

# Piglowska v Piglowski

**[1999] 2 FLR 763**

03/11/1997

## Barristers

Private: Jonathan Cohen QC

Private: Amanda Barrington-Smyth

## Court

Court of Appeal

## Facts

The husband and wife's total assets amounted to £127,000. They had lived in the matrimonial property, which was worth about £100,000, for 20 years. It was in their joint names, and they had both contributed to its purchase and to the mortgage instalments. The couple also owned a property in Spain, now worth about £14,000, which had been purchased with the wife's money. There were also insurance policies worth £7400, and the husband had accumulated savings of about £4000 during the marriage. The two adult children were in full-time education, living at home. Both husband and wife had always worked, he as an architect's draughtsman, she as a cleaner and then as a dressmaker, and both contributed to the household expenses. The marriage came to an end after the husband was made redundant and he decided to spend some time in Poland, where he, like the wife, had been born. Although he returned to England for a time, he eventually settled in Poland, remarrying a Polish woman with three children of her own. He had stopped contributing to the household after his redundancy. The wife sought ancillary relief in the form of a transfer of property order. She wished to stay in the former matrimonial home, which formed the base for her dressmaking business. It was accepted that she needed at least three bedrooms, to provide the children with somewhere to stay plus a room for her dressmaking business. The husband argued that she could obtain such a property with half the proceeds of sale of the property, producing estate agents' particulars in support. He claimed that he and his new wife were planning to return to England, and would need half the proceeds of sale to obtain housing themselves. He had spent his savings. The district judge described the properties proposed by the husband as unsuitable, and made a finding that the wife needed to stay in the matrimonial property. He also gave particular weight to his finding that the wife had made the greater financial contribution to the marriage. The husband was ordered to transfer the property to the wife, and in return awarded the property in Spain, plus £10,000. At this stage the parties' legal costs amounted to 25% of their total assets. Because the amount awarded to the husband was not likely to be sufficient to enable him to purchase a home in England, it was virtually inevitable that £7500 of the amount awarded to the husband would go to the Legal Aid Board. The husband's appeal was dismissed by the judge, but the Court of Appeal eventually granted him leave, and allowed his further appeal, on the basis that (1) the wife did not need to remain in the matrimonial property, as there was evidence from the estate agent, rejected by the district judge, which established that there was a range of suitable alternative property, (2) although the contribution factor was weighted

in the wife's favour, the judge had exaggerated the wife's contribution to the matrimonial assets, and (3) the district judge had failed to consider what the husband's reasonable needs were; in particular the husband's need to be rehoused had not been sufficiently addressed. The Court of Appeal ordered that both properties be sold, awarding the husband £41,000 and the wife £74,600. The costs of the case were now approaching the total matrimonial assets.

## Held

The wife appealed.

**Held** – allowing the wife's appeal –

(1) The estate agents' particulars which had been rejected by the district judge could not justify the Court of Appeal's finding that there was suitable alternative housing for the wife locally. In any event, once moving costs were taken into consideration, the district judge's decision to allow the wife to stay in the matrimonial home could not be said to be dramatically wrong.

(2) The district judge had not been plainly wrong to give the weight he had to the wife's contribution. Even if the husband could be described as the major breadwinner for part of the marriage, during that period the wife had been caring for the children and home as well as contributing to the household outgoings, so that her contribution was at least equal to his for that period, and there had then been a period when she had made the greater financial contribution in addition to her continued work looking after the home and children.

(3) While the district judge and the judge had not given the husband's housing needs the same weight which the Court of Appeal would have given them, they had both considered those needs. There was no rule that spouses' housing needs were to be given greater weight than the other criteria listed in s 25. The district judge was entitled to take into account the rationality of the husband's declared intention to move to England from Poland.

(4) The appellate court had to be very cautious in giving leave and in granting appeals. It had to bear in mind the advantage which the first instance judge had had in seeing the parties and the other witnesses, including his evaluation of those facts. Given the exigencies of daily courtroom life, reasons for judgment ought to be read on the assumption that, unless the judge had demonstrated the contrary, he knew how he should perform his functions and which matters he should take into account. It should be borne in mind that reasonable people might differ in reaching the sort of value judgments which had to be made in matrimonial cases. In particular, the appeal courts should consider the issue of proportionality between the amount at stake and the costs; allowing successive appeals in the hope of producing an answer which accorded with perfect justice was not appropriate.

(5) While a court which was considering making a transfer of property order should take into account the effect of the Legal Aid Board's charge and its possible postponement, it should not make a greater award to one spouse than would otherwise be proper in order to ensure that the charge was postponed.

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