

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA 13 of 2014
(FAM84/12)

BEFORE

The Rt Hon Sir John Chadwick, President
The Hon E. Mottley, Justice of Appeal
The Rt Hon Sir Bernard Rix, Justice of Appeal

BETWEEN

Valerie Ayala Gordon

Petitioner/Respondent

- and -

-

JEFFERSON RAYMOND WATLER

Respondent to Petition/Applicant

Mr Connor Fee of Samson & McGrath appeared for the Appellant, Valerie Gordon
The Respondent/Applicant, Mr Jefferson Watler, appeared in person

APPLICATION HEARD AND JUDGMENT DELIVERED: 5 NOVEMBER 2014
Revised from transcript and Approved released: 16 March 2015

Sir John Chadwick, President:

1. This application for leave to appeal to Her Majesty in Council is made in ancillary relief proceedings under the Matrimonial Causes Law following a breakdown of the marriage between the petitioner, Valerie Ayala Gordon, and her former husband, the present applicant, Jefferson Raymond Watler. Those proceedings came before the Chief Magistrate, sitting as a judge of the Grand Court, in January 2014. By an order made on 25 February 2014, the judge ordered the applicant to pay to the petitioner CI\$60,000; that sum representing 25 percent of the value of the assets which the judge had held to be matrimonial property for the purposes of Article 21(b) of the Matrimonial Causes Law. She awarded a sum representing 25 percent of the value of the matrimonial property, rather than an equal share of fifty percent, on the ground that the applicant/husband had

made what she held to be a special contribution to the acquisition of the matrimonial property.

2. The petitioner appealed to this court. By her appeal she asked this court to increase the sum awarded under Article 21(b) of the Law from CI\$60,000 to CI\$120,000; that is to say, to increase the sum awarded to a sum equal to fifty percent of the value of the matrimonial property.
3. This Court allowed the appeal and ordered payment of the CI\$120,000 which the petitioner sought; subject to credit for some CI\$3,000 which had already been paid under an interim order. The Court did so on the basis that it was satisfied that the judge had erred in principle in her approach to her task under Article 21 of the Law. In particular, the Court held that she had failed to have regard to the guidance given by this Court in its decision in *McTaggart v McTaggart*. At para. 17 of the judgment delivered on 22 August 2014, it was said:

“The judge's approach was to leave out of account, in relation to sharing, all property other than the matrimonial property and then to award the husband a seventy-five percent share in the matrimonial property on the grounds that he had made a special contribution which deserved that recognition. That approach was inconsistent with the modern authorities and in adopting that approach the judge fell into error.

She did so in reliance on the decision in *Frazier* which pre-dated the modern authorities, and, in particular, pre-dated both *Miller* and *McTaggart*. In *Frazier*, Justice Henderson had come to the conclusion that an appropriate recognition of the husband's contribution, in bringing property into account, was a 60/40 split.”

It was because this Court held that the judge had fallen into error that it took the view that it was required to intervene and substitute its own view.

4. The husband now seeks leave to appeal to the Judicial Committee of the Privy Council from the order made in this Court. He relies on matters set out in a short affidavit sworn on 31 October 2014. At paragraph 4 of that affidavit he refers to section 3(1)(a) of the Cayman Islands (Appeals to Privy Council) Order 1984, as amended by the Cayman Islands (Appeals to Privy Council)(Amendment) Order 2009. He contends that he has an appeal as of right in the circumstances that the order of this Court directly involves his

right to property far in excess of the £300 threshold mentioned in the s.3(1)(a). The application is opposed by the petitioner.

5. Section 3 of the 1984 order is in these terms:

“3(1) Subject to the provisions of this order an appeal shall lie as of right from decisions of the court to Her Majesty in council in the following cases:

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in council is of the value of £300 sterling or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £300 or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- and (c) such other cases as may be prescribed by any law for the time being in force in the Cayman Islands.

(2) Subject to the provisions of this Order, an appeal shall lie from decisions of the court to Her Majesty in Council with the leave of the court in the following cases:

- (a) decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that by reason of its great, general or public importance or otherwise ought to be submitted to Her Majesty in Council; and
- (b) such other uses as may be prescribed by any law for the time being in force in the Cayman Islands.”

