Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

FIONA MARGARET MEAD v LILACH PAUL

(SC 7/2022) [2023] NZSC 70

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

The parties (Fiona, Lilach and Brett)[1] met around 1999 or 2000. At that point, Lilach was married to Brett. In 2002, Lilach, Fiona and Brett formed a triangular polyamorous relationship. The parties lived together in a four-hectare property in Kumeū, purchased shortly after the formation of their triangular relationship, for $533,000. Fiona paid the deposit of $40,000 and the property was registered in her name.

Lilach separated from Fiona and Brett in November 2017. At that point the property had a rateable value of $2,175,000. Brett and Fiona subsequently separated in early 2018. Fiona remains resident in the property.

In 2019, Lilach sought orders in the Family Court determining the parties' respective shares in the relationship property and awarding her a one-third share of the Kumeū property. Brett supported the application. Fiona protested the Family Court's jurisdiction on the basis the parties did not have a qualifying relationship under the Property (Relationships) Act 1976 (the PRA). Lilach applied to set aside Fiona's protest to jurisdiction. The Family Court referred the question to the High Court.

Lower Court judgments

The High Court held that the PRA did not apply to the parties, meaning the Family Court lacked jurisdiction to entertain Lilach and Brett's claims. The Judge held that Lilach and

[1] The Court has followed the Courts below, and counsel, in using the parties' first names for the avoidance of confusion.

Brett's claims against Fiona broke down at s 2D of the PRA.[2] The Judge concluded that the statutory requirement to live together as a couple excluded a scenario where *three* parties are participating in the very relationship at issue.

The Court of Appeal agreed that a polyamorous relationship (or a multi-partner relationship) per se cannot be a qualifying relationship under the PRA. The Court, however, allowed Lilach and Brett's appeal, finding that the Family Court had jurisdiction to determine claims among three people in a polyamorous relationship, where each partner in that relationship was in a discrete qualifying relationship (a marriage, civil union or de facto relationship) with each of the other partners in that polyamorous relationship. While the PRA was premised on "coupledom", that coupledom did not have to be *exclusive* for the purposes of the PRA.

The appeal

Leave to appeal to the Supreme Court was granted on the question of whether the Court of Appeal was correct to allow the appeal. The appeal to this Court concerned the limited question of whether the PRA can apply—a matter of jurisdiction (and therefore, statutory interpretation)—not *how* it applies in fact.

Fiona argued that the parties' relationship was not a qualifying relationship under the PRA and that equity alone could erode her legal title to the Kumeū property. Lilach and Brett argued that, for the purposes of property division, the parties' relationship could be subdivided into three constituent relationships so that the PRA applied.

Majority judgment

The Court has dismissed the appeal, by a majority (comprising O'Regan, Williams and Kós JJ). The majority addressed the fundamental question of whether the PRA may govern the parties' relationship property rights by addressing two issues: (1) whether a triangular relationship itself could be a qualifying relationship under the PRA; and (2) whether a triangular relationship could be subdivided into two or more qualifying relationships (as the Court of Appeal thought).

There was no real dispute on issue (1) that a triangular relationship could not itself be a qualifying relationship under the PRA. To answer issue (2), the majority addressed five sub-questions.

The first was whether a de facto relationship had to be *exclusive* to qualify under the PRA. The majority found that, when Parliament enacted ss 52A and 52B of the PRA in 2001, providing for the priority of claims where a person has been in more than one qualifying relationship (either successively and/or contemporaneously), it expressly contemplated that a de facto relationship need not be exclusive to qualify under the PRA.

The second sub-question was what Parliament meant by "liv[ing] together as a couple". Underlying this question, the majority said, was the point that all multilateral relationships are, inherently, also collections of bilateral relationships. Exact numbers and mechanics are

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[2] Under s 2D of the PRA, a de facto relationship commences when two persons who are both aged at least 18 years or older (and are not married or in a civil union with one another) "live together as a couple". There are a range of factors in s 2D(2) of the PRA that are relevant to determining whether a de facto relationship exists.

less important for the PRA than the fact the people comprising the relationship live together in a marriage, civil union or a de facto relationship exhibiting sufficient s 2D(2) factors to command the division of property under the PRA.

The next two sub-questions were whether a "vee arrangement" (where A is in a distinct relationship with B and C), either involving or not involving mutual cohabitation, could be subdivided into two qualifying relationships. Both sub-questions were answered in the affirmative.

The final sub-question was whether a triangular relationship (with mutual cohabitation and sexual relations) could then be subdivided into three qualifying relationships. The majority found no material distinction between vee arrangements—the constituent parts of which are capable of being qualifying relationships—and triangular relationships, for the purposes of the PRA. If the constituent relationships each met the requirements of mutual (but not exclusive) commitment, contemporaneity (and triangularity) did not then take them beyond the Act.

Minority judgment

Glazebrook and Ellen France JJ dissented and would have allowed the appeal. They considered the High Court was correct to conclude that the Family Court had no jurisdiction to consider the parties' claims. There were two main reasons for adopting that view.

First, they were concerned with the artificiality of treating the parties' relationship as subdivisible in order to be able to qualify under the PRA. In their view the majority's approach effectively ignored the way in which the parties in fact conducted their lives and how they saw their relationship.

Second, they considered that the practical ramifications of applying the PRA, which is premised on coupledom, to the parties' polyamorous relationship were such that it should be left to Parliament to decide whether to extend the PRA and how to address the practical issues arising from an extension. The relative simplicity of the facts of the present case, involving just the one property, belied the potential complexities and uncertainties that may result from the majority's approach.

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