

(1) HM Customs & Excise (2) Richard Long v (1) MCA (2) JMA : JMA v MCA & Richard Long (Intervenor) (2002)

[2002] EWHC 611 (Admin); (2002) 2 FLR 274

18/04/2002

Barristers

Christopher Hames KC

Court

Queen's Bench Division

Summary

Where a husband's assets were the subject of competing claims by his former spouse under the Matrimonial Causes Act 1973 and by Customs and Excise under the Drug Trafficking Act 1994, the proper balancing of those claims required, in the exceptional circumstances of this case, an order that all his assets should go to his wife.

Facts

Conjoined applications by: (i) HM Customs and Excise for an order that the interest of the first respondent ('H') in his former matrimonial home ('FMH') and in two endowment policies should be made available to satisfy his liability under a confiscation order made pursuant to the Drug Trafficking Act 1994; and (ii) by the second respondent ('W') for an order that H's interest in those assets should be transferred to her by way of ancillary relief. The agreed facts were that: (a) the confiscation order was in the sum of £47,868.22; (b) H's receiver had already realised H's assets to the value of £21,348.04; (c) H's interest in the FMH and the policies was worth £35,290; (d) W was entirely innocent of any involvement in drug trafficking; (e) neither the property or the policies had been acquired with or had benefited from the proceeds of H's drug trafficking. Customs contended that the effect of s.31(2) of the 1994 Act was to make enforcement of the confiscation order the overriding consideration.

Held

HELD: (1) Section 31(2) of the 1994 Act took effect subject to s.31(4), which safeguarded the rights of, inter alia, a spouse who was entitled to ancillary relief provision and entitled that spouse to enjoy her property rights in specie. (2) But for H's conviction and the confiscation order, the court was satisfied that as between H and W, the appropriate order for ancillary relief would have been to transfer H's interest in the FMH and the policies to W absolutely. The case for allowing H to remain in the FMH was compelling. (3) It would be disproportionate to any legitimate public interest to make an order the effect of which would be to throw onto W, who was entirely innocent, the burden of discharging, from assets which were wholly untainted with criminality and which would otherwise be treated by the court as hers

alone, those liabilities to which H had exposed himself by his drug trafficking. A proper balancing exercise required, on the facts of this exceptional case, that the interest of W should take priority over those of Customs.

Application by Customs dismissed. H's interest in the FMH and the policies to be transferred to W.

Permission

Lawtel 