It may be noted, first, that section 3(1) of the Order draws a distinction between decisions in civil proceedings and decisions in proceedings for dissolution or nullity of marriage; second, that (in each case) the decision, if it is to fall within paragraphs (a) or (b) of section 3(1) must be “a final decision”; and, third, that, where the decision is a final decision in proceedings for dissolution or nullity of marriage. there is no monetary threshold.

6. It is plain that the decision of this Court in the present case is a decision in proceedings for the dissolution of marriage: it is a decision on an application for ancillary relief in such proceedings. The first question, therefore, is whether it is a final decision within the meaning of section 3(1)(b) of the 1984 Order.

7. In the light of observations made in the speech of Lord Griffiths, delivering the opinion of the Privy Council in *Johnson v Johnson* [1992-93] CILR 250, I think that this Court is bound to take the view that the answer to that question is “No”. *Johnson* was a case in which this Court had allowed an appeal from the Grand Court in ancillary relief

proceedings by altering the terms on which the appellant/husband should transfer property to the respondent/wife. It had increased the payment which was to be made by the wife to the husband in return for a transfer of property of some value to her from US\$59,000 to US\$350,000. It refused the husband, who had sought a higher payment than that, leave to appeal to the Privy Council. The husband sought and obtained leave to appeal from the Appeal Committee of the Privy Council. In delivering judgment on the substantive appeal, Lord Griffiths said this (*ibid*, at page 253, lines 1-28):

“Their Lordships wish to state at the outset of this advice that it is only in wholly exceptional circumstances that the Judicial Committee will be prepared to entertain an appeal from a decision adjudicating upon the distribution of matrimonial assets at the end of the marriage. The detailed investigation of the figures necessarily involved in the exercise of that discretion is wholly unsuitable for the appellate function of this Board which is concerned in matters of this kind with the correction of egregious errors of law and substantial miscarriages of justice. The exercise of the discretion involved in an order made under s.18 and 21 of the Matrimonial Causes Law is to be carried out by the judge of first instance. If he has erred either as a matter of law or of mixed fact and law, an appeal will lie under s.24 of the Court of Appeal. The Court of Appeal has the responsibility of reviewing the decision made by the trial judge. If they decide to alter the judge’s order, there the matter must rest. It is not the function of this Court thereafter to seek to review all the evidence to see whether they might have taken a different view of the evaluation of the many factors involved in such a decision. The local courts, with their knowledge of local conditions, are far better equipped to embark on the analysis of fact in the evaluation of the needs of parties and their children which are essential to arriving at a fair decision. These matters must be left to the local courts working under the guidance of the local Court of Appeal. It is therefore necessary to look with some care at the sequence of events which led the Committee in this case to take the exceptional course of giving leave to appeal after it had been refused by the Court of Appeal.”

8. I find it impossible to think that Lord Griffiths could have said what he did in the passage just cited if he had taken the view that an appeal from a monetary order in ancillary relief proceedings lay as of right under paragraph.(b) of s.3(1) of the 1984 Order. If he had taken the view that an appeal lay as of right against an order for payment under ancillary relief proceedings, Lord Griffiths could not have observed, as he did, that “it is only in wholly exceptional circumstances that the Judicial Committee will be prepared to entertain an appeal from a decision adjudicating upon distribution of matrimonial assets at the end of the marriage” or that “If they [the Court of Appeal] decide to alter the judge’s order, there the matter must rest.” Nor would it have been

necessary for the Board to look with some care at the sequence of events which had led the Appeals Committee to take the exceptional course of giving leave to appeal after it had been refused by the Court of Appeal: to give leave when the Court of Appeal had wrongly failed to recognise and give effect to a provision in the 1984 order that an appeal lay as of right could not be seen as an exceptional course.

