

Golubovich v Golubovich (2011)

[2011] 2 FLR 1193 : [2011] Fam Law 935: [2011] EWCA Civ 479

30/03/2011

Barristers

Justine Johnston

Court

Civil Division

Practice Areas

Financial Remedies

Summary

A judge had been entitled to award a wife a large sum in ancillary relief proceedings. Although the judge had not explicitly stated the source of the husband's funds enabling him to comply with the order, there was sufficient evidence to assume that the husband had the means to comply

Facts

The appellant husband (H) appealed against a refusal of an adjournment and against orders requiring him to pay a substantial lump sum to the respondent wife (W) and to provide her with accommodation. H had been given a sum of around \$6million by his family, and W, \$1.6 million. H and W, who were Russian, married, had a child, and lived in a high-value London home provided by H's parents. H had a right of residence under a concession that granted visas on investment of £1 million in the UK jurisdiction. That concession also extended to W. Their marriage broke down. W initiated divorce proceedings in the UK, and H in Russia. H obtained a Russian decree. The domestic courts initially refused to recognise the Russian decree, but it was recognised on appeal. W had issued ancillary relief proceedings under the Matrimonial Causes Act 1973, but owing to the recognition of the Russian decree, applied to the Court of Appeal for permission to bring her financial claim under the Matrimonial and Family Proceedings Act 1984 Pt III. Her application was successful. The following day H unsuccessfully sought an adjournment. W's proceedings continued, in which H failed to give full and frank disclosure of his financial circumstances. Taking into account the consequent perfunctory disclosure and rejecting H's oral evidence, the judge concluded that although he could not pinpoint the source of H's present and future funds, H could confidently meet W's needs. Consequently, he ordered H to provide W with accommodation in London and to pay £2.485 million for her maintenance. H submitted that (1) had the judge properly applied s.16 of the 1984 Act he would have refused the grant of permission; (2) the refused adjournment was unfair as respondents to Part III applications usually had 28 days to respond but he had had only 24 hours and if he had had the manifested time he could have given better disclosure; (3) the judge had failed to identify where the large sum would come from and to distinguish between H's assets and funds from his parents.

Held

(1) Given the Court of Appeal's recognition of the Russian decree that same morning, the judge had had no alternative than to grant permission, as the court had indicated that if the Russian decree was recognised then W could bring proceedings under Part III of the 1984 Act. An appeal against the grant of permission would be hard to win unless the judge had been misled or had erred. In any event, granting permission only opened the door to a forensic process. (2) H's attack on the judge's decision to adjourn was hopeless. The judge had made a sensible and pragmatic case management decision, he had been dealing with the case for some time, and an earlier application by W for financial relief had already been postponed for a number of months. If a further postponement had been made, it would take months for the matter to be dealt with. (3) H's arguments ignored many of the judge's findings. Although the judge had not specifically stated how he had reached his conclusion on H's ability to pay W, the judgment as a whole showed that H's international business activities and ventures had been noted and considered as possible income streams. Some of the structures of H's businesses were the type usually used to protect substantial wealth. H's argument that his family no longer supported him was false. The judge had noted that there had been a reduction in the support provided because of the court proceedings, but that funds had not been withdrawn. While the judge might have been more explicit about the source from which the sum ordered would be satisfied, the evidence was there and the decision made was within the ambit of his discretion. H had repeatedly failed to engage responsibly in the London proceedings.

Permission

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