

X v X (Crown Prosecution Service Intervening)

[2005] 2 FLR 487

02/03/2005

Barristers

Private: David Williams QC
Christopher Hames QC

Court

Family Division

Facts

The husband and wife were married for over 30 years, and had three adult children. In the last few years of the marriage, the husband, without the wife's knowledge, had begun to use the successful family company for professional money laundering. He was eventually sentenced to 6 years' imprisonment, and, under the Criminal Justice Act 1988, a confiscation order was made against him in the sum of £1,427,316 (with a further 5 years' imprisonment in default of satisfaction). The wife petitioned for divorce. The net family assets were worth about £2,485,358, including not only the matrimonial home, valued at £873,000, but also a property in France, valued at £402,550, and significant pension funds. The French property had been acquired using compensation paid to the husband's family by the West German government in respect of Nazi atrocities, including the murder of the husband's Jewish grandparents, and the husband argued that this asset should be treated differently. In the ancillary relief proceedings the wife initially sought equal division of all but the assets tainted by the husband's criminal conduct, plus a fund for her income needs over 3 years and her costs, amounting to a total of £1,234,890, leaving the husband with £1,041,919 plus his pension fund. The Crown Prosecution Service (CPS) was also involved in the proceedings, pursuing enforcement of the confiscation order. The wife eventually reached a compromise with the CPS and both argued that the wife should receive £1,191,374 of the family assets, leaving the husband with £1,085,435 plus his pension. This was less than the husband needed to pay for the confiscation order, but the CPS indicated that it would not resist giving him a certificate of inadequacy to cover the eventual shortfall, and that it would not attempt to seize his pension income. The husband proposed either that (a) £300,000 be preserved to provide for his future accommodation needs, ideally held in a trust created to hold the West German compensation assets, the remainder being held for the children, alternatively to come from the wife's share of the family assets, to return to her on the husband's death; in both cases the remaining family assets were to be used first to satisfy the wife's claim, then to satisfy the compensation order or (b) to apply the family assets first to payment of the confiscation order, dividing them between husband and wife only afterwards, with a lump sum of £200,000, plus his pension for the husband and what was left (about £575,732) for the wife.

Held

Held - granting decree absolute and making a clean break order of a lump sum of £262,500 to the wife, with a transfer to her of the matrimonial home -

(1) A confiscation order was a highly relevant factor when considering the application of s. 25 of the Matrimonial Causes Act 1973, not merely when considering financial obligations, but also as conduct which it would be inequitable to disregard. It would be wrong to take into account during ancillary relief proceedings a spouse's obligations under a confiscation order in such a way as to insulate the offender from the consequences of the order. It would be wrong for a husband against whom a confiscation order had been made to be in a better position if he divorced than if he stayed married, and wrong for a married offender to be in a better position than an unmarried offender (see paras [21], [22], [41]).

(2) There was no general discretionary power in either the Administrative Court or the Family Division to exonerate the defendant from the consequences of a confiscation order, or to ameliorate those consequences merely because it might be fair or just to do so. In any case, Parliament had determined that a confiscation order should not be limited to the defendant's profit from his criminal activities, and the court had no jurisdiction to substitute its own view of justice for that laid down by Parliament (see paras [20], [33]).

(3) Had there been no confiscation order there would have been no question but that this was a case for equal division of the assets. Taking the confiscation order into account, the case remained an equal division case. It would be wrong as a matter of principle to allow the husband's understandable need for accommodation, which had been generated entirely by the confiscation order, to turn the wife's claim into a claim based merely on needs, or to charge her funds with his accommodation for his lifetime. Even had this been a needs case, the wife's needs would not have been satisfied by the husband's proposals, calculating needs by reference to, inter alia, previous standard of living (see paras [23], [31], [41], [43], [44]).

(4) The husband's suggestions in regard to the assets purchased with atrocity compensation money were attempts to immunise some of his assets from the confiscation order while at the same time allowing him to enjoy the benefits of them, which was the kind of artificial contrivance judges must be alert to prevent. Even allowing for the exceedingly sensitive and unusual provenance of the compensation money, it was inconceivable that anyone would have suggested that the funds be settled or resettled in an ordinary ancillary relief case (see paras [28], [30]).

(5) The confiscation order should be met out of the husband's share of the assets, notwithstanding that this would leave him with only his pension income to rely upon. Satisfying the confiscation order before ordering division of the assets would be to punish the wife for the husband's crimes. This solution was not only fair, just and reasonable as between the husband and wife, it was also in the public interest (see paras [43], [44], [46]).

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