Respondent: Sarah Bevan Family Lawyers

ORDERS

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- (5) That the husband and wife do all acts and things and give all consents and execute all documents and writings necessary to give effect to the orders made herein.
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- (b) Any monies, shares, debentures and superannuation entitlements not previously dealt with as part of these orders which stand in their sole name respectively at the date hereof.

**FEDERAL MAGISTRATES
COURT OF AUSTRALIA AT
PARRAMATTA**

PAC6601 of 2007

PETER ANDREW NOLAN

Applicant

And

JENNIFER MARGUERITE NOLAN

Respondent

REASONS FOR JUDGMENT

1. Mr and Mrs Nolan have been engaged in litigation in one form or another before the Family Court of Australia and now the Federal Magistrates Court since December 2007 relating to issue of property settlement.
2. Neither party has lived in Australia for any length of time recently. Mr Nolan currently seems to reside in Germany. Mrs Nolan resides in Ireland.
3. Both are Australian citizens.

Background

4. Mrs Nolan was born on 9 October 1962.
5. Mr Nolan was born on 11 January 1964.
6. They began living together in January 1987. They were married in Wagga Wagga, New South Wales, on 7 October 1989.

7. They separated on 12 November 2007.
8. They have two children, Josephine, who was born 24 May 1991 and Joshua, who was born 20 May 1993.
9. On 1 July 2008 proceedings for property settlement were transferred from the Family Court at Parramatta to the Federal Magistrates Court at Parramatta.
10. The parties were divorced by Order of Registrar Campton sitting in the Federal Magistrates Court, Parramatta on 8 December 2008.
11. There were a number of procedural hearings in the Federal Magistrates Court in which both Mr and Mrs Nolan were legally represented. Mr Nolan's solicitors filed a Notice of Ceasing to Act on 3 August 2009. Mr Nolan thereafter became a self-represented litigant.
12. The parties have at some stage sought orders from the circuit Family Court in Dublin, Ireland.
13. The principal asset of the property dispute is the proceeds of sale of 8 Schofields Parade, Pennant Hills which is held in the trust account of Watts McCray Lawyers. Watts McCray were formerly Mr Nolan's solicitors.
14. Mr Nolan commenced proceedings by filing an Application for Final Orders in the Family Court of Australia at Parramatta on 3 December 2007. In support of that Application he filed an Affidavit which he swore on 13 June 2008 and a Financial Statement which he swore on 28 November 2007.
15. Apart from those documents he has filed no other relevant material. He has, however, kept up a barrage of email communication with the Court, and with Mrs Nolan and her solicitors. There was tendered, on Mrs Nolan's behalf, a ring back folder of many, many emails. They became Exhibit A. Some of the emails dealt with the property issues in dispute. It is thereby clear Mr Nolan could have prepared and filed documents further supporting his case had he so chosen.

16. Mrs Nolan relies on an Amended Response filed 18 November 2009, her Affidavit sworn 10 November 2009 and her Financial Statement sworn 20 November 2009.
17. Judicial Registrar Johnson made orders on 16 June 2008 relating to the sale of the property at 89 Schofield Parade, Pennant Hills and the disbursement of the sale proceeds pending further hearing.
18. Neither party asserted that this court lacked jurisdiction to hear the case. Each submitted to the jurisdiction to the Court. It is clear that the Court has jurisdiction to hear the case.
19. After Mr Nolan's solicitors ceased to act for him, he has done nothing to further prepare his case. On 25 March 2009 the case was listed for Final Hearing on 26 and 27 November 2009 as a priority hearing as the parties were travelling from overseas.
20. Mr Nolan has been obstructionate of the proceedings being heard. On the appointed hearing date of 26 November 2009 he was present at Court and initially refused to enter the Court room. He then entered the Court room and remained standing for the duration of the hearing at the back of the Court. He refused to identify the documents that he relied on. He did not answer a Notice to Produce. He mouthed inanities about "preservation of his inalienable rights". His behaviour and demeanour it appeared was intended to be provocative of both the Mother's legal representative and of the Court itself. When that did not succeed in gaining the attention he seemed to desire, he began to be personally disrespectful and provocative of the Court, engaging in such actions as referring to me by my first name and of seeming to photograph and record the proceedings using his mobile phone.
21. Mr Nolan would not submit to cross examination. Little if no weight would therefore be normally attached to his Financial Statement and Affidavit, except that by her Affidavit sworn 10 November 2009, Mrs Nolan, accepted many of the assertions contained in Mr Nolan's Affidavit. Exhibit A also contains some emails from Mr Nolan that assist, for example, with identification of matrimonial assets.

