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J v U; U v J (No.2) (Domicile) (2017)

[2017] EWHC 449 (Fam)

08/03/2017

Barristers
Charles Hale KC
Jonathan Rustin

Court
Family Division

Practice Areas
Financial Remedies
Application for the dissolution of a marriage where the domicile of the parties was in dispute.

The Petitioner was born in England to Irish Parents, and the Respondent was born in India but moved to the United Kingdom when he was fifteen. The parties married in Italy in 2005 and had two children together. Both parties were in the diplomatic service and therefore spent much of their married life together outside of England. Indeed, at the time of the proceedings, the Petitioner was living in Serbia and the Respondent and the children in Bosnia.

On 28 July 2015, the Petitioner sought a dissolution of the marriage in the United Kingdom on the basis that the Petitioner was domiciled in England, as required by s.5(2) Domicile and Matrimonial Proceedings Act 1973, and that England would be the forum conveniens for the divorce and ancillary matters. Conversely, the Respondent argued that the Petitioner was not domiciled in England and that England was not the forum conveniens for the divorce and ancillary matters. He therefore applied for a stay of proceedings under paragraph 9, Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973, and in September 2015, issued divorce proceedings in Sarajevo, Bosnia where the family then lived. Those proceedings were dismissed due to the Petitioner's diplomatic immunity, but on 29 November 2016, the Petitioner issued her own application in Sarajevo to deal with the child arrangements.

As set out in paragraph 8 of the judgment, the questions for the court were as follows:

i) Whether the Petitioner, whose domicile of origin is Ireland, acquired a domicile of choice in England, and if so, whether that domicile of choice subsists?
ii) Whether the Respondent, whose domicile of origin is India, acquired a domicile of choice in England, and if so, whether that domicile of choice subsists?
iii) If either party has domicile here, whether it has been demonstrated that there is another court with competent jurisdiction which is clearly or distinctly more appropriate than England for the trial of the action (forum non conveniens)?

Having set out the relevant principles in respect of domicile [9], the Judge detailed the extensive evidence submitted by each party. In addition, he noted a number of behaviours on the part of the Respondent that influenced his decision, including that the Respondent had been “less than forthcoming” [66(i)], had deliberately removed or caused to be removed many of the Petitioner’s files from the family computer to frustrate the Petitioner’s claims, had attempted to remove the Petitioner’s Home Rights Notice from his property in London, and had sought to exclude the Petitioner from benefitting from his will. After lengthy consideration of all of the evidence, the Judge held that the Petitioner was domiciled by choice in England and that whilst the Respondent had once been domiciled by choice in England, he was now domiciled in India. As such, England had jurisdiction.

The Judge then went on to consider the Respondent’s case that England was not the forum conveniens for the divorce and ancillary matters. He reiterated the elements of the test to be applied in a forum conveniens case [70] and reminded himself that it was for the Respondent to show that the matters “may be tried more suitably for the interests of all the parties and the ends of justice” in Bosnia [71]. Notwithstanding that the Respondent and the children were currently living in Bosnia, the court held that it was not the appropriate forum and that the petition and ancillary financial remedy proceedings should proceed in the English court.