9. In a subsequent decision of this court, *Wight v. Wight*, CICA 6/2006, this Court must be taken to have adhered to its earlier view in *Johnson* that cases of this nature do not fall within section 3(1) of the 1984 Order, whether under paragraph(a) or paragraph (b) of that section. *Wight* was also an ancillary relief case in which the husband sought leave from this Court to appeal to the Privy Council. Leave to appeal was refused. Plainly, this court in *Wight* did not think that an appeal lay.
10. The reason for that approach seems to me to lie in the requirement in section 3(1)(a) and (b) of the 1984 Order that the decision in respect of which leave to appeal is sought must be a final decision. That raises the question whether a decision on an ancillary relief application in proceedings for dissolution of marriage is a final decision. A strong indication that it is not a final decision within the meaning of section 3(1) of the 1984 Act seems to me to be that paragraph (b) of the section contains no monetary threshold. It would be very odd if there was a monetary threshold of £300 in relation to a payment order in other civil proceedings and no monetary threshold at all in an ancillary relief case. That, to my mind, points strongly to the view that the section does not contemplate that decisions ordering payment in ancillary relief cases were intended to fall within the description of final decisions in proceedings for dissolution of marriage.
11. The position in this jurisdiction is that a decision in an ancillary relief case would not be regarded as a final decision: see the judgment of this Court in an earlier round in *Wight v Wight* in which the issue was whether the applicant/wife required permission to appeal to this Court. The issue arose because under the Court of Appeal Rules permission is required for interlocutory matters but not for final matters. This Court held, on 21 November 2006, that that would be the position under the general law; but that, in relation to appeals to this Court in matrimonial proceedings, the matter was governed by

sections 24 and 25 of the Matrimonial Causes Law, to which the Court of Appeal Rules were subordinate in that context. The provisions of sections 24 and 25 of the Law have no application in relation to appeals to the Judicial Committee, and so, under the general law in this island, ancillary relief orders, even of a monetary amount, are to be regarded as interim rather than final decisions. That as it seems to me, is the approach that this Court should take; mindful that that approach gives effect to the clear observations in *Johnson* that it would only be in exceptional circumstances that the Judicial Committee would be prepared to entertain an appeal from a decision of this nature.

12. In those circumstances, I would reject the contention that the husband is entitled as of right to the order which he seeks.

13. I turn then to section 3(2) of the 1984 Order. Assuming, without deciding, that section 3(2)(a), which begins with the words “decision in any civil proceedings” is in point in a case where the decision is made in proceedings for dissolution of marriage, it would be necessary for this Court to be satisfied that the question involved in the appeal is one that by reason of its great general or public importance or otherwise ought to be submitted to Her Majesty in Council. In my view, it could not be said that, in this case, the decision of this Court was of great general or public importance. The court was applying principles which had been set out in its earlier decision in *McTaggart*: and those principles were derived from the leading decisions of the House of Lords to which I have referred. So if it were appropriate to consider the position under section 3(2)(a) the applicant would fail to cross that threshold.

14. I should mention shortly two paragraphs in the affidavit of Mr. Watler. At paragraph 2 he says this:

“I was granted a certificate of Legal Aid to have counsel represent me in the appeal before the Court of Appeal. However, on the day of the appeal my counsel advised the court that he was not in a position to argue the appeal as he did not have sufficient time to prepare it. The court refused to grant an adjournment.”

That statement is correct. The Court took the view that counsel, who had had the papers in this matter for upwards of four weeks or so, could not contend that he was not in a position to argue an appeal which he knew was going to take place on the day fixed. The

appeal was one which could not have required more than one day of preparation, at the outside, by counsel with any familiarity of matrimonial law. It raised no issue on the facts; which were not challenged. As I said, it involved the application of principles of law which, at least in this Court, were not in doubt. At paragraph 3 of Mr. Watler's affidavit he goes on to say this:

“In the circumstances the appeal was heard and I was not represented and no legal arguments were presented on my behalf.”

Mr Watler is correct to say that no legal arguments were presented on his behalf. But, in the view of the Court, he was represented; his counsel remained in court and, to all appearances, was continuing to represent him, at least in presence, throughout the hearing. He, himself intervened in the course of the hearing to make the points which he wished to make; which included an application by way of cross appeal that the money to be paid should be reduced from CI\$60,000 to CI\$15,000.

15. I make those observations in order to assist the Judicial Committee should Mr. Watler decide, as he is of course entitled to do, to make an application direct to the Judicial Committee under the saving provision in section 22 of the 1984 Order.

16. I would dismiss the application which he has made to this Court.

Elliott Mottley, Justice of Appeal:

17. I agree.

Sir Bernard Rix, Justice of Appeal:

18. I agree.