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I v I (2009)

[2009] EWCA Civ 412

04/03/2009

Barristers
Private: Jonathan Cohen QC

Court
Court of Appeal

Summary
The widely reported decision forming the subject of the instant appeal was not to be treated as a precedent or followed insofar as it expressed any view beyond, or inconsistent with, those expressed in the instant case.

Facts
The appellant wife (W) appealed against the dismissal (2008) EWHC 1167 (Fam), (2009) 1 FLR 2001 of her application to set aside a consent order determining her claims for ancillary relief against the respondent (H). Some 10 days after the consent order had been made H had entered into a new contract of employment, significantly increasing the level of his remuneration. At the time the consent order was made, H's negotiations with his new employer were at an advanced stage, yet he did not disclose either to W or to the court his prospects of a successful move to higher remuneration in the immediate future. In dismissing W's application, the judge found that when H had signed the consent order a formal offer was a real and imminent possibility, and that was information that he had consciously suppressed. He found that H was in breach of his duty to disclose. However, he refused W's application on the basis that even had H complied with his duty it could not be said that the outcome would have been different. He reasoned that firstly, had the parties reached the same agreement, the district judge would have approved it; secondly, the new evidence did not enable a finding to be made as to whether or not the same agreement would have been put to the district judge; and thirdly, there were problems in the court asking whether it would have made the same order had it not been put before it pursuant to an agreement between the parties. By agreement, both H and W invited the court to allow the appeal, set aside the consent order and make revised orders on W's applications.

Held
HELD: (1) Even had the appeal not been compromised, it would have been allowed. Had H made full and frank disclosure of the imminence of his new contract of employment it was inconceivable that W would not have raised her sights. It was also inconceivable that the district judge would have rejected the information as irrelevant. There were only two options, either the hearing had to be adjourned to eliminate the risk that the negotiation would not lead to contract, or the parties and the court had to come to a fair conclusion that assumed that the contract would be signed but with some discount for the

risk of breakdown. The first option was the only realistic course, and the judge was wrong to conclude that the breach of the duty had no effect on the outcome of the case. (2) Two impressions from the judgment below were to be corrected. Firstly, it was not for a party to a financial dispute resolution hearing to judge the ambit of the duty to disclose or the consequences of disclosure. Any information that was relevant to the outcome had to be disclosed. Secondly, the fact that H had not signed his new contract of employment at the time the consent order was made was irrelevant to the question of whether the negotiations had to be disclosed. The duty to disclose extended beyond what was certain on the date that the order was made to any fact relevant to the court's review of the foreseeable future. (3) The judgment below was not to be treated as a precedent or followed insofar as it expressed any view beyond, or inconsistent with, those expressed in the instant judgment.