

## ***Damiani & Damiani* [2012] FamCA 535 (9 July 2012) – Family Court of Australia**

‘Court to consider family violence (60cc)’ – ‘Family violence in property proceedings’ – ‘Kennon adjustment’ – ‘People with mental illness’ – ‘Property proceedings’

Proceedings: Application for property orders.

Facts: The parties married and lived together for 19 months. They had one child. The husband contributed the bulk of the capital to the marriage and was on a far superior income. The wife had cared for the child since separation, nearly eight years prior. During the marriage, the husband perpetrated family violence against the wife on five occasions, over a period of 15 months. This caused the wife to suffer from post-traumatic stress disorder. The wife claimed the family violence made her contributions in the role of homemaker and parent significantly more arduous. The husband had financially supported the wife and the child during the period since separation.

Issue/s: Whether the court should make a Kennon style adjustment in the property settlement proceeding?

Reasoning/Decision: The Court referred to the Full Court in *Kennon* where the principles regarding family violence making contributions more arduous lie. The Full Court’s further refinement of the *Kennon* principles in *Spagnardi & Spagnardi* was also noted (see [138]-[144]).

The Court discussed the approach regarding family violence in property proceedings as broken down into three steps: (1) Make findings of fact about one party’s conduct; (2) (If applicable) make findings about the physical or psychological effect of the conduct on the other party; and (3) Make findings of fact about the effect of the conduct of one party upon contributions made by the other party. It was also noted that it could not be assumed in a particular case that an effect on a party’s condition automatically means there is an effect upon the party’s contributions. At trial, the wife had to establish to the judge’s satisfaction a connection between any proven family violence in the case and the contributions she made (see [145]).

On the facts, Watts J first concluded that the wife's contributions in the role of homemaker and parent during the period over which the violence took place were made significantly more arduous by the violence of the husband. Second, while His Honour also held that the wife's role as parent post-separation was made significantly more arduous by the family violence during co-habitation, His Honour observed that it was more difficult to make such an assessment. The wife did experience apprehension and heightened emotion around dealing with the husband's time with the child after the separation. However, the effect of violence on contributions was not constant over the previous eight years, with the wife's post-traumatic stress disorder having significantly dissipated (see [174]-[179]). Accordingly, it was appropriate to increase the wife's assessed contributions by 25 per cent for the duration of the relationship and by 5 per cent post separation to take account of the effect of the husband's conduct on the mother (see [179]).