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High Court determines meaning of “breakdown of de facto relationship”

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On 11 May 2022, the High Court handed down its judgement in the case of *Fairbairn v Radecki*. This significant case clarified the meaning and circumstances of a breakdown of a de facto relationship. So why is this case important and what should you be aware of? The meaning of “breakdown of a de facto relationship” has particular significance in estate planning matters, management of a deceased estate and in family law matters.

Why is this important in estate planning matters?

For deceased estate matters, the court has, on a number of occasions, had to consider whether and when a de facto relationship began. This clarity is required in order to determine whether the surviving spouse is entitled to certain benefits following their partner’s death, for example:

1. superannuation death benefits;
2. distributions under the Will; and
3. family provision applications (contesting a Will).

The court will generally take a holistic approach to assess this and look at several factors when they consider this, including:

whether the couple lived together;

the public perception as a couple (and whether they were considered de facto by friends and family); and

whether the couple had intertwined finances.

The case of *Fairbirn v Radecki* is different to previous cases looked at by the courts because it considers de facto relationships and whether and when the relationship ended as opposed to when and whether it started.

Background to the High Court case

Sometime in late 2005/2006, Mrs Fairbairn and Mr Radecki commenced a de facto relationship together. The couple had a practical and supportive relationship, with a core element being an agreement to keep all their assets strictly separate from each other. Significantly, however, the couple decided to live together in the home owned by Mrs Fairbairn.

After being in a de facto relationship for almost 10 years, in 2015, Mrs Fairbairn suffered a rapid cognitive decline, and in 2017 she was diagnosed with dementia. In 2017, Mrs Fairbairn's condition had progressed to the point that she was no longer able to make long-term decisions for herself.

Unfortunately, there were disagreements between Mrs Fairbairn's children and Mr Radecki about how to manage Mrs Fairbairn's care. As a result of the ongoing disagreements, the New South Wales Trustee and Guardian ('the Trustee') was appointed to make decisions on behalf of Mrs Fairbairn.

The Trustee came to the decision that Mrs Fairbairn should permanently reside in an aged care facility. The Trustee also decided that Mrs Fairbairn's home should be sold to fund the significant costs associated with Mrs Fairbairn living in the residential facility.

The dispute

Following the Trustee's decision, a dispute arose between Mr Radecki and the Trustee.

Mr Radecki was unhappy with the Trustee's decision to sell Mrs Fairbairn's home, opposing the decision. Mr Radecki refused to move out of the home as he wanted to keep living there. No agreement between Mr Radecki and the Trustee could be reached, and in the unhappy circumstances, the Trustee commenced proceedings to sell the home.

The basis for the sale of the home was that the de facto relationship between Mr Radecki and Mrs Fairbairn had broken down (or ended). This position was supported by Mrs Fairbairn's children.

The High Court's decision

After consideration, the Court agreed with the Trustee (and Mrs Fairbairn's children) and was satisfied that the parties were no longer in a relationship, or in other words, that the de facto relationship had ended. Importantly, the Court rejected arguments that the relationship had broken down solely due to Mrs Fairbairn's mental incapacity or because she had moved into an aged care facility.

This is likely to mean that neither separate living arrangements nor mental incapacity **on their own** is enough for a court to

conclude that a de facto relationship has broken down.

Instead, the Court focused on the following circumstances (and, importantly all of these circumstances together) were relevant to whether or not the de facto relationship had ended:

By 2017, Mr Radecki and Mrs Fairbairn were occupying separate rooms;

Mr Radecki acted, although he was not bound by the core element of the relationship, to keep assets separate (after she became ill, Mr Radecki secured on behalf of Mrs Fairbairn a new Power of Attorney and Will, giving himself considerable control and financial favour);

Mr Radecki refused to permit the sale Mrs Fairbairn's home;

Mr Radecki was very unwilling to pay for Mrs Fairbairn's required care; and

Mr Radecki's conduct required the Trustee to be appointed.

Overall, the Court found that there was no evidence of an ongoing de facto relationship between Mr Radecki and Mrs Fairbairn due to Mr Radecki's persistent refusal to make the necessary or desirable adjustments to evidence a relationship.

Implications of this decision

This case demonstrates that to determine the end point of a de facto relationship, the Court can consider the aggregate of matters which it determines appropriate.

It also shows how complicated the law is around different categories of familial and romantic relationships and how this can cause complications in relation to a person's estate. It is important that expert legal help is sought when:

- preparing your estate plan (eg, drafting your Will and appointing an Enduring Power of Attorney);
- administering a deceased estate (with or without a Will); and
- dealing with disputes regarding a deceased estate.

Get help from a Wills and estates lawyer

We have extensive experience and expertise in estate planning and managing a deceased estate. With deceased estates in particular, the law can be very complex, and it’s often prudent to seek advice if matters are in dispute.

If you would like an obligation-free chat about your estate planning or if you are the Executor of a Will and require assistance with administration of the estate, get in touch to get the ball rolling.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.