

# Piglowska v Piglowski

**[1999] 1 WLR 1360**

17/05/1999

## Barristers

Private: Jonathan Cohen QC

Private: Amanda Barrington-Smyth

## Court

House of Lords

## Facts

Following a decree of divorce the wife made an application for ancillary relief pursuant to sections 23 and 24 of the Matrimonial Causes Act 1973 so as to divide up the matrimonial assets, the total value of which amounted to £127,400. The wife wished to remain in the former matrimonial home for the purposes of her business and to accommodate her two student sons, whereas the husband, who had remarried and was living in cramped accommodation in Poland, sought an order for the sale of the matrimonial property with sufficient of the proceeds awarded as to allow him to purchase a property in England to which he could return with his new family. The district judge found that the wife's needs were such as to require her continued occupation of the former matrimonial home and held that her contributions to the matrimonial assets justified their being split 73 per cent. to 27 per cent. in her favour, with the result that the sum available to the husband, although sufficient to provide suitable accommodation for himself and his family in Poland, did not allow him to purchase a property in England. On the husband's appeal a judge of the Family Division held that the district judge had paid due regard to the matters he was required by section 25(2) of the Act of 1973 to consider when exercising his powers under sections 23 and 24 of the Act, and upheld his decision. The husband's application to appeal further to the Court of Appeal was dismissed by the single judge but, on a renewed application, was allowed by a differently constituted court. On the hearing of the appeal, the Court of Appeal held that the district judge had placed undue weight on the wife's contribution to the matrimonial assets, and that both the district judge and the judge had failed to carry out the exercise which section 25(2) required by failing to consider the husband's reasonable housing needs. The court accordingly varied the order by awarding the husband 40 per cent. of the matrimonial assets, thereby requiring the sale of the former matrimonial home.

## Held

On the wife's appeal: -

Held , allowing the appeal, (1) that section 25(2) of the Matrimonial Causes Act 1973 did not rank the provision of homes for both parties above the other considerations set out

1 Matrimonial Causes Act 1973, s. 25(2), as substituted: see post, p. 1364D-G .

therein and the relative weight to be given to each would depend on the facts of the particular case; that where the question arose as to whether the exercise of a judicial discretion such as was involved in section 25(2) was plainly wrong, the appellate court was to have regard to the advantage which the trial judge had in seeing the witnesses both in respect of his findings of primary fact and his evaluation of them, and should assume unless demonstrated to the contrary that he knew how to perform his functions and which matters he should take into account; that where the exercise of discretion involved value judgments on which reasonable people might differ a degree of diversity was inevitable; and that, accordingly, since the district judge's decision had not been made in disregard of the husband's needs but had been based on the wife's greater need to stay in the matrimonial home and her claim to a larger share of the assets on account of her contribution during the marriage, and since there had been no other ground for impugning the district judge's exercise of discretion or the judge's upholding of it, the Court of Appeal ought not to have varied the order (post, pp. 1362C-E ,1370F-H , 1371D-G , 1373B-D , 1374A ).

Dicta of Asquith L.J. in *Bellenden (formerly Satterthwaite) v. Satterthwaite* [1948] 1 All E.R. 343, 345, C.A. considered.

(2) That an appellate court should bear in mind the principle of proportionality between the amount at stake and the legal resources of the parties and the community which it was appropriate to spend on resolving the dispute before granting leave for a second appeal; that even if a case raised an important point of practice or principle, the Court of Appeal should consider carefully whether it was fair to have it decided at the expense of parties with very limited resources or whether it should wait for a more suitable vehicle; and that, in the circumstances, leave to appeal should not have been granted by the Court of Appeal (post, pp. 1362C-E , 1373E-F ).

Decision of the Court of Appeal reversed.

This was an appeal, by leave of the House of Lords (Lord Lloyd of Berwick, Lord Steyn and Lord Hutton), by the wife, Ewa Rozalia Piglowska, from the judgment of the Court of Appeal (Simon Brown and Ward L.JJ.) on 3 November 1997 varying a transfer of property order made under section 24(1)(a ) of the Matrimonial Causes Act 1973 and thereby allowing an appeal by the husband, Henryk Jan Piglowski, from the judgment of Judge Pearlman, sitting as a judge of the High Court on 25 November 1996, who had affirmed the original section 24(1)(a ) order made on 7 October 1996 by District Judge Kenworthy-Browne, sitting in the Principal Registry of the Family Division, on the wife's application for ancillary relief following the parties' divorce.

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