

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA No. 6 of 2006
Grand Court D43/03

BETWEEN:

DEBORAH M. WIGHT



AND:

IAN A.N. WIGHT

APPELLANT
(Petitioner)

RESPONDENT
(Respondent)

BEFORE: The Right Hon. Mr. Justice E. Zacca, President
The Hon. Mr. Justice M. Taylor, Justice of Appeal
The Hon. Mr. Justice I. Forte, Justice of Appeal

Appearances: Nicholas Mostyn, Q.C., instructed by Michael Bradley of L.A. Samson & CO. for the Petitioner/Appellant.

Andrew Jones, Q.C., instructed by Zena Merren of Appleby for the Respondent.

Heard and Delivered: Nov. 21, 2006

Reasons Given: December 8th, 2006

REASONS FOR JUDGMENT

TAYLOR, J.A.

The Appellant sought a preliminary ruling that her appeal against an ancillary order dividing matrimonial assets in these divorce proceedings is not required to be brought under the *Court of Appeal Law* and *Court of Appeal Rules*, and thus with leave,

but has properly been brought by her under s. 24 of the *Matrimonial Causes Law* (2005 Revision) without the granting of leave.

At the conclusion of argument we found for the Appellant on this preliminary point and said that our reasons would later be provided in writing.

The *Matrimonial Causes Law* (2005 Revision) provides only for a single, and thus final, decree of dissolution of marriage. This may under s. 12(5) be granted only when provision has been made for all ancillary matters, including settlement of matrimonial property and other financial arrangements, as well as care and custody of children, and when no application for any order in respect of such matter remains outstanding. The practice is for the Court first to determine whether the facts alleged in support of the petition for dissolution have been established, which is usually done by affidavit, and thereafter, when an order has been made that these have been proved, to deal with any ancillary matters. Only after orders have been made disposing of the ancillary matters is a decree of dissolution of marriage granted. Until the decree of dissolution is granted any order disposing of matrimonial assets is without effect, since the marriage remains until then in effect and could, indeed, be terminated by death, in which case a different disposition of the matrimonial property might take effect.

On June 24, 2003, an order was made that all facts relating to the petition for dissolution of the marriage had been proved. On February 9, 2006, an order was made dealing with ancillary matters including the disposition of matrimonial assets, the order against which the wife now seeks to appeal. On February 17, 2006, a Decree of Dissolution of Marriage was pronounced and entered. The decree recites the making of the earlier orders and declares the marriage dissolved.

Section 5 of the *Court of Appeal Law* (2006 Revision) provides, subject to its subsequent provisions, that the Court of Appeal has jurisdiction to hear and determine appeals from any judgment of the Grand Court. Section 6(f)(iii) provides that no appeal shall lie from an interlocutory judgment of the Grand Court or from “a decree nisi in a matrimonial cause”, except with leave of the Grand Court or of this Court. Rule 12(6)(y) of the *Court of Appeal Rules* (2004 Revision) provides that any order “for or relating to ancillary relief in matrimonial proceedings, including a matrimonial property adjustment order” shall be treated as interlocutory for the purposes of appeal, and may be brought only with leave. Thus an appeal against the order now sought to be appealed could under the Court of Appeal Rules be brought only with leave.

Section 3 of the *Matrimonial Causes Law* (2005 Revision) authorizes the Grand Court to pronounce and enforce “decrees” not only of dissolution of marriage but also under (f) of “matters ancillary thereto” -- disposition normally made by order, rather than by decree. But section 21 requires the Court to make “orders” for a variety of purposes

including under (b) "the disposition of matrimonial property" and under (e) "making financial provision from the property of either spouse". Sections 24 and 25 grant a specific right of appeal to either party to any suit under the statute against "any decree or order pronounced or made" in "such suit". They provide:

24. Either party to a suit brought under this Law may appeal to the Court of Appeal against any decree or order pronounced or made by the Court in such suit in respect of any matter of law or of mixed fact and law, provided that written notice of appeal is lodged within twenty-one days of the pronouncement of the decree or such notice is given orally in open court at the time of the pronouncement of the decree.

25. The Court of Appeal may, after hearing and considering any appeal against any decree pronounced under this Law-

- (a) rescind the decree; or
- (b) confirm the decree with or without variation of any order made therein.

Section 26 provides that the parties become free to remarry if time for appeal has expired without notice of appeal having been given. No provision is made for any extension of time to appeal. It is apparent that the "decree" referred to in ss. 24 and 25 is a decree relating to the dissolution of the marriage.

We were of the view that the expression in section 24, "any decree or order pronounced or made by the Court in such suit," must be taken to extend to an order for ancillary relief relating to division of assets granted in association with the decree of divorce, and that the time for giving notice of appeal against any such order must be taken to run from the date of the granting of the decree of divorce.

The right of appeal provided for in the *Matrimonial Causes Law* does not seem capable of application to ancillary relief orders made after the granting of the divorce decree, such as orders varying provisions made for custody or maintenance. This anomaly could not, in our view, justify the Court in disregarding the plain words of s. 24 creating an appeal as of right with respect to orders made in the divorce proceedings which take effect in association with the granting of the decree of divorce.

While this is all that it was necessary to decide in order to dispose of the preliminary point, we think it right to suggest that an early amendment to the *Matrimonial Causes Law* would be desirable in order to clarify the present confusing position with respect to appeals from orders for ancillary relief granted before, in conjunction with and after a decree of dissolution is issued in matrimonial proceedings. It is of significance in that different appeal periods are provided for under the two conflicting statutory regimes, that leave is required under one and not under the other, and that the single appeal period provided under the *Matrimonial Causes Law* appears incapable of extension. There is obvious potential in the present state of the law for procedural disputes, and resulting waste of money and court time, as well as the possibility of injustice resulting.

For the reasons stated above we found that this appeal was properly brought within time, without need of leave, and directed that there be no costs here or below with respect to the resolution of this issue.

E. Zacca, P.

M.R., Taylor, J.A.

I. Forte, J.A.

