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VILLIERS V VILLIERS: THE WIDER IMPLICATIONS WHEN ADVISING YOUR CLIENT IN ENGLAND

Jane Mitchell, October 2020



Paragraph 8 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973

- It is always important to establish where the parties last lived together.
- As a result of paragraph 8 of Schedule 1 to the DMPA, although Mrs Villiers filed a petition for divorce in England in 2013 and Mr Villiers did not file his writ for a divorce in Scotland until the following year, the divorce proceedings had to be assigned to the court in Scotland because that was where the parties had last lived together.
- The jurisdiction of the court in England to make financial orders was therefore limited (see below).



Council Regulation (EC) No 4/2009 (the Maintenance Regulation)

- The Supreme Court has emphasised that a fundamental object of the Maintenance Regulation is to protect the interests of the weaker financial party, the maintenance creditor.
- It is an important principle that the maintenance creditor can choose, from a menu of options, the jurisdiction which will be the most convenient and/or beneficial to them.
- So what might those options be in England?

Application under Section 27 of the Matrimonial Causes Act 1973

- Made on the basis that a spouse has failed reasonably to maintain the applicant and/or their child.
- There need not be any divorce, nullity or judicial separation proceedings in existence: this is a self-standing application.
- The court can make orders for periodical payments, secured periodical payments and/or lump sum, to be made to the other party or for the benefit of the child (subject to the jurisdiction of the CMS).



Application under Section 27 of the Matrimonial Causes Act 1973 (cont.)

- An interim order for maintenance can be made.
- An order to make provision towards the other party's legal costs can be made.
- The application can be made at any time provided that the parties are still married when it is filed.
- The court can make an order for maintenance for such a term as it thinks fit and this can endure beyond the length of the marriage.



Key findings by the Supreme Court in dismissing Mr Villiers's appeal against the section 27 interim order

- The English court has not retained a general discretion to stay a section 27 application on the grounds of forum non-conveniens.
- The removal of that general discretion was not ultra-vires.
- Schedule 6 to the Civil Jurisdiction and Judgment (Maintenance) Regulations 2011 was intended to introduce for intra-state cases the same clear and certain jurisdictional rules which have been adopted for inter-state cases in the Maintenance Regulation.



Key findings by the Supreme Court in dismissing Mr Villiers's appeal against the section 27 interim order (cont.)

- The need for a certain and predictable set of rules is particularly important given that many people are highly mobile and liable to move between jurisdictions, both internationally and within the UK.
- The divorce proceedings in Scotland are not a 'related action' for the purposes of article 13 of the Maintenance Regulation. The Supreme Court found there was no relevant connection between the two sets of proceedings, which have distinct subject matters.



Key findings by the Supreme Court in dismissing Mr Villiers's appeal against the section 27 interim order (cont.)

- Since the English court was first seised of the issue of maintenance, the Scottish court would be obliged to refuse to consider a maintenance claim, under Article 12 of the Maintenance Regulation. Had Mrs Villiers wanted the court in Scotland to deal with her application for maintenance she could have withdrawn her claim in England and filed it in Scotland instead.
- An award of maintenance in England is in no way incapable of being reconciled with an order for divorce in Scotland.



Application under Schedule 1 of the Children Act 1989

- These offer a further potential route to financial claims in England, even when a divorce is proceeding in another country.



Application under the Matrimonial and Family Proceedings Act 1984

- In certain circumstances a party to a marriage can apply for financial orders from an English court following a divorce in another country, under the MFPA 1984. This was not a possibility in *Villiers*, since the English court can only entertain such a claim following a divorce in an 'overseas country'. That is defined by section 27 of the MFPA as a country or territory outside the British Islands.



The future

- **Lady Black** pointed out that whilst a family lawyer might think that obviously one court should resolve all the financial issues arising on the end of a marriage, this is by no means always the case. An application under the MFPA for financial relief after an overseas divorce is one example of this. She posited some examples of situations which might fall within article 13 of the Maintenance Regulation as being 'related' actions. These might include:
 - where a spouse is being pursued for maintenance by his or her first and second spouse at the same time; and
 - where there are cross applications for maintenance by a wife against the husband in one part of the UK and by him against her in another.



The future (cont.)

- Depending on the precise facts, there could be a risk of two courts giving irreconcilable judgments in which case the court first seised might have jurisdiction over both actions, and be permitted to consolidate them.
- Such examples are however very different from Villiers, where the court was clear there could be no risk at all of irreconcilable judgments.



The future (cont.)

- Lord Wilson was of the view that the court's decision could mean an "untrammelled licence... to go forum shopping". He expressed concern that a court in one part of the UK could not decline to determine a wife's maintenance claim even when a court in another part alone had the power to determine a claim by one spouse or the other for transfer of property, or for some other capital adjustments. These views did not persuade the majority, however.
- The Maintenance Regulation will continue to apply until the end of this year. What then?



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