

I v I (Ancillary Relief: Disclosure)

[2008] EWHC 1167 (Fam)

23/06/2008

Barristers

Private: Jonathan Cohen QC

Court

Family Division

Summary

An order for ancillary relief made at a financial dispute resolution appointment would not have been materially affected by the husband's failure, in breach of the duty of full and frank disclosure, to disclose that he was in the late stages of negotiating a new job that was likely to increase his income.

Facts

The applicant wife (W) applied to set aside an order for ancillary relief made at a financial dispute resolution appointment following the breakdown of her marriage to the respondent (H). By the time of the FDR appointment H was negotiating a new contract of employment with a new prospective employer (B). Although nothing had been finalised it was apparent that if H were to be employed by B he could expect a significant salary increase and a substantial bonus guarantee. At no point during the FDR appointment did H mention the prospect of new employment or that he was currently negotiating a new job. W submitted that H had suppressed relevant information in relation to his finances or prospective finances at the time of the FDR, or that he had failed to mention that he had agreed draft terms of employment with B with the consequence that he was materially financially better off as to both capital and income at that time. H contended that at the time of the FDR the negotiations with B were preliminary and therefore he was under no duty to disclose them; but even if he was, knowledge of them would not have caused the court to make a substantially different order.

Held

HELD: It was obvious common sense, and therefore should have been clear to W and her advisers, that H would not commit himself to resigning from his job and moving until his new contract was finalised and that until that was done there was real uncertainty as to whether he would move jobs. On the evidence it could not be said that on the day of the FDR he was about to sign a new contract of employment, or that he had agreed terms of employment and was in consequence materially financially better off, or that his job move was effectively a done deal. Nor was there an agreement or understanding in principle. However, the prospect of a job move and H's expectation about it were significantly higher than he was asserting: he knew that a formal offer was a real and imminent possibility. In essence, he had underplayed the advanced state of the negotiations between himself and B and his expectations and hopes relating to them. He had taken a commercial decision not to tell W about it. Nevertheless, at the

time of the FDR he had not been consciously suppressing information that he thought he had a duty to disclose. The duty of full and frank disclosure in ancillary relief proceedings included a duty to inform the other side of information that might result in the removal of uncertainty as to the value of assets or the amount of a party's future income, or inform the assessment of a party's income, earning capacity or assets. Offers of employment and negotiations regarding employment that would have an impact on income should generally be disclosed. If a party was in doubt about whether to disclose something, he should disclose it. H had breached the duty of full and frank disclosure. However, his failure to disclose the true position in relation to his negotiations with B would not have made a difference to the judge's order, *Jenkins v Livesey (formerly Jenkins)* (1985) AC 424 HL applied. Neither the court nor the parties could have properly proceeded on the basis that H would receive all that he had asked for in negotiations with B; the uncertainties concerning his change in employment remained.

Application refused