

# M v L (Financial Relief After Overseas Divorce)

**[2003] 2 FLR 425**

28/02/2003

## **Barristers**

Private: Jonathan Cohen QC

## **Court**

Family Division

## **Facts**

The wife's claim was for financial relief after an overseas divorce, under the Matrimonial and Family Proceedings Act 1984, Part III. The parties had married in 1966 and separated in 1970, having had two children. The husband had been born in South Africa, and, although he had moved to England before the marriage, he had retained his South African domicile, which at the time meant that the only place where he could take divorce proceedings was South Africa; the couple were duly divorced in South Africa in 1973. During the initial separation period the husband had provided the wife with £100, then £130 per month to cover rent and the family's living expenses, and the only financial order made by the South African court was for the husband to continue making those payments 'for the said children'. In 1976 the wife asked the husband for better accommodation, and the husband purchased a flat for the wife and children to live in, spending considerable sums on improvements. The husband granted the wife a lease for 11 years, by which time the youngest child would be 22 years old. By 1985 the monthly payments had increased to £300, which the wife supplemented by taking temporary secretarial jobs and by taking in paying lodgers. The payments continued to be made to the wife even after the children reached adulthood, and when the lease on the property expired, the husband renewed it for a further 10 years. The wife had remained in the property, no longer worked, and no longer took in lodgers. In 2001, as a result of a banking error, the monthly standing order was interrupted, which the wife interpreted as a decision by the husband to stop the payments, and she instructed solicitors. By holding over after the expiry of the second term of the lease in 2001, the wife had become a statutory tenant of the husband, which meant she could not be evicted. A consent interim maintenance order of £650 per month was in force. The husband had been married to his second wife for 22 years, with whom he had a child, and lived on a substantial income from family trusts set up by his father.

## **Held**

Held – allowing the wife's application and ordering the husband to pay a lump sum of £30,000 to builders to make repairs on the wife's home and periodical payments of £1,000 per month, to be capitalised at £150,000, and on the sale of the property the wife to receive 50% of the net proceeds –

(1) It was appropriate to make a financial order in this case, despite the 30-year delay between divorce and the application. The husband had acknowledged by his actions during that period that he had a

moral obligation to the mother of his elder children, and had suffered no financial prejudice by the delay. It had been entirely anomalous that the original divorce had taken place in South Africa, the result of a jurisdictional anachronism, and the case should always have been an English one. The South African jurisdiction had not afforded the wife appropriate relief. The South African order had made no reference to the wife's financial claims, as opposed to those of the children. This was not a case in which the wife was seeking a second bite of the cherry after a proper foreign determination (see paras [31 ], [32 ], [35 ], [37 ], [38 ]).

(2) The wife's contribution as mother justified full recognition, notwithstanding that the marriage had not been a long one. The wife had a real financial need which to some extent arose out of that contribution. The wife had remained financially dependent on the husband, admittedly through voluntary payments, and it would be unfair for him to walk away from that dependency. There remained a liability on the husband arising out of the former marital relationship, which he had the means to meet. It would be grossly unfair to the husband to divide his capital on the basis of modern precepts, and the award was based on what would be reasonable in all the circumstances for the applicant to have for her maintenance, which was within the husband's ability to pay (see paras [55 ], [56 ], [57 ]).

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