

# If I die, it gets rid of the problem'

An Auckland woman went up alone against her ex-husband, his QC, judges and an unsympathetic Family Court – all while battling cancer. More than two years on, she tells **Tony Wall** there is still no end in sight.

ERICA\* FOUND out her husband, a senior executive, had left her when she got the note he left with a neighbour. He'd already declined to pay for an expensive drug to treat her cancer, and, according to Erica, told her she was "past my use-by date".

In the note, he simply wrote: "I have sought legal advice and have no intention of returning to the property."

That was in January, 2010 – she has not spoken to him since, other than through his lawyers, including a Queen's Counsel.

In the meantime, the couple's dispute over disbursement of their assets – a \$1.5-million home in a well-heeled suburb, a \$650,000 superannuation account and other investments – has dragged on.

The case has cost the husband an estimated \$180,000 in legal fees. Because her husband refused to let her have access to money in a trust account and the court did nothing to release the funds for two years, Erica had to represent herself, boiling up on relationship law on the internet and living off a single woman's benefit.

She was spending six hours a day on the case while also getting treatment for cancer. Late last year she broke down in court, sobbing to the judge that she couldn't take it any more.

"I have reached the conclusion that Erica is becoming somewhat overwhelmed by the whole complexity and difficulties of the case and the emotional aspect of it," the judge wrote.

A lawyer has been appointed by the court to "assist" Erica, and she will have to pay his bill when the case finally settles.

Lawyers have complained that a new centralised system for processing Family Court cases in

Auckland is a shambles, but Erica believes lawyers are half the problem.

"The lawyers drive the Family Court – it's revenue collection," she says. "The reason this has dragged on so long and the reason my husband's lawyer has gone for so many adjournments... is that if I die, it gets rid of the problem. Without a shadow of a doubt that is their agenda," she claims.

IN THE spacious home that the couple shared for several of their 30-plus years of marriage (they have adult children and grandchildren), Erica is surrounded by boxes of files on the seemingly never-ending case.

She finds it incredible that 2½ years since their separation nothing has changed. "Nothing has progressed. I'm still in the house, my ex-husband's superannuation is still sitting there, yet there are 20 Eastlight files of correspondence."

Soon after her husband left, the legal letters started arriving. She describes them as nasty.

"I was threatened that if I didn't get out of the house [so it could be sold], they would put a court order on me."

She didn't want to leave the house because she had nowhere to go, no income and was concerned that the property would not fetch top dollar because of problems with a leak.

She says she's asked her husband's lawyer if they could go to mediation to avoid court, but he declined.

Her husband hired a QC and Erica turned up to court alone, having been up all night studying the Property (Relationships) Act and the Trustee Act.

"I was terrified. The first time outside the courtroom I was phys-



Photo: Graham Cowie/Infanz

Long, hard slog: Erica says her 2½-year family court battle has been a living nightmare.

## 'Every day I just shake because I

worry about what email I'm going to get, what's going to be in the post, what threat is coming at me next'

Erica says she has had no sympathy from the courts for her ill health. Her specialist wrote a letter ordering that her husband pay \$600 a week in maintenance for an interim period of six months. Erica says it was one of her small "victories", but her husband stopped paying when the six months was up and she has been unable to secure another order.

In March this year a judge finally ruled that \$100,000 from the trust account be made available to her. She spent \$30,000 on a lawyer for a High Court bid to have her husband and the third "independent" trustee (her husband's best friend) removed from their trust. Some of the \$230,000 in a joint trust account be released to cover

her legal and medical costs. She also repeatedly asked for an order that her husband pay spousal maintenance, having found case law that the lesser-earning partner in a broken relationship should not have to resort to using capital to live.

Finally, in April, 2011, a judge ordered that her husband pay \$600 a week in maintenance for an interim period of six months. Erica says it was one of her small "victories", but her husband stopped paying when the six months was up and she has been unable to secure another order.

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representation. I said 'if you give me money from the trust account, I'll go get a barrister'."

She believes the QC tried to inflame the situation. At any time she could have advised her ex-husband to pay spousal maintenance, Erica says.

The first thing a lawyer will tell (clients) is, 'do not pay maintenance, starve her out'. The longer you don't have money, the more hungry you go, the more willing you are to accept the crumbs that are offered."

Erica says the dispute should never have come to court.

"I told the court 'it doesn't belong here, I'm sick... throw it into mediation, throw it to a judicial settlement but for God's sake get it out of here'."

"That was the one thing the court never offered or agreed."

RAIG JACKSON, a Wellington counsellor with 30 years'

experience of the Family Court, says Erica's case is a prime example of why the court needs reforming.

"Delays, drawing hearings out, gender-biased decisions, decisions that have wrecked lives of women – have all been part of the history of the court," he says.

He says lawyers, instead of moaning that the wheels are falling off the system, should support reforms announced by the Government which will take a lot of the business away from lawyers and the Family Court to mediation centres, as is the case in Australia.

Sarah Turner, general manager of the courts and services policy group for the Ministry of Justice, says the reforms are designed to ensure cases are less adversarial, and make it easier for people to represent themselves.

She says only 3 per cent of Family Court cases in 2010-11 were relationship property applications, but they took the longest time to resolve – about 400 days on average.

Under the reforms, parties will have to disclose financial information and key documents without a court order and will have to provide a new, more comprehensive affidavit of assets and liabilities.

"The reforms will also clarify what parties must disclose, particularly regarding trusts."

In addition, cases must be transferred to the High Court if they would be more appropriately dealt with there, enabling relationship property issues to be heard together with related trust or company issues.

Erica starts to cry when she describes how the case has affected her.

"I've nearly killed me. It's been hell, a nightmare. I shouldn't be going through this. I went through hell with the cancer treatment. My doctors are effectively saying, 'Is this how she should be spending her remission, fighting in court?'"

Her health outlook is uncertain. "There's no cure, and it usually comes back with a vengeance."

Her specialist has told her she should budget \$300,000 for future medical care, including drugs not currently funded by Pharmac.

She will have much more than that when the cash and assets are finally disbursed, but there is no end in sight – there is now a dispute over repairs to the house.

Another hearing will be held later this month, for a registrar's review of the case. Erica doesn't expect it to be resolved this year.

"Every day I just shake because I worry about what email I'm going to get, what's going to be in the post, what threat is coming at me next."

Whenever something new comes at me, I've got to study it, learn it, understand it and try and work out how I can stay alive and stay on top of this."

Name changed for legal reasons.

## SILENT INJUSTICE

Women who have had bad experiences in the Family Court will gather in Auckland this week to discuss their stories. The Women's Health Action Trust is organising a seminar, titled *Silent Injustice: Women's Experiences of the Family Court*, which will be held at Auckland University on Friday.

Speakers will include university researchers who studied how women fared negotiating custody arrangements for their children after separations.

For more information go to women'shealth.org.nz

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