



1 July 2020

PRESS SUMMARY

Villiers (Appellant) v Villiers (Respondent)
[2020] UKSC 30
On appeal from [2018] EWCA Civ 1120

JUSTICES: Lady Hale, Lord Kerr, Lord Wilson, Lady Black, Lord Sales

BACKGROUND TO THE APPEAL

This appeal brought by the husband concerns the jurisdiction of an English court to make a maintenance order in favour of the wife under section 27 of the Matrimonial Causes Act 1973 (as amended) (“**section 27**”) when the parties had mostly lived in Scotland and the divorce proceedings were conducted there.

The parties married in England in 1994 and lived together in Scotland between 1995 and 2012, when they separated and the wife returned to England. She issued a divorce petition in England in July 2013 and the husband issued a writ for divorce in Scotland in October 2014. As the parties had last lived together in Scotland, the application for divorce was assigned to the Scottish court. On 13 January 2015 the wife consented to an order dismissing her petition in England and she issued an application under section 27 in England for maintenance payments. The husband applied to stay or dismiss this application on the basis that the English court did not have or should not exercise jurisdiction to hear the application. The English High Court rejected the husband’s challenge and ordered maintenance to be paid by the husband. The husband unsuccessfully appealed against the decision to the Court of Appeal.

The husband now appeals to this Court in relation to the jurisdictional issues. The issues relate to Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (“**the Maintenance Regulation**”) and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (“**Schedule 6**” and “**the 2011 Regulations**”, respectively), promulgated by the Secretary of State for Justice pursuant to section 2(2) of the European Communities Act 1972 (“**the ECA 1972**”).

JUDGMENT

By a majority, the Supreme Court dismisses the appeal. Lord Sales gives the lead judgment, with which Lord Kerr agrees. Lady Black gives a concurring judgment. Lord Wilson gives a dissenting judgment, with which Lady Hale agrees.

REASONS FOR THE JUDGMENT

In the lead judgment, Lord Sales sets out the four issues that arise on the appeal: (1) whether under section 27 an English court has jurisdiction to make any order for maintenance in a case with no international dimension; (2) if so, whether Schedule 6 allows for an English court to retain its previous discretion to stay maintenance proceedings before it on the ground of forum non conveniens (ie the court’s discretion to make an assessment as to which jurisdiction is the most appropriate); (3) if not, whether the purported removal of that discretion was outside the scope of the Secretary of State’s powers in section 2(2) of the ECA 1972; and (4) if not, whether the husband’s divorce proceeding in Scotland is a “related action” for the purposes of article 13 of the Maintenance Regulation and the corresponding

provision in Schedule 6 and, accordingly, whether the English court should decline jurisdiction in respect of the wife’s claim for a maintenance order under section 27 [7].

Lord Sales considers that the European Union (“EU”) legislation governing jurisdiction in cross-border cases treats maintenance obligations and questions of marital status, including divorce, as separate matters for the purposes of jurisdiction [8]-[24]. Maintenance obligations are covered by their own inter-state jurisdiction regime set out in the Maintenance Regulation [17]. Schedule 6 applies the provisions of the Maintenance Regulation to the allocation of jurisdiction for intra-state cases within the United Kingdom relating to maintenance [22]-[23].

On the first issue, the husband submits that section 27 can only apply if a case falls to be governed by both the Maintenance Regulation and by Schedule 6, which would have the effect of it only applying in inter-state cases. Lord Sales considers (and Lord Wilson agrees) that section 27 does not require that both the Maintenance Regulation and Schedule 6 apply. Section 27 refers to both the Maintenance Regulation and Schedule 6 only in the sense that together they cover the whole possible field of inter-state cases and intra-state cases [26], [135]-[140].

On the second issue, Lord Sales follows EU case law to hold that the scheme of the EU legislation is inconsistent with the courts of a Member State retaining any discretionary power to stay proceedings on forum non conveniens grounds [28]. This is particularly applicable to the Maintenance Regulation, which aims to afford special protection to a maintenance creditor by giving him or her the right to choose jurisdiction [29]. Schedule 6 replicates the scheme of the Maintenance Regulation in domestic law for intra-state cases, and accordingly has the effect of removing any discretion based on the domestic forum non conveniens doctrine [34].

On the third issue, Lord Sales considers (and Lord Wilson agrees) that the making of the 2011 Regulations is within the wide power conferred on the Secretary of State by section 2(2) of the ECA 1972 to make subordinate legislation [38], [141]-[145].

On the fourth issue, in Lord Sales’s judgment the husband’s divorce proceeding in Scotland is not a “related action” within article 13 of the Maintenance Regulation, so that article (and the corresponding provision in Schedule 6) does not permit the English court to decline jurisdiction [40]. The Maintenance Regulation must be considered in light of its fundamental object of conferring the right to choose jurisdiction on a maintenance creditor [41]. The word “actions” in article 13 refers primarily to maintenance claims to which the special regime in the Regulation applies. Holding it to mean any legal proceedings would undermine the object of the Regulation [45]. There is no relevant connection between the wife’s section 27 maintenance claim in England and the Scottish proceedings concerned with determining marriage status [46].

In her concurring judgment, Lady Black agrees with Lord Sales’s conclusion on article 13, despite the fact that it leads to the potential fragmentation of the proceedings required to resolve financial affairs upon divorce. Based on the wording of article 13, with the object of protecting the maintenance creditor in mind, she considers that the English and the Scottish proceedings are not related actions [91].

In his dissenting judgment, Lord Wilson views the English and Scottish proceedings as “related actions” for the purpose of article 13, giving the English court the power to stay or decline the wife’s maintenance application. He would adopt a broad, common sense approach to the interpretation of the article [162]. As a result, Lord Wilson would have allowed the husband’s appeal [163].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>