

S & S (*Spagnardi & Spagnardi*) [2003] FamCA 905 (8 September 2003) – Full Court of the Family Court of Australia

‘Contributions must be affected by the violence’ – ‘Impact of violence on past contributions’ – ‘Kennon adjustment’ – ‘Property proceedings’ – ‘Reference to exceptional cases should not mean rare’

Appeal type: Appeal against property orders.

Facts: The parties had two adult children and separated in 2000. The trial judge made a *Kennon* style adjustment in favour of the wife. His Honour held that the evidence clearly revealed that there had been some violent behaviour by the husband towards the wife. Although there was no explicit evidence from the wife as regards to the effect of the violence on her contributions, the trial judge accepted that the wife’s contributions must have been made significantly more arduous than they ought to have been because of the violence inflicted upon her by the husband..

Issue/s: One of the grounds of appeal was whether the trial judge erred in adjusting the wife’s contributions to account for the domestic violence perpetrated by the husband?

Reasoning/Decision: The appeal was allowed. Here, the evidence could not have properly led to a *Kennon* adjustment under section 79 (see [48]). In reaching this decision, the Court made a number of statements of principle, elaborating upon the decision in *Kennon*.

It was held that evidence of violence alone is not enough, but that the “violent conduct by one party towards the other” must be demonstrated to have an effect on contributions.

In addition, the Court also stated that the reference in *Kennon* to ‘exceptional’ cases should not be understood to mean rare. They adopted the trial judge’s comments that *‘the references to ‘exceptional cases’ and ‘narrow band of cases’ occurs in the context of the principle of misconduct in general rather than the more narrow formulation about domestic violence. ... It seems to me that reading these passages carefully, the key words in a case where there are allegations of domestic violence are ‘significant adverse impact’ and ‘discernible impact’. (see [47]).*