



14 October 2015

PRESS SUMMARY

Gohil (Appellant) v Gohil (Respondent) [2015] UKSC 61 *On appeal from [2014] EWCA Civ 274*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed and Lord Hodge

BACKGROUND TO THE APPEAL

The appellant ("the wife") used to be married to the respondent ("the husband"), a former solicitor. In 2002, the wife petitioned for a divorce. In response to her financial claims, the husband asserted that all of his ostensible wealth represented assets held on behalf of his clients [4-6]. In 2004, the wife's claims were settled at a Financial Dispute Resolution ("FDR") meeting. The settlement order ("the 2004 Order") provided that the husband should make a lump sum payment in final settlement of the wife's capital claims (which was eventually paid), and periodical annual payments (which the husband stopped paying in 2008). The 2004 Order included a recital that "the [wife] believes that the [husband] has not provided full and frank disclosure of his financial circumstances (although this is disputed by the [husband]), but is compromising her claims in the terms set out in this consent order despite this in order to achieve finality" ("the Recital") [7-9]. In 2007, the wife applied by notice issued within the divorce proceedings to set aside the 2004 Order on the ground that the husband had fraudulently failed to disclose his assets. These proceedings were delayed, largely because in 2008 the husband was charged with serious money-laundering offences dating from mid-2005. He was eventually convicted and committed to prison in 2011, and confiscation proceedings against him are ongoing [10-11].

In September 2012, after an eight-day hearing, Moylan J set aside the 2004 Order [12-14]. His decision was made on the basis both that (a) there had been material non-disclosure by the husband when the 2004 Order was made and, had he made full disclosure, the outcome would have been different, and (b) because the wife's evidence satisfied the criteria in *Ladd v Marshall* (which govern when fresh evidence may be adduced on appeal) it followed that her application should be allowed [24-25].

The Court of Appeal allowed the husband's appeal. It held that Moylan J had incorrectly applied the *Ladd* criteria and was wrong to allow the wife's application on that basis [24]. However, it held that the *Ladd* criteria were relevant in order to establish what evidence the wife could adduce in order to establish material non-disclosure by the husband. Applying those criteria to the evidence before Moylan J, and discounting other inadmissible evidence, the Court of Appeal concluded that there was no admissible evidence to support Moylan J's conclusions on material non-disclosure [26-29].

JUDGMENT

The Supreme Court unanimously allows Mrs Gohil's appeal and reinstates Moylan J's order. Lord Wilson (with whom Lord Neuberger, Lady Hale, Lord Clarke, Lord Sumption, Lord Reed and Lord Hodge agree) gives the leading judgment. Lord Neuberger gives a short concurring judgment.

REASONS FOR THE JUDGMENT

The husband had suggested that, as a judge of the High Court, Moylan J did not have jurisdiction to

set aside an order of the High Court. This argument was not pursued in the Court of Appeal, but the Supreme Court makes the following observations: (a) the Court of Appeal has long recognised that it is an inappropriate forum for inquiries into non-disclosure issues raised in proceedings for the setting aside of a financial order; (b) this is shown by the present case, where an intensive fact-finding hearing was necessary; (c) there is an urgent need for definitive confirmation of the High Court’s jurisdiction to set aside a financial order made in that court; (d) the Supreme Court endorses the conclusion of the Family Procedure Rule Committee in relation to its “Setting Aside Working Party”, set out in the minutes of its meeting on 20 April 2015 [16-18].

The Recital

Words such as those used in the Recital have no legal effect in a financial order in divorce proceedings. The husband owed a duty to the court to make full and frank disclosure of his resources, without which the court would be disabled from discharging its duty under s. 25(2) of the Matrimonial Causes Act 1973. One spouse cannot exonerate the other from complying with this duty [19-22].

Criteria in Ladd v Marshall

The *Ladd* criteria have no relevance to the determination of an application to set aside a financial order on grounds of fraudulent non-disclosure [32]. The Court of Appeal was wrong to accept an argument that the criteria should apply to determine what evidence could be adduced because: (a) the Court of Appeal would not have conducted the necessary fact-finding exercise, so the criteria for determining the admissibility of evidence in that court were irrelevant; (b) the first *Ladd* criterion presupposes that there has been a trial whereas, in this case, the wife’s *first* opportunity to adduce the evidence was at the hearing before Moylan J; (c) the argument would not apply to an application to set aside a financial order made by a district judge and the evidential criteria should not depend on the level of court, and (d) the argument ignores the fact that, had the wife’s claims proceeded to trial in 2004, the duty would have lain on the husband, not on her, to explain his resources [31]. In light of the erroneous approach to the admissibility of the wife’s evidence, the dismissal of her set aside application cannot stand [33].

Consequences

To decide whether Moylan J’s order could be reinstated, it was necessary to consider what admissible evidence was before him and ask whether he would properly have found that the husband had been guilty of material non-disclosure in 2004 [33-35]. Through no fault of his own, Moylan J had relied on evidence from the husband’s criminal proceedings obtained from sources outside the UK (which had since been held inadmissible and had been discounted by the Court of Appeal) [13-15, 33]. However, even if Moylan J had referred only to the remaining admissible evidence [36-40], he would, in the light of his findings on it, still have concluded that the husband was guilty of material non-disclosure [42].

Lord Neuberger agrees that Moylan J’s order can be reinstated. Several factors make it clear that the material non-disclosure issue should not be remitted, provided that there is no risk of injustice to the husband [49-55]. The court has to be satisfied that: (a) Moylan J would have decided that there had been material non-disclosure even if he had not received the inadmissible evidence; or (b) looking at the totality of the admissible evidence, it could safely be concluded that there had been material non-disclosure; or (c) if the issue was remitted, the judge could only realistically come to that conclusion in light of the totality of the admissible evidence [56-57]. For the reasons given by Lord Wilson, all three of these requirements were satisfied [58-61].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>