

## **In the Supreme Court of Appeal of South Africa**

### **MEDIA SUMMARY – A BEZUIDENHOUT v D G BEZUIDENHOUT**

From: The Registrar, Supreme Court of Appeal

Date: 2004-09-23

Status: Immediate

(1) On 23 September 2004 the Supreme Court of Appeal handed down judgment in the divorce matter of Bezuidenhout v Bezuidenhout. The parties were married to each other in 1975, out of community of property. After 25 years of marriage the respondent (the wife) instituted divorce proceedings against the appellant (the husband) in the Cape High Court. Apart from a decree of divorce, the only substantive relief she sought was an order for redistribution of their assets under s 7(3) of the Divorce Act 70 of 1979 on the basis that their combined assets be divided equally. In upholding the respondent's claim, the High Court ordered that the parties were to retain the assets in their respective estates, save that the appellant was directed to pay the respondent an amount of R7,8m.

(2) A thesis which weighed heavily with the High Court in arriving at this conclusion was that it would be in conflict with the anti discrimination provisions in s 9 of the Constitution to undervalue the role of a housewife and mother traditionally conferred upon women by society. While agreeing with this thesis, the SCA pointed out that that consideration had nothing to do with

the facts of the case since the respondent never assumed the traditional role. She was the financial director of the company which was the vehicle for the conduct of the family business and her whole case was that she contributed to the increase in her husband's estate through her efforts in that business. Her responsibility for their only child she largely shared with her husband and although she took responsibility for their household, she never claimed this to be her real contribution to his estate.

(3) Obviously, the SCA held, her contribution as a mother and homemaker must be afforded some weight. But, so the court held, the consideration advanced by the court *a quo* for splitting the proceeds of the marriage on a 50/50 basis, namely that the wife was "a dedicated housewife, mother and homemaker" was in the circumstances inappropriate. But for the misdirection, the SCA held, the trial court would have realised that, unlike in most other marriages, the contributions of the parties in this matter could be compared because the efforts of both were aimed at the promotion of the same business. In doing this comparison, the SCA found two material differences between the respective contributions of the parties. First, according to the wife's own evidence, it was her husband's efforts, not hers, which caused the business to be exceptionally successful as opposed to just average. Second, since the success of the business was dependent on the efforts of the husband, he was also indirectly responsible for whatever resulted from the wife's efforts.

(4) In all the circumstances, the court found that the just redistribution contemplated in s 7(3) would be achieved if the

husband was ordered to pay the wife the sum of R4,5m which resulted in a division of their joint assets in the ratio of about 60:40 in favour of the husband. Consequently the appeal succeeded and the judgment in favour of the wife was reduced from R7,8m to R4,5m.