Field v Field

[2003] 1 FLR 376

28/10/2002

Barristers
Michael Sternberg OBE KC

Court
Family Division

Facts
In ancillary relief proceedings the husband was ordered to pay the wife £900,000 in two instalments. He breached the order by failing to pay the second instalment of £500,000. The terms of the original order provided that in the event of non-payment the husband must pay £32,000 per annum to the wife in default, on account of his liability for interest on the sum unpaid. Apart from arrears of about £9,000, the husband had made the default payments. The wife had also been given security for payment of the second instalment in the form of a charge over land, but this was valueless unless planning permission could be obtained. The wife now wished to enforce the lump sum order against the husband's entitlements under a personal pension scheme; both his right to elect for part of the payments to him to be made in the form of a lump sum and his right to an annuity. The wife asked the court to make either: (i) a charging order in her favour on his entitlements under the scheme pursuant to s. 1 of the Charging Orders Act 1979; or (ii) an injunction, pursuant to either s. 37 of the Supreme Court Act 1981 or s. 37(2)(a) of the Matrimonial Causes Act 1973, requiring the husband to elect to receive a lump sum to the maximum permissible extent by a certain date and to claim his annuity from that date, and directing their payment to the wife; or (iii) an order for the appointment of a receiver, by way of equitable execution, over the husband's entitlements under the scheme, pursuant to s. 37 of the Supreme Court Act 1981, so that with effect from that date the receiver could make the election, claim the annuity and remit the proceeds to the wife. The husband argued that the court lacked jurisdiction to make any of the three orders. It had emerged that the pension fund, which had originally consisted of UK investments, had now been largely, if not entirely, invested in South Africa, where the husband now lived, and had reduced markedly in value.

Held
Held – dismissing the wife's applications –

(1) The court had no power to make a charging order on the husband's entitlements under the pension scheme, because the husband had no beneficial interest under the trusts of the pension scheme, and furthermore the scheme contained an express provision that no annuity or lump sum benefit payable under the scheme was capable of being charged (see paras [13], [14]).

(2) An injunction could be granted under s. 37 of the Supreme Court Act 1971 as an aid to the court's established procedures for enforcement of a judgment but not as a free-standing enforcement procedure in its own right (see paras [16], [17]).

(3) Section 37(2) of the Matrimonial Causes Act 1973 was not available because it provided that the court could restrain the husband from dealing with property with the intention of frustrating the enforcement of the order, if satisfied that he was about to do so, whereas the essential complaint in this case was that the husband was not about to deal with his pension fund; moreover an injunction under s. 37(2) was prohibitory not mandatory (see para [18]).

(4) The court had no power to appoint a receiver in aid of execution under s. 37(1) of the Supreme Court Act 1981, because the sums payable to the husband under the scheme were not of such a nature as to make his interest in them assignable (see paras [19], [20]).

Per curiam : even if the power to earmark all or part of the husband's pension introduced by s. 166 of the Pensions Act 1995 been available in this case, it would not have assisted the wife, because such an order under s. 166 could require the husband to elect commutation of the pension, but could not require him to do so at any particular time. Indeed, s. 166 would have been redundant had any of the enforcement methods suggested by the wife been available (see para [21]).

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