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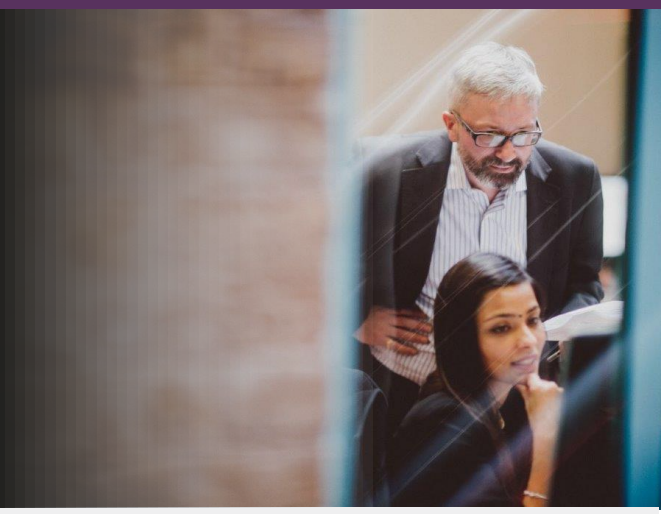
Divorce goes virtual, but complex cases will keep their day in court



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A new online service should cut the stress of applying for a divorce according to the Ministry of Justice, but family law professionals say it's likely to benefit only those with simple finances who are pursuing the DIY route.

The Ministry of Justice's nationwide scheme for online divorce applications follows a successful pilot earlier this year. While rejections average around 40% for paper applications, because forms have not been completed correctly or documents are missing, only 0.6% were rejected in the online submission pilot.

The move is one of the latest initiatives in a £1bn modernisation programme for the department, which will also see a reduction in the number of court employees. While professionals have welcomed any simplification to the process, they say the increasing complexity of finances, particularly in second marriages, is likely to keep many couples in court, in the pursuit of a fair share of the assets when a marriage ends.

Family lawyer William Roberts-Phelps said:

"With the arrival of online divorces, there is a risk that couples finalise their divorce without fully considering their financial positions. Understandably, each party wishes to secure the best outcome, but this does not mean that they must have their "day in court" to resolve such differences. There are many options family solicitors can utilise when negotiating finances. These options are often more cost-effective and conclude more swiftly than the court process, which should only be used as a last resort."

Today's definition of a 'fair share' may not be the 'equal share' that is generally expected, particularly after a long marriage, with recent cases highlighting the courts' attitude in achieving a fair outcome focusing on needs and stepping away from long term maintenance orders.

One of the areas giving rise to more complex financial matters is the trend for couples to enter into pre-nuptial agreements. In KA v MA, a pre-nup was a condition for the marriage, as the husband wanted to protect his accumulated assets to ensure they would pass on to the sons of his first marriage. The agreement was made, but when the marriage failed the second wife asked the court to set aside the pre-nup, saying she had been pressured into signing it on those terms. However, the court did not set it aside, saying it had been entered into willingly, but in applying the test established in Radmacher v Granatino, they decided the pre-nup did not properly meet her needs. The result was that she was awarded a significantly higher contribution from her ex-husband, but one that left his main wealth intact to pass on.

William:

"This case highlights the importance of getting it right. A poorly drafted pre-nup can have dire consequences down the line."

The Radmacher case was a landmark judgement by the Supreme Court, giving weight to pre-nups. While such agreements are not automatically legally binding in England and Wales, the judgement set out that *'the court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.'*

Another judgement from the Court of Appeal has undermined the so-called 'meal ticket for life' of a joint lives maintenance order, with experts saying this is no

longer something that divorcing spouses can be sure of securing from the English courts.

Waggott v Waggott involved the ex-wife of a successful businessman, whose attempt to secure an increase in her annual maintenance payment backfired. She had been awarded a settlement of £9.76m which included £175,000 per year in maintenance for the rest of her life. She appealed, asking for an increased share of the husband's bonuses and a variation of the maintenance order to give her an extra £23,000 per year. Her former husband cross-appealed, and the Court of Appeal agreed with him, ordering a three-year non-extendable term instead.

These two cases follow hard on the heels of the Court of Appeal ruling in Hart v Hart, which saw a wife awarded £3.5m, out of total resources of just under £9.4m, with greater weight given to the pre-marriage wealth of the husband. This was despite a 23-year marriage, where an expectation would be for an equal distribution of assets, but instead the wife's settlement was based on a calculation of needs.

William added:

"These are high profile cases, involving big numbers, but they will have implications for other divorcing couples, however big or small the financial pot is.

The assets and family structures of divorcing couples tend to be more complicated these days. More couples are entering second marriages and may have children from previous relationships who they wish to protect financially. Equally, they may have built a business, or accumulated an asset base, and want to hold on to that if their new marriage ends in divorce. In these circumstances it is worth considering a pre-nup, setting out the assets each person has brought to the relationship and their intended division in the event of separation or divorce. There is now clear case law that the courts will take such agreements into account."

In the recent case of Mills v Mills, the Supreme Court addressed the topic of long-term maintenance within a more modest asset case. Read William's article on the case to find out more.

RIAA Barker Gillette has an excellent family team who can advise further on all topics raised in this article, including the drafting of pre-nups on a FIXED FEE basis*.

Call William Roberts-Phelps today!

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* Subject to an asset assessment.