

W v W (Divorce Proceedings: Withdrawal of Consent after Perfection of Order)

[2202] 2 FLR 1225

31/07/2002

Court

Family Division

Facts

The husband's divorce petition was presented before December 2000 while the wife's cross-petition was presented after December 2000. The decree nisi was granted on the basis of the allegations in both petitions. The open position of both parties in the ancillary relief proceedings was that a pension sharing order should be part of the financial resolution of the case, although they disagreed as to the percentage the wife should receive. The district judge suggested to the parties that, as the proceedings had begun before December 2000, the court did not have jurisdiction to make a pension sharing order. Following the judge's intervention the parties re-negotiated and reached an agreement which did not include pension sharing; this was then approved as a consent order by the district judge. The order was not perfected by the court when it should have been, and during the period of delay the wife sought further legal advice, and eventually applied for an order preventing perfection of the consent order. The district judge directed that the order be perfected but that the words 'by consent' be omitted. The wife appealed against the judge's 'ruling' that the court had no jurisdiction to make a pension sharing order, and against perfection of the order, while the husband appealed against the removal of the words 'by consent'.

Held

Held - dismissing the wife's appeals and allowing the husband's appeal -

(1) The parties' divorce proceedings comprised one set of proceedings, instituted by the husband's petition, presented before December 2000. The wife's cross-petition in the divorce did not constitute separate proceedings in the sense referred to in s. 83(3)(a) of the Welfare Reform and Pensions Act 1999, although it could be described as a fresh 'cause of action'. The court therefore did not have jurisdiction to make a pension sharing order in this case. Although it had subsequently been decided that the parties could have applied by consent to rescind the decree nisi and to issue fresh proceedings, no such application had been made to the district judge, whose interventions had been correct in law (see paras [41], [44]-[46]).

(2) The wife had no grounds for seeking release from her bargain. Even if the wife had been negotiating under a mistake or on a false premise such as to vitiate her true consent, she would still have had to demonstrate that the resulting agreement was so disadvantageous that justice demanded she should be released from the bargain. The agreement was not so unfairly out of balance as to justify reopening the

ancillary relief proceedings (see paras [48], [65], [66], [69]).

(3) When one party purported to withdraw his or her consent to an order originally made by consent, the words 'by consent' ought to remain in the order as originally drafted, since it was and remained a consent order, but a note should appear on the bottom to the effect: 'and it is noted (for the record): that by the date when this consent order was perfected the [petitioner/respondent] had purported to withdraw his/her consent to it' (see paras [74], [75], [77]).

Per curiam : where there were cross-decrees each party succeeded in achieving a decree nisi, albeit that they jointly received only one piece of paper (see para [54]).

Had the judge's intervention regarding the court's jurisdiction to grant a pension sharing order been wrong, it would not in any event have constituted a decision susceptible to appeal, since expressing a view, albeit firmly, could not be taken as amounting to an order or decision (see paras [57], [58]).

This case demonstrated the difficulties which can be created when there is a delay between the making and the perfection of an order. Such delays in finalising the court's order are unacceptable. All involved in finance and other matrimonial cases should strive to ensure that the interval between the making of an order and its perfection is kept to an absolute minimum (see paras [81], [82]).

Permission

Reproduced with kind permission from Justis 