

DIVORCE: WILL MY EX GET A SHARE OF MY LOTTERY WIN?

I have recently seen a statistic indicating that you stand about a 1 in 14 million chance of winning the lottery. Many of us ignore these incredible odds in the fervent hope that our ticket will be the one to change our lives.

S v AG

A recent case in the High Court has caught the eye of divorce lawyers, as it is the first case which has looked at and made a decision on the status of a National Lottery win. The case has been anonymised by the Court and has the boring title S vs AG. It was heard by Mr Justice Mostyn, whom many lawyers regard as the most brilliant divorce and family lawyer of his generation.

FACTS

The basic facts are that the husband and wife married in Colombia in 1984 and had two children. They came with their children to the UK hoping that they would have a better lifestyle than back home. However, by the mid 1990s the marriage was unhappy, and they separated in 2003.

While they were living together, and unknown to the husband, the wife was part of a lottery syndicate which scooped the jackpot on 31 December 1999 when they won £1 million. The wife's share was £500,000. Instead of squandering all the money, she used most of it to buy and renovate a house, which then became the family home. The husband and wife divorced following the separation, and the wife remarried.

With his eye to the main chance, the husband applied for his share of the family assets, and took the view that he could see no good reason why he should not get half of the family assets which, of course, included a half-share of the lottery win.

PULLING THE WOOL

In the court case, the wife tried to muddy the waters. She tried to allege that she and the husband had separated in 1996, long before her lottery win. As a second line of defence, she argued that she was not in fact a lottery winner, but had simply been loaned the money by her friend (the other syndicate member), who in fact was the sole winner. She expected the Judge to believe that she had such a friend who was willing to part with such a huge amount. Not surprisingly, the Judge quickly discounted her flights of fancy. Instead, he found that the lottery prize was not in fact matrimonial money. The wife was unilaterally playing the lottery. She did so without the husband's knowledge. She also bought the ticket from her own wages. The decisive change, however, was that she used the money to purchase what was to become the family home. In so doing she converted her part of her non-matrimonial assets into what the Court regarded as matrimonial property. This decisive change meant that the husband could argue for a share.

The Judge went on to say that the windfall was not the result of any joint endeavour between husband and wife. He also held that they had a relatively short time together in the family home. The Judge therefore rejected the concept of the husband being entitled to an equal share of the property (which was the starting point for the Judge to consider).

AWARD

After doing his mathematics, and considering in detail the husband's arguments about his ongoing needs, the Judge held that it was fair for the husband to get a share of between 15% and 20% of the proceeds of sale of the property after the costs of sale had been taken out. The net value was £480,150. Having looked at the principle of what should be share out, and having considered the needs of both husband and wife, the Judge made an award in the husband's favour of £85,000 on the basis that there would then be a clean break between the husband and wife. Neither would thereafter have any claim against the other once the husband had received his money.

RELEVANCE

So this is an interesting decision. It is one where the Court was prepared to “ring fence” certain assets once the Court had taken the view that the needs of the husband and wife had been met. The Court would not apply the so-called sharing principle to all property, restricting it only to matrimonial property.

The Court’s decision was based on the fact that the husband needed £85,000 for his retirement needs. One wonders what the Judge would have done if that £2 lottery ticket had come from a joint account owned by the husband and wife. It would also be interesting to know what the Judge would have decided if the husband did not need any retirement nest egg - presumably he would not have had any of the lottery win at all.

This case shows that there is an increasing trend by some judges in the High Court to look to separate the assets of married couples. This is more in line with the general approach adopted throughout Europe.

BE AWARE

If you are a punter on the lottery and are married, perhaps some of these thoughts may be of interest to you! If you are a working person, make sure that you buy the lottery ticket out of your wages - this might help you if you divorce to keep most if not all of your winnings. And if you convert your winnings into a family home, expect an application on divorce not dissimilar to that of the Columbian gentleman.

There are some serious issues dealt with by the Court in this particular case, and the judgment will be used by divorce lawyers in the future if they seek to argue that certain property acquired during the course of the marriage should be disregarded as a shared asset.

ACTION

If you need any advice on divorce and related money and property issues, feel free to contact me on **01288 35 9000**.

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