

Ramadani v Ramadani [2015]

[2015] EWCA Civ 1138

12/11/2015

Barristers

Charles Hale KC
Henry Clayton

Court

Court of Appeal

Practice Areas

Financial Remedies

Appeal concerning the jurisdiction of a court in England and Wales to hear a spousal maintenance application in the context of Council Regulation (EC) 4/2009 ("The Maintenance Regulation") following previous proceedings in another EU member state.

Both parties were born in Kosovo but lived for much of their married life in Slovenia. In May 2008 the wife and children moved to live in England and Wales.

In June 2008 the wife commenced divorce proceedings in Slovenia and the marriage was eventually dissolved by the Slovenian Court on 8 November 2011. The court record of the outcome of the proceedings stated:

"DECIDED:

I. Due to the partial withdrawal of the complaint, the proceeding regarding the following claim for maintenance has been stopped:"

In October 2013 W was given leave to apply for financial remedy orders in under Part III of the MFPA 1984. In November 2014 the English High Court heard H's applications to effectively knock out all of W's claims in England and Wales. At the end of a two day hearing, the judge delivered what McFarlane LJ in the Court of Appeal described as, "an immaculately crafted and fully reasoned judgment" in which she refused H's applications in their entirety.

H's appeal

H's appeal focussed solely on W's claim in England and Wales to spousal maintenance.

The structure of H's appeal was distilled by his counsel to four stages:

i) The outcome of the Slovenian hearing on 8 November 2011 was a "decision" for the purposes of the Maintenance Regulation. Alternatively, it was a "court settlement" which must be treated in the same

way as a decision.

ii) As a decision emanating from a member state which is bound by the 2007 Hague Protocol, it must be recognised without question.

iii) The Slovenian order amounted to a final termination of W's maintenance.

iv) Once a party's spousal maintenance entitlement has been finally determined and terminated by order in the member state of origin, it is not open to that party to claim spousal maintenance in another member state.

The effect of recognising the Slovenian order is that it must be given the same effect in England that it has in Slovenia.

Decision of the Court of Appeal

The Court of Appeal determined that the four points contained within H's appeal should be thought of as "stages"; the subsequent point may only be reached if their predecessors have been established. Thus the appeal must fail if point (i) cannot be established.

McFarlane LJ, with whom Sales LJ and Black LJ agreed, found that the Slovenian court had not made a "decision" nor had there been a "court settlement" with respect to spousal maintenance. Consequently, the husband's appeal was dismissed.

With respect to the finding that there had not been a "decision" the McFarlane LJ adopted the following reasoning:

a. The fact that the relevant clause appeared immediately under the heading "Decided" was not determinative. The jurisdiction of the court in England and Wales cannot be determined solely by consideration of the "end result" or manner in which matters have been laid out on a page. The substance of the Slovenian proceedings was relevant.

b. In September 2010 W indicated she wished to revoke her claim for maintenance and H agreed to that course:

"There was a decision, but it was the wife's decision to withdraw her claim; it was not 'a decision ... by a court' as required by Article 2.1(i)."

In relation to the finding that the result of the Slovenian proceedings did not amount to a "court settlement" McFarlane LJ made the following observations:

a. It was not known if a husband's consent is required in Slovenia before a wife is permitted to withdraw an extant claim for maintenance. Therefore the significance of the recording that H agreed to the withdrawal was ambiguous.

b. By September 2010 W was habitually resident in the UK and therefore had a choice of jurisdictions. If she unilaterally withdrew her claim in Slovenia so as to pursue it in England that would be an understandable course of action.

c. There was no positive evidence that W agreed or accepted that there should not be a spousal maintenance obligation on H.

Permission

 **Family Law Week**