Evidence of Mr Nolan

22. Mr Nolan concedes that both the parties' children continue to reside in Ireland with Mrs Nolan after separation.
23. He states that in 2005, a company Instant Business Intelligence Ltd. (hereafter 'the company'), was incorporated in Ireland. He and Mrs Nolan were the only directors and shareholders.
24. As the consequence of proceedings in the Circuit Family Court in Dublin, Ireland, a number of restraining orders were made affecting the company and the parties' dealings with the company.
25. Mr Nolan asserts that he has not worked since 2007, although his Financial Statement sworn 28 November 2007 stated that he then had a gross income of \$2,500.00 working as a consultant for the company Instant Business Intelligence. Mr Nolan's current emails indicate he remains a company consultant. He asserts that since the commencement of proceedings in Ireland, he has incurred debts totalling \$275,408.00.
26. Mr Nolan provided no documentary evidence in support of the alleged debts.
27. His Financial Statement disclosed the following property:
 - a) Half interest in 8 Schofield Parade, Pennant Hills estimated value \$375,000.00;
 - b) Royal bank of Canada Account, current balance \$1,500.00.
 - c) A part interest in a 1991 Volvo, estimated value \$1000.00
 - d) Instant Business Intelligence, estimated value \$10,000.00;
 - e) Household contents, estimated value \$15,000.00.
28. His Financial Statement disclosed superannuation assets of approximately \$26,000.00.
29. Apart from the liabilities referred to, his Financial Statement disclosed their home mortgage with a pay out figure of approximately \$225,000.00.

30. He asserts monies were loaned to the parties by his brother and that this money has not been repaid.

Mrs Nolan

31. In Mrs Nolan's Affidavit, she confirms the history previously referred to herein.
32. She says that she was employed full time until just prior to the birth of Josephine. After the birth, she returned to full time work until Joshua was born. She now works as an office administrator.
33. Prior to the parties' relationship commencing, neither had any assets of significant value other than a few thousand dollars in savings.
34. In either 1987 or 1988, the Husband's brother is said to have given the parties \$15,000.00 which was used to discharge a mortgage over their then matrimonial home. She says that the Husband's brother has forgiven the debt and does not want repayment.
35. In 1992, Mr and Mrs Nolan purchased the property at 8 Schofields Parade, Pennant Hills as joint tenants. Thereafter, she was principally a home maker and parent and Mr Nolan focussed his energies in income earning.
36. She says that in the late 1990's Mr Nolan received a redundancy payment of about \$50,000.00 which was applied to the parties' debts.
37. She says that since separation she has received only minimal financial assistance from the husband consisting of three payments totalling 1,300.00 Euro. She says that on 9 October 2007, the Husband withdrew 10,000.00 Euro from a joint account in Jersey and used those monies on his own personal account.
38. She says the last knowledge she had of the company's earnings related to the 2006/2007 financial year and that the company earned approximately 250,000.00 Euro in consultancy fees and software sales. She says that during the period 2005 – 2007 the company paid a salary to Mr Nolan of between 6,000.00 and 8,000.00 Euro a month.

39. She says that since 2007, although she has remained a director of the company, as a result of orders obtained in Ireland, she has no knowledge of the company's financial affairs or otherwise. She discloses a company tax debt of 22,885.00 Euro. She says that in about early 2009, she became aware that the company may have been dissolved through the company registration office in Ireland, and believes no action is being taken to recover the company tax debt.
40. The former matrimonial home at Pennant Hills has been sold. On 11 May 2009, the net proceeds of sale of approximately \$251,200.00 were deposited into the trust account of the Husband's then solicitors, Watts McCray, were those monies remain to date. There is no interest being earned on these monies.
41. A further small undisclosed sum remains with the trust account of the selling agent.
42. Mrs Nolan says that she has accepted responsibility for a joint overdraft of the parties' account which has a balance owing of approximately 8,000.00 Euro. She says that all proceedings in Ireland were dismissed as the result of the parties being divorced in Australia. This dismissal was as a result of what she describes as "jurisdictional issues".
43. She says that she continues to support both her children, even though Josephine is over the age of 18. Joshua continues with his high school education.
44. Her financial statement discloses a before tax income of \$1,212.00 per week. She asserts her personal expenditure is \$856.00 per week. She has a superannuation investment in an approved deposit fund of \$14,428.00. She says that she has a debt to family friends of approximately 5,000.00 Euro arising from post-separation expenditure.
45. Mr Nolan did not cross examine her and her evidence is therefore accepted uncontroverted.

Mr Nolan

46. Mr Nolan did not make himself available for cross examination, therefore little weight is attached to his Affidavit evidence, or the evidence in his Financial Statement, where it is contradicted by Mrs Nolan's evidence.

