

King & King (No 2) [2023] FedCFamC1A 100

[Tahlia Ferrari](#), Barrister & Nationally Accredited Mediator

A Full Court consideration of an erroneous calculation of spousal maintenance payable and arithmetical error in calculating the net value of the asset pool.

Facts

The husband and wife married in 1994 and later had one child. The parties separated in 1997 and thereafter divorced. The parties reconciled and remarried in 2003 and went on to have two more children. The parties again separated in 2011 and divorced in 2019 for the second time.

Legal proceedings ensued before the Court after the parties first marriage came to an end in 1997 and later after their second marriage came to an end in 2019. In fact, prior to the appeal, there had been 35 judicial events pertaining to the husband and wife spanning 11 to 12 years encapsulating the end of both marriages.

Appeal

The husband initiated the appeal based on nine discreet grounds, of which only one ground was successfully appealed.

The Full Court (Austin, Williams and McNab JJ) allowed the appeal in relation to ground 5. The Full Court declared that the amount of spousal maintenance and property settlement payable by the husband to the wife be varied and increased to \$469,105 from the original amount of \$436,000.

Key Principles

The key principle is that an erroneous mathematical error can be corrected pursuant to the *slip rule* as opposed to an appeal.

The Full Court recorded (at [51]) that;

“The appeal only succeeds for the solitary error about the arrears of spousal maintenance, which affected the quantum of the sum payable by the husband to the wife to satisfy the otherwise just and equitable orders adjusting the parties’ property interests. The parties agreed the error could be rectified by variation of the appealed orders, by substituting the correct calculation of spousal maintenance arrears for the erroneous calculation. In correcting that error, we are also able to correct the mathematical error made by the primary judge about the net value of the parties’ assets, which could have been corrected under the slip rule”.

As the amount owed to the wife from the husband increased by \$33,105, the wife sought interest payable by the husband on this amount. The Full Court declared that this submission (at [55]) failed for three reasons:

- s117B of the *Family Law Act* is not a source of power for the accrual of interest for payment of periodic maintenance;
- The arrears related to a period of time which ended 9 years prior in March 2014; and
- Interest pertaining to the arrears of maintenance was not ventilated at the trial.

While the legal principles were uncontroversial in this case, it is a useful study of mathematical errors contained in final orders. In this case both parties agreed that the final orders contained erroneous mathematical calculations. Inter alia, where the calculation is the only error complained of, it is a reminder that an appeal is unnecessary when an amendment to final orders is permitted by virtue of the *slip rule*.



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Tahlia practices exclusively in family law, both as counsel and as a Nationally Accredited Mediator.

Regularly appearing in the Federal Circuit and Family Court of Australia in relation to parenting and complex high value property proceedings on behalf of individual parties, Tahlia appears on behalf of the Independent Children's Lawyer. Tahlia also appears at mediations on behalf of an individual party as counsel or as the Mediator.

Holding a Bachelor of Business and Master of Commerce degree, in addition to a Juris Doctor of Law degree, Tahlia has a particular interest in complex property proceedings and is often engaged to provide advice and appear in these matters.

Prior to coming to the Bar, Tahlia was appointed as Legal Associate to the Honourable Judge Tinney at the County Court of Victoria, gaining experience in the criminal jurisdiction in matters pertaining to family violence.

Tahlia regularly presents papers and speaks on family law topics, at conferences and for CPD providers. Tahlia lectures in Family Law at the Australian Catholic University, having been appointed national lecturer in charge across the Victorian and NSW campus.

Member of the Family Law Section of the Law Council of Australia, Australian Institute of Family Law Arbitrators and Mediators (AIFLAM), the Family Law Bar Association and Woman's Barristers Bar Association.

Tahlia's Senior Mentor is Tim North SC.

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