

T v (1) B (2) Revenue & Customs Prosecutions Office (2008)

[2008] EWHC 3000 (Fam); (2009) 1 FLR 1231

10/12/2008

Barristers

Christopher Hames KC

Court

Family Division

Summary

An applicant in child maintenance proceedings was not entitled to an order requiring disclosure of statements filed in, and information arising from, criminal proceedings concerning a restraint order made against the respondent which froze his assets. Whilst the judge in the maintenance proceedings should be prepared to consider making such an order, the refusal of the prosecutor to supply such information meant that it was not appropriate for the judge to do so.

Facts

An applicant in child maintenance proceedings was not entitled to an order requiring disclosure of statements filed in, and information arising from, criminal proceedings concerning a restraint order made against the respondent which froze his assets. Whilst the judge in the maintenance proceedings should be prepared to consider making such an order, the refusal of the prosecutor to supply such information meant that it was not appropriate for the judge to do so.

Held

HELD: (1) It was not appropriate to make an order pursuant to r.57(8)(2)(b) in the terms sought. The purpose of the rule seemed to be to preserve the confidentiality of witness statements served in the proceedings unless expressly agreed by the prosecutor, or otherwise ordered by the Crown Court. If the prosecutor was not willing to consent to the statements being disclosed, the proper place to deal with the matter was the Crown Court concerned with the restraint proceedings. (2) The 2002 Act did not contemplate a requirement upon the prosecutor, if he did not wish to do so, to supply information which would indicate whether F had operated or sought to operate the exception in the restraint order and, if so, to supply M with the details set out in that order. Moreover, it was not reasonable to require him to do so, as F had stated in open court that he had not operated the mechanism provided for in the exception. The resulting question as to what funds had been available to F for his living expenses and where they had come from had to be a matter for discovery and the interrogation of F in the maintenance proceedings, rather than by an order against the prosecutor. (3) The order could be made under the Supreme Court Act 1981 s.8(1). However, such future applications would not be encouraged. The proper place for consideration of restraint orders and the appropriateness of any relief granted in relation to

them on the application of an affected party was the Crown Court where the original order was made. Nevertheless, provided there was no reason to suppose or suspect collusion, tainted knowledge or improper motive on the part of an applicant in seeking leave to make use of a witness statement or statements made in the course of restraint proceedings for the purposes of a bona fide claim for maintenance, or other ancillary relief or relief under Sch.1 to the 1989 Act, the judge should be prepared to consider favourably the making of such an order in the interests of justice.

Permission

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