

Re T v T (Occupation Orders, Brussels I and Protective Measures)

[2010] EWHC 3776 (Fam)

21/12/2010

Court

High Court

Practice Areas

Financial Remedies

Summary

Judgment of Moylan J concerning jurisdictional issues arising within an application for an occupation order and cross-proceedings for possession of a property in West London.

Facts

The Respondent husband was Lebanese and also a French national, while the Applicant wife was an English national. They had been married for some 21 years before separating in 2006, and had resided mainly in Paris. Divorce proceedings had taken place in France, but as a result of the wife's appeal against the French divorce order they remained married at the time of the hearing. The French proceedings were ongoing. Additionally, there was a property in London; although it was common ground that the property was owned by a series of foreign companies, there was a dispute as to whether (a) it had ever been a "matrimonial home", (b) whether the husband was the ultimate owner and (c) whether the husband had a right to occupy the property.

The instant hearing concerned the husband's application for the High court to stay its proceedings in light of the ongoing French proceedings. The Husband argued that in essence the wife's application sought maintenance, and as such the *lis pendens* provisions of Article 27 of Brussels I applied and Article 31 was not applicable; in the alternative, that the proceedings were "related" under Article 28; and further, her application could not be defined as a provisional, protective measure under Article 31. In the alternative the husband sought to rely on Brussels IIR to obtain a stay. The wife argued that an application for an occupation order is not an application for maintenance nor a related proceeding, but rather an order preserving matrimonial home rights, and therefore Brussels I did not apply. Furthermore Article 31 applied, and Brussels IIR was not relevant.

Held

Moylan J considered in detail the facts surrounding ownership and occupation of the property before going on to consider authorities concerning the definition of "maintenance" under Brussels I, including *Moore v. Moore* [2007] and *Van den Boogard v. Laumen* [1997]; the approach of the courts to Article 28, including the decision of the Court of Appeal in *Prazic v. Prazic* [2006]; and the relevance of Article 31, including *Wermuth v. Wermuth* [2003]. His Lordship was clear that the wife's application did not fall

within Brussels IIR, which deals (in relation to divorce matters) only with the dissolution of matrimonial ties. In relation to the arguments under Brussels I, Moylan J reached the preliminary view that in fact Brussels I would not apply at all to the wife's application, as an occupation order was probably concerned with "rights in property arising out of a matrimonial relationship" and therefore was outside the scope of Brussels I; however, given that this issue was not fully argued, his Lordship did not rely on this reasoning in reaching his conclusion. Nevertheless, Moylan J found for the wife. She was right to assert that the causes of action in France and England were different: an application for an occupation order is not an application for maintenance, which is more concerned with "financial awards... which have the purpose of enabling one party to provide for his or her needs". Furthermore, Article 28 did not apply as it was not at this stage clear whether the French court had an equivalent power to that of the English court under the Family Law Act 1996; it had not therefore been established that there was a risk of irreconcilable judgments. In any event, occupation orders fall within the definition of "provisional, including protective measures" and therefore the court had jurisdiction under Article 31. Accordingly, the husband's application for a stay was rejected, as was his subsequent application for permission to appeal.

Permission

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