

# Mann v Mann [2014]

**[2014] EWCA Civ 1674**

19/12/2014

## **Barristers**

Rex Howling KC

## **Court**

Court of Appeal (Civil Division)

## **Practice Areas**

Financial Remedies

## **Summary**

Appeal concerning the question whether Mostyn J had jurisdiction to order the Husband to make payments to the Wife prior to the determination of the Wife's enforcement proceedings

## **Facts**

The parties separated in 1997. A consent order was sealed in April 1999 which provided for H to pay W periodical payments at the rate of £24,000 p.a. In the ensuing years, H applied for a downward variation, while W applied for secured provision/capitalisation and an upward variation.

In 2005, Charles J heard the case over several days. He found for W. H's application for a downward variation was dismissed. W's periodical payments were capitalised in the sum of £1.3m and H ordered to pay arrears of c.£75,000.

In April 2010, W issued a statutory demand for c.£2m (including interest). W's claim was compromised in November 2011 when the parties entered into a binding agreement to mediate. In the meantime, H was to pay to W:

- a lump sum of £20,000;
- £4,000 pcm; and
- the deposit and rent of a specified property.

Mediation failed and W issued an application pursuant to FPR 2010 r33.3(2)(b) seeking "such method of enforcement as the court may consider appropriate". Mostyn J was seized of the substantive application in February 2014. Significantly, he found that the financial arrangements set down in the November 2011 agreement qualified those clauses as a maintenance agreement.

The matter was restored before Mostyn on 12 May 2014 when Mostyn J ordered that H shall pay to W interim periodical payments at the rate of £120,000 pa and arrears of £42,000. He further ordered that H should appear before him in June to be examined as to his means and to show cause why he should not

be committed to prison.

H was granted permission to appeal and a stay of the enforcement proceedings by way of committal.

At the hearing in June, Mostyn J ordered that H only be allowed to make payment to his solicitors if he paid a corresponding amount on each occasion to W, in partial discharge of his debt to her.

## Held

### **The Decision of the Court of Appeal**

#### **The May Order for interim periodical payments**

The Court of Appeal relied upon the dictum of Lord Scarman in *Minton v Minton* [1979] AC 593:

“Once an application [for periodical payments] has been dealt with upon its merits, the court has no future jurisdiction save where there is a continuing order capable of variation or discharge under section 31 of the Act”.

Pursuant to s.31(1) and (2) of the Matrimonial Causes Act 1973 there was no order capable of variation. The Court of Appeal did not accept W’s argument that the case of *Hamilton v Hamilton* [2013] EWCA Civ 13 was authority for the proposition that the court could, and should, reinterpret the 2005 order to insert a provision that the order for periodical payments would only be discharged upon payment of the lump sum.

H’s appeal was allowed; the jurisdiction of the court to make further orders ceased in June 2005 in accordance with the order of Charles J.

#### **The June Order imposing terms on payments to H’s solicitors**

This order provided for the mechanics of payment of an order that was itself made ultra vires. H’s appeal was allowed.

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## Permission

Family Law Week 