

Scenario

The story of Jane and Peter.....

Jane (aged 40) and Peter (aged 40) have been married for 20 years; they lived together for a brief period of less than a year before marriage.

Neither party had much by way of assets at the date of cohabitation.

There are three children of the marriage, A B and C

A (a boy) is 15 yrs, B (a boy) is 12 yrs and C (a girl) is just 3 yrs

Jane alleges that C was conceived as a result of a sexual assault upon her by Peter.

Jane has had 3 periods of extended maternity leave and has really only worked part time since B was born.

They separated 18 months ago; Jane filed pretty swiftly by way of an urgent application when Peter withheld the children one weekend and was refusing to return them unless Jane agreed that the children live with him for half the time.

She filed for parenting orders, and then not long after also property settlement (after complying with the pre-action procedures) The matters were consolidated.

C has been having limited supervised time with Peter, A and B have regular unsupervised weekend time with Peter, roughly one overnight every second weekend.

A B and C's live with and spend time with arrangements are in dispute and will be dealt with at trial, Jane wants orders for primary care and supervised time for C until she's at least 7 years of age and the current arrangements for the two older children to remain the same. Peter wants equal time and one half of all school holidays.

About 12 months ago Jane and Peter agreed to a partial property settlement from funds that were tied up in a term deposit account, those funds were an inheritance that Jane received 2 years ago from a long-lost aunt. Jane took \$100,000 and Peter took \$100,000 and they closed the account.

Peter used some of the funds to set himself up in alternate accommodation as he had been living with his mother when he left the FMH. He says spent the balance on legal fees.

He has no funds left.

Jane and the children live in the FMH.

Peter does not pay child support.

From her \$100,000, Jane has spent \$20,000 on legal fees but has gambled \$80,000 of the monies on online betting.

Jane has borrowed \$80,000 from her father (set out in a loan agreement) to pay her legal fees.

Jane works part time two days a week, and does not intend to return to the paid workforce on a fulltime basis due to the fact that she will (on her case) have primary care of the 3 children. Jane is earning about \$50,000 pa.

Jane is finding it extremely hard to even hold down the two days a week she works as a public servant. She is suffering from anxiety, insomnia and, she has lost weight.

She finds it difficult to actually get to work on time and her manager has spoken to her now on several occasions about this issue. She is deeply worried that (even as a public servant), she may lose her job.

She feels sad, most days and is teary She doesn't not know why she likes online betting; she acknowledges that she has had some small wins but mostly lots of losses. She gambles when the children go to bed and she is very lonely and she cannot sleep.

She advises her lawyer that she is frightened of Peter and that he was violent towards her during the marriage especially the last 10 years.

Jane says he was regularly verbally abusive towards her, dismissive of her and often demanded sex and forced her to have sex against her will. He would threaten her with physical violence if she did not submit.

Peter denies all the allegations of violence.

She has no visibility in relation to the business and has no idea of what is happening with the business finances.

Peter has always worked really long hours and Jane says she was left to deal with the children. He rarely turned up for school functions or events for the two older children, although of late he is taking an interest in the boys' sport and is attending their soccer and rugby games.

Jane says when Peter wasn't working, he was at the club or playing golf at RCGC It was not unusual for him to return home from being at the club drunk and abusive.

Peter works in the family business; he is sole director and sole shareholder of the family building company P and J Builders. He sees himself as a self-made man but in recent times with the cost of building materials skyrocketing, bureaucratic red tape around building approvals, increases in the cost of labour and the problems with people not being able to afford to build new homes, he tells you that his business is suffering a significant downturn in income.

In the last 2 months, he has also unsuccessfully defended an expensive unfair dismissal claim made by one of his female members of staff, when he sacked her after she accused him of sexual harassment.

He has a significant outstanding bill to his lawyers in relation to the unfair dismissal court action and he/the business needs to pay out an unfair dismissal award.

The parties have a report in the wings for the parenting matter and have had a Compliance and readiness hearing and trial directions have been made.

A valuation of the business by a forensic accountant has been ordered; Peter is paying the costs of this up front at a cost of \$10,000. He asserts there is very little value in the business and there are debts mounting and he is considering whether he should put the business into voluntary administration or just wind it up and go work for someone else.

Peter discloses to you before the documents are sent to the accountant that he has been borrowing money from the business since separation, he says he had to do this to stay afloat, to pay his lawyers, pay for the costs of supervised time and his rent at the 6 -bedroom property he has rented in Yarralumla (close to RCGC) as well as paying the mortgage of the FMH. He has director's loans of \$350,000.

You take a close look at Peter's bank statements before you send them to the other lawyer by way of disclosure and you form the view that perhaps Peter has not been entirely truthful about his post separation lifestyle.

His banks statements reflect at least two overseas holidays post separation (airfares, resort accommodation) to Bali and eating out at expensive restaurants and the purchase of jewellery

Their costs notices reflect that Peter has been billed and paid \$200,000 in legal fees (excluding the unfair dismissal); Jane has been billed and paid \$100,000 for legal fees.

Jane has no idea how she will fund her litigation. Her lawyers have estimated another \$100,000 will be needed to run the matter to trial on both issues and she has made application to Justfund for litigation funding. It has been approved. She will therefore have a \$100,000 debt to Justfund plus interest at the end of the proceedings.

Peter also has a new girlfriend who is about to move into the Yarralumla property and he does not want Jane to know about her. She is a 25-year golf pro from RCGC and she wants children.

The assets are as follows

The FMH in Curtin worth \$3 million

Jane's car \$10,000

Household contents for both homes \$15,000

Jane's Pssap super \$150,000

Peter's C Bus super \$350,000

P and J Builders, not yet valued

Liabilities

Jane's loan to her dad for legal fees \$80,000

Mortgage FMH \$400,000

Peter's outstanding legal fees on the unfair dismissal \$100,000

Unfair dismissal payout \$100 ,000.

Justfund debt \$100,000

Questions.....