

Pasha v Pasha (2001)

LTL 5/3/2001

05/03/2001

Court

House of Lords

Facts

In a dispute between a married couple over both a lump sum and periodical payments to be made by the husband, the circuit judge had correctly directed himself as to his function in conducting an appeal from the decision of a district judge but had wrongly regarded himself as free to re-evaluate essential findings that had neither been challenged nor were in dispute.

Appeal from the decision of the order of HH Judge Riddell made on 23 June 2000 in favour of the respondent husband ('H') dismissing the earlier decision of District Judge Karet. The appellant wife ('W') began cohabiting with H in the mid-1980's and they married in August 1986. They had two children and moved into a large home in Hertfordshire in 1995. The enormity of the home reflected H's high status as a valued employee of the bank where he worked. Towards the end of his employment he was earning approximately £200,000 per annum. W and H separated in July 1998 and H petitioned for divorce, obtaining a decree nisi on his petition in October 1998. At a hearing in March 2000, District Judge Karet ordered that H give W £185,000 from the matrimonial home and pay her periodical payments of £750 per month. When served with that order, H immediately lodged a notice of appeal on two grounds: (i) that the lump sum ordered to be paid was in excess of W's needs and left him with little funds to rehouse himself and his children; (ii) that the periodical payments were too high. In June 2000, HH Judge Riddell heard submissions and delivered judgment in August 2000 in favour of H. W lodged her notice of appeal in September 2000 and in January 2001 the Court of Appeal directed an oral hearing that resulted in the instant appeal. A lengthy hearing had taken place before the district judge at which the principal issue in dispute was H's credit and the reliability of his disclosure. Counsel for W had mounted a powerful attack on H's integrity and relied on an analysis of H's expenditure, particularly during the 18 months preceding December 1998, and had sought to prove by the exceptional nature of the sums passing through H's hands that he had dissipated and/or secreted some of his funds in preparation of the court's investigation into his financial position. The district judge was in no doubt that H had engaged himself in a lengthy plan to dissipate his capital funds to the point where his evaluation was most succinctly put as "I did not believe anything he told me... and even of the fact that he is now not employed I am suspicious". In making the order that he did the district judge took into account H's assets that were both shown and those he believed to be concealed. In his appeal to the circuit judge, H had made no attack on the district judge's findings on H's credibility. The circuit judge had approached the case with care and his judgment ran for some 61 pages. Counsel for W submitted that the circuit judge was wrong to have reached the conclusions that he had in overruling the district judge's findings of fact. Further, counsel submitted that the district judge had had the benefit of hearing both H and W give evidence, a benefit that the circuit

judge had not had.

Held

HELD: (1) The Court of Appeal was of the opinion that the circuit judge had mistaken his essential task, which was to evaluate and determine whether there was any validity in H's two grounds of appeal. The circuit judge was inevitably circumscribed by the district judge's findings of H's credibility and findings of fact. Although the circuit judge correctly directed himself as to his function, he did seem to have regarded himself as free to re-evaluate H's misconduct even though he had heard no evidence. The circuit judge began to depart from essential findings of the district judge, criticising his analysis. In recording H's financial resources, the circuit judge had only recorded H's accounts that were admitted or discovered and took the opinion that no accounts were hidden from him by H. (2) Trial judges in this field should be acute to detect cover-ups and should be forthright in dealing with them by first finding a concealment where funds had passed through a respondent's hands without explanation and then drawing adverse inferences. (3) Had the circuit judge properly taken into account the assets concealed and revealed by H, he would not have felt the need to depart from the discretion exercised by the district judge. (4) This was another of many revealing deficiencies in the appellate procedure where ancillary relief was litigated in county courts and where the availability of the right to appeal was abused or exploited by strong emotions engendered in this division of the High Court. The reform of this procedure was currently under scrutiny in the Lord Chancellor's Department and this case demonstrated that obvious need for reform.

Appeal allowed. Original order restored in favour of W.

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