

Stodgell v Stodgell (2009)

[2009] EWCA Civ 243; (2009) 2 FLR 244

12/02/2009

Barristers

Christopher Hames KC

Court

Civil Division

Summary

Ancillary relief for a wife and child of the marriage was stayed pending satisfaction of a confiscation order in favour of the Inland Revenue and Customs for unpaid tax and penalties.

Facts

The appellant wife (W) applied for leave to appeal a decision (*Stodgell v Stodgell* (2008) EWHC 1925 (Admin), (2009) 2 FLR 218) staying her application for ancillary relief pending the discharge of a confiscation order to be satisfied by the respondent husband (H). During the subsistence of the marriage, H had been an art dealer. H had fraudulently evaded income tax and had received a confiscation order comprised of unpaid tax together with interest and penalties. On divorce W sought a lump sum payment as financial provision for herself and for the child of the marriage in ancillary relief proceedings at the hearing of which, it became apparent that H's assets were insufficient to satisfy the confiscation order. W contended that (1) the judge had failed to take into account her lack of complicity in the crime and had failed to distinguish her case from that of the wife in *Crown Prosecution Service v Richards* (2006) EWCA Civ 849, (2006) 2 FLR 1220 and she was in effect being punished for the crime of her husband; (2) W would be forced to seek support from the state if she received no financial provision; (3) H had other assets that were currently unidentified from which both the order and ancillary relief could be paid; and (4) there should have been an equal division of assets between H and W in accordance with the decision in *White (Pamela) v White (Martin)* (2001) 1 AC 596 HL.

Held

HELD: (1) It was clear that the judge below had correctly contrasted the case of *Richards* with the case of *Customs and Excise Commissioners v A* (2002) EWCA Civ 1039, (2003) Fam 55, which were at opposite extremes in terms of the respective wife's knowledge and complicity, *Richards* cited and *Customs v A* followed. Non-complicity was a necessary but not a sufficient condition for success in an ancillary relief application that was in direct competition with a confiscation order. The confiscation order did not bite on surplus income but the assets were available only because of H's failure to pay income tax. Had he paid his tax as it was due, or, as counsel for W had been forced to concede, had the Crown brought an action and bankrupted H for the payments, then there would have been no assets for distribution between H and W. This was not a case of punishing W for H's crime as there would have been a similar lack of

assets for W had H been a spendthrift rather than a criminal. (2) It was clear from Customs that it was relevant to consider whether W would be cast upon the state, but in the instant case that factor could not prevail. (3) It would not be a legitimate exercise of the court's power to require the receiver to use public funds in a speculative search for further assets. (4) It was simply incorrect to equate a wife's proprietary interest which would have vested with a non-proprietary claim for ancillary relief, White followed. It was recommended that the transcript of the application be made available to the specialist law reports despite the fact that it was only an application for permission.

Permission

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