

29
BEDFORD ROW
CHAMBERS

VILLIERS v VILLIERS

Alexis Campbell QC

October 2020

•

Villiers v Villiers [2020] UKSC 30

Lady Hale
Lord Kerr
Lord Wilson
Lady Black
Lord Sales

STRONG COURT FOR A MATRIMONIAL CASE
3/5 FAMILY LAWYERS

Ironic that two of the family lawyers were in the
minority

TENSION BETWEEN:

- Family lawyers desire for discretion
- Civil lawyers pursuit of certainty

EUROPEAN LAW

Aspires to avoid conflict, requires:

- simple predictable rules
- certainty

EUROPEAN LAW

- Conscious decision to favour the maintenance creditor
- Positively encourages forum shopping

EXIT FROM EUROPE

31 DECEMBER 2020

- UK ceased to be a member of the EU on 31 January 2020, (“exit day”).
- The 11 month implementation period ends at 11pm on 31 December 2020 (IP completion day).
- After that, the EU Maintenance Regulation will cease to apply.

IMPLEMENTATION PERIOD

- Provision to agree new terms with Europe
- Requires agreement of each member state
- If nothing agreed by 31 December 2020?

Government Weekly Update 30 September 2020

(released on Sat 3 October 2020)

Family Law Disputes Involving the EU: Guidance to Professionals from 1 January 2021

<https://www.gov.uk/government/publications/family-law-disputes-involving-the-eu-guidance-for-legal-professionals-from-1-january-2021/family-law-disputes-involving-the-eu-guidance-for-legal-professionals-from-1-january-2021>

CLARITY?

Divorce and maintenance recoupled

JURISDICTION FOR DIVORCE AMENDED DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973

Jurisdictional rules for the Court in England and Wales which replicate those in Brussels IIa have been inserted into section 5(2) of the Domicile and Matrimonial Proceedings Act 1973, by the Jurisdiction and Judgments (Family) (Amendment etc.)

(EU Exit) Regulations 2019

Sole domicile as a ground of divorce etc. jurisdiction has been added.

The court in England and Wales will have a discretion to stay proceedings when there are proceedings continuing in another jurisdiction.

JURISDICTION

AMENDED DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973

- (a) both parties to the marriage are habitually resident in England and Wales;
- (b) both parties to the marriage were last habitually resident in England and Wales and one of them continues to reside there;
- (c) the respondent is habitually resident in England and Wales;
- (d) the **applicant** is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;
- (e) the **applicant** is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;
- (f) both parties to the marriage are domiciled in England and Wales; or
- (g) either of the parties to the marriage is domiciled in England and Wales.

DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973

Obligatory stays for concurrent proceedings

- in respect of the same marriage
- in related jurisdictions (England & Scotland & Northern Ireland)
- which was the last residence of the parties
- and one of the parties was habitually resident there for a year before separation or the proceedings

DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973

Discretionary stays for

- Proceedings in another jurisdiction (outside of England and Wales) and
- The balance of fairness (including convenience) justifies the proceedings being disposed of first

Jurisdiction for maintenance decisions

Depends upon whether claim is brought
in England and Wales or
outside of England and Wales

New cases brought in England and Wales...

Jurisdiction for maintenance decisions

The court in England and Wales will decide if it has jurisdiction using the relevant non-EU rules. These rules are different depending on the type of maintenance case before the court.

Recognition and enforcement of maintenance decisions

2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

with all EU member states except Denmark.

The 1973 Hague Maintenance Enforcement Convention

will continue to operate between the UK and Denmark.

Recognition and enforcement of maintenance decisions

2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Article 2 Scope

- (1) This Convention shall apply –
 - a. to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
 - b. to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
 - c. with the exception of Chapters II and III, (provision for Central Authorities) to spousal support.

The 2007 Hague Convention

Provides for the recognition and enforcement of maintenance decisions
where the court which made the decision had jurisdiction for divorce,
except if that was based on the nationality of only one spouse.

“Therefore, where the court’s jurisdiction for the divorce relies on sole domicile, not nationality,
it should be possible
for any maintenance decision to be recognised and enforced under the 2007 Hague Convention.”

S.27 MCA Amended by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019

- (2) The court may not entertain an application under this section unless—
- (a) the applicant or the respondent is domiciled in England and Wales on the date of the application;
 - (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
 - (c) the respondent is resident there on that date.

New cases brought in an EU member state

Jurisdiction for maintenance decisions

“The guidance from the European Commission states that where proceedings involve a UK domiciled defendant, unless an EU instrument sets out the rules of jurisdiction with regard to third countries, international jurisdiction will be governed by the national rules of the EU member state in which the court is seised.”

To find out the law the member state’s court will apply in a case involving a UK party or parties after the end of the transition period, individuals should seek local legal advice if possible.”

FINAL IRONY

- The discretionary forum conveniens has been revived
- Which will subjugate the right of the maintenance creditor to choose which jurisdiction is more suitable, to the overarching authority of the court

29
BEDFORD ROW
CHAMBERS

ALEXIS CAMPBELL QC

October 2020