Case Law

47. *Hickey v Hickey v Attorney-General of Australia (Intervener)* (2003) FLC 93-143 sets out the approach to be taken in property settlement cases.
48. A line of cases including *Giunti v Guinti* (1986) FLC 91-757, *Mezzacappa v Mezzacappa* (1987) FLC 91-853 and *Black v Kellner* (1992) FLC 92-287 made clear that parties must make full disclosure as to their financial affairs. Mr Nolan has not done so.
49. The decision in *Weir v Weir* (1993) FLC 92-338 makes clear that once it has been established that there has been a deliberate non-disclosure, the Court should not be unduly cautious about making findings in favour of the innocent party. Mr Nolan has engaged in deliberate non-disclosure.

Asset Pool

50. Non-superannuation assets:

Net proceeds of sale of 8 Schofields Parade, Pennant Hills	\$251,203.00
Wife's bank accounts in AIB and St George	\$525.00
Wife's motor vehicle	\$800.00
Joint bank account, Royal Bank of Canada	\$14.00
Wife's household contents	\$5000.00

Husband's household contents	\$15,000.00
Add-back monies deducted from Jersey account by Husband	EU 10,000.00 at 60 Australian cents - \$16,666.00
Monies transferred by Husband from Instant Business Intelligence bank account	EU 7,000.00 at 60 Australian cents - \$11,666.00
TOTAL	\$300,874.00

51. Liabilities

Overdraft	\$12,931.00
Nett Non Superannuation Assets	\$287,943.00

52. Superannuation Assets

Wife's Superannuation	\$14,428.00
Husband's Superannuation	\$26,000.00
Total Superannuation Assets	\$40,428.00

53. Total Nett Superannuation and Non-Superannuation Assets

Non-Superannuation Assets	\$287,943.00
Superannuation Assets	\$40,428.00
Nett Superannuation & Non-Superannuation Assets	\$328,371.00

Findings

54. The Husband, through his conduct, has engaged in wilful non-disclosure. In his Affidavit he says that he not worked since 2007, yet he filed at that time a Financial Statement indicating an income of \$2,500.00. Since that time he has managed to remain living overseas,

returning from time to time to Australia. He would not answer a Notice to Produce. He would not be subject to cross-examination. Therefore, on the balance of probabilities he has more income and assets than he has disclosed. The quantum of that income and the value of those assets are unknown.

55. It is more probable than not that he continues to work as an IT Consultant, earning considerable income.
56. No findings can be made for the asserted debts claimed by the Husband. He provides no documents relating to the debts. He would not be cross examined.
57. The gift from the Husband's brother of \$15,000.00 in 1987 or 1988 is a contribution referable to the Husband. Apart from this, until the date of the hearing, the parties' contributions have been equal; Mrs Nolan having made her contribution as a home-maker and parent and through her income earning. Mr Nolan having made his contribution principally through his income earning and his assistance as a parent. As a consequence, the Husband has made a 52% contribution to the acquisition of the parties' assets, and Mrs Nolan a 48% contribution.
58. Mrs Nolan has the care and control of one child under the age of 18 years. She is receiving no regular child support for that child.
59. Given the husband's non disclosure on the balance of probabilities, Mrs Nolan's income earning capacity as an office administrator is significantly less than Mr Nolan's income earning capacity as an IT specialist.
60. There is no evidence that either of the parties has any issue as to health.
61. There is no evidence that either of the parties has re-partnered.
62. Each of the parties has modest superannuation.
63. Having regard to paragraphs 58-62 above, and the non-cautious approach as set out in the decision in *Weir v Weir* for the non-disclosure made by Mr Nolan, a 22% adjustment is made in favour of the wife, for factors set out in s75(2).

64. This results in an overall property settlement of 70% for the wife and 30% to the Husband.
65. An order will be made for the repayment of the over-draft for which the Wife has assumed responsibility. It is clearly a liability of the parties being incurred prior to their separation. It relates to their marriage and was used for family expenses.
66. As a consequence, the wife will receive 70% of the Nett superannuation and non-superannuation assets (\$328,371.00) after an amount equal to the overdraft is first deducted, which equates to \$220,808.70.
67. Mrs Nolan will retain her superannuation investment, her car, the existing bank accounts and her furniture. She will therefore receive \$217,505.00 from the sale proceeds in the Watts McCray trust account.
68. She will retain responsibility for the loan she has borrowed from friends, as that is a post separation borrowing.
69. As a consequence of the above, the Husband will receive 30% x \$328,371.00 which equates to \$98,511.30.
70. Mr Nolan will retain the benefit of his superannuation investment. He has already received the added back funds. He will receive from Watts McCray trust account the sum of \$20,767.00.
71. The small amount that remains in the trust account of the real estate agent will be divided as to 70% to the wife and 30% to the Husband.
72. Having regard to the above, no further adjustment is warranted with respect to justice and equity.

I certify that the preceding seventy-two (72) paragraphs are a true copy of the reasons for judgment of Dunkley FM

Associate: L. Campbell

Date: 19 February 2010