Press Summary

2 July 2025

Standish (Appellant) v Standish (Respondent)

[2025] UKSC 26

On appeal from [2024] EWCA Civ 567

Justices: Lord Reed (President), Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Simler

Background to the Appeal

This appeal arises out of proceedings brought under the Matrimonial Causes Act 1973 for the court to make a division of the parties' assets upon divorce. It is what has been termed a "big money" case and concerns the scope and application of the "sharing principle". This dictates that certain types of property should be shared between parties on a divorce.

The husband is now aged 72 and the wife 57. The husband had a very successful career in the financial services industry. He acquired very considerable wealth. This was the second marriage for both the husband and the wife. They began living together in 2004 in Switzerland where the husband was then working and were married in 2005. They have two children together. The marriage broke down in early 2020.

This appeal concerns a portfolio of investments ("**the 2017 Assets**"), which the husband transferred from his sole name into the wife's sole name in 2017. By the time of trial, the 2017 Assets were worth approximately £80 million. The transfer to the wife was part of a tax planning scheme. The husband's intention was for the wife to place the 2017 Assets in trusts for the children thereby negating inheritance tax. The wife did not set up the trusts and she continued to hold the 2017 Assets in her sole name.

The trial judge held that, pre-transfer, most of the 2017 Assets had been "non-matrimonial property" ("**NMP**"). But, by virtue of the transfer, the NMP portion of the 2017 Assets became matrimonial property ("**MP**"). This meant that the sharing principle applied: all of the 2017 Assets should be shared between the parties. But because the source of the 2017 Assets was primarily the husband rather than the wife, he decided that the appropriate division should not be 50/50 but rather 60/40 in favour of the husband.

Both the husband and the wife appealed to the Court of Appeal which decided that the husband was entitled to 75% of the 2017 Assets plus half of 25% of those Assets. This was because only 25% of the 2017 Assets was MP that was subject to the sharing principle. The bulk of the 2017 Assets was therefore ordered to be returned to the husband.

The wife now appeals to the Supreme Court. She argues that the Court of Appeal placed too much weight on the husband being the primary source of the 2017 Assets. She contends that, properly analysed, the transfer was effective as a gift to her of the 2017 Assets.

Judgment

The Supreme Court unanimously dismisses the wife's appeal and upholds the decision of the Court of Appeal. Lord Burrows and Lord Stephens give the judgment, with which the other Justices agree.

Reasons for the Judgment

Sections 23 and 24 of the Matrimonial Causes Act 1973 lay down the financial provision and property adjustment orders that a court may make upon a divorce. Section 25 grants courts a wide discretion in the exercise of those powers, and provides that they must take account of all the circumstances of the case **[28]**.

The overall aim of a court in making a financial order on divorce is to achieve a fair outcome. In so doing, courts are guided by certain key principles **[4]-[5]**. This appeal concerns, in particular, the "sharing principle". Lord Burrows and Lord Stephens set out the following five principles that are relevant to the application of the sharing principle.

First, there is a conceptual distinction between NMP – which is typically pre-marital property brought into the marriage by one of the parties, or property acquired by one party by external gift or inheritance – and MP – which is property which comprises the fruits of the marriage, reflects the marriage partnership or is the product of the parties' common endeavour. Which party has legal title to the property is not determinative of whether it is MP or NMP **[47]**.

Secondly, though courts have been reluctant previously to say so, the time has come to recognise that the sharing principle applies only to MP and not to NMP (although NMP can be subject to what have been termed the "needs" and "compensation" principles that are not in issue on this appeal) **[48]-[49]**.

Thirdly, the starting point is that MP should be shared on an equal basis (though there may be justified departures from that position) **[50]**.

Fourthly, and at the heart of the reasoning, what starts as NMP may become MP through a process that was given the label in an earlier case of "matrimonialisation". Although it may be new to the English language, the Supreme Court accepts that that is a useful shorthand term to describe the process by which NMP may become MP. But whether one is using that label or not, the important question on any facts is whether that transformation has occurred. Although this has not previously been clearly spelt out, what is important (leaving aside MP resting on contributions from each party) is to consider how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared **[51]-[55]**.

Finally, a transfer of an asset between spouses in a scheme designed to save tax, irrespective of the time period involved, will not normally show that the asset is being treated as shared

between the spouses. Therefore, such a transfer will not normally constitute matrimonialisation **[56]**.

Lord Burrows and Lord Stephens then apply those principles to the facts of the present case. Applying the first two principles, there is no reason to interfere with the Court of Appeal's assessment that (prior to any matrimonialisation) 25% of the 2017 Assets was MP and 75% was NMP. Applying the third principle, the 25% that was MP should be shared equally. The question is then whether, applying the fourth principle, the 75% that was NMP had been matrimonialised. It had not. There is nothing to show that, over time, the parties were treating the 2017 Assets as shared between them. Applying the fifth principle, the transfer of the 2017 Assets to the wife was to save tax and it was for the benefit of the children, by saving inheritance tax, not for the benefit of the wife. Therefore, the 75% of the 2017 Assets that was NMP had not been matrimonialised. The Court of Appeal therefore correctly decided (although the Supreme Court does not agree with all its reasoning) that the husband was entitled to 75% of the 2017 Assets plus half of 25% of those Assets **[57]-[63]**.

References in square brackets are to paragraphs in the judgment.