

Division of assets in a short childless marriage (E v L)

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Family analysis: In *E v L*, Mr Justice Mostyn considered an application for financial remedies following a short marriage. He concluded the fact that the marriage was childless was irrelevant to whether there should be a departure from the application of the equal sharing principle. Moreover, there was no reason to distinguish between an accrual (of assets) over a short marriage and an accrual over a longer marriage. The statutory factor of the duration of marriage was likely to be reflected in any event in that an acquest over a shorter period was likely to be less. Mostyn J also considered the approach to valuing businesses in this case where three accountants gave ‘hot-tub’ evidence as to the value of one of the husband’s companies. Tahmina Rahman, barrister at 1GC Family Law Chambers, considers the issues.

E v L [\[2021\] EWFC 60](#)

What are the practical implications of this case?

This is an important new authority for cases involving short childless marriages.

It is now clear that in applications for financial remedies, parties should be treated as having the same level of commitment, whether or not they have children. Mostyn J was clear that he ‘fundamentally disagree[d]’ with the suggestion that having children reflects a completely different category or lesser extent of commitment (para [24]).

Moreover, the marital acquest should be considered no differently whether the marriage was short or long. Mostyn J said there was ‘absolutely no logical reason’ to distinguish between an accrual over a short period and an accrual over a longer period (para [44]).

Finally, this case provides helpful guidance for when courts look at business valuations.

Mostyn J concluded the court could, when considering the value of a business, include knowledge of subsequent events, as ‘blinding oneself to the knowledge of subsequent events, while conforming to the purity of valuation theory, obviously risks serious injustice’ (para [63]).

Mostyn J also considered the question of when the clock stops for the purposes of calculating the acquest. He found that save in cases where there has been undue delay between the separation and the trial, the end date for the purposes of calculation of the acquest should be the date of trial (para [74]).

What was the background?

The husband was aged 66 years and the wife was aged 61 years. The parties were married for about two years. There were no children of the marriage. The wife was a housewife who was financially supported by the husband, a highly successful production manager for live music events. He had an interest in six companies, but much of the dispute between the parties focused on the value to be attributed to Company A. The gulf between the parties’ positions in the case was ‘extraordinary’, with the judge ascribing this to the ‘imprecision within the case law combined with intransigence and dogmatism by the parties’. The wife sought a lump sum of £5.5m, which was her calculation of half of the marital acquest based on the valuations before the court. The husband’s open position was he should pay the wife a lump sum of £600,000. He said this was a short childless marriage which meant there was not a case for equal sharing but one where wife should be restricted to very conservatively assessed needs. The legal costs of the parties were nearly £900,000 in a case where the overall assets were judged to be £9.2m.

What did the court decide?

The court agreed (mostly) with the wife. The fact the marriage was short and childless did not affect division—she was entitled to an equal share of the acquest. Attempting to evaluate the quality of a marriage, or the arrangements within, was likely to lead to subconscious discrimination. Mostyn J warned that for the court to start asking why there are no children, and whether this denotes a lesser extent of commitment to the relationship, is ‘to make windows into people’s souls, and should be avoided at all costs’ (para [29]). Childlessness should be ‘banished from any consideration of whether there should be a departure from the application of the equal sharing principle’ (para [34]). Moreover, there was no logical reason to draw a distinction between an accrual over a short period and an accrual over a long period. The court awarded the wife a lump sum of £1.5m, which meant she had 50% of the marital acquest.

Case details

- Court: High Court
- Judge: Mr Justice Mostyn
- Date of judgment: 13 July 2021

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