

A v B C-489/14

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06/10/2015

Barristers

Henry Clayton

Court

Court of Justice of the European Union

Practice Areas

Financial Remedies

This was a request made by the High Court for a ruling in relation to the interpretation of Article 19(1) and (3) of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters (and matters of parental responsibility).

The case involved a couple who had married in France in 1997 before moving to the UK in 2000 and subsequently separating in 2010. The issue to be ruled upon was, in short, the correct meaning of "established" for the purposes of Article 19.

Article 19 provides as follows: "1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised."

The factual background was, in very broad terms, that the husband had commenced judicial separation proceedings, first in time, in France and had then failed to take any steps to progress the proceedings such that a non-reconciliation order that had been made by a family court judge had automatically expired after 30 months. The husband had then, first thing the next day, commenced divorce proceedings.

In the meantime, the wife had filed a divorce petition in England four days before the expiry of the non-reconciliation order and had attempted, unsuccessfully, to ensure that the petition would only take effect from one minute past midnight on the day after the order had expired. The husband applied to the English court for an order dismissing the wife's petition or striking it out on the basis that the jurisdiction of the French court had been established within the terms of Article 19(3).

The High Court sought a ruling on, "in essence, whether, in the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States, Articles 19(1) and (3)... must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the jurisdiction of the court first seised must be regarded as not being established. The referring court asks in particular whether the fact that those proceedings expired very shortly before a third set of proceedings was brought before a court of the first Member State, the conduct of the applicant in the first proceedings, notably his lack of diligence, and the existence of a time difference between the Member States concerned, which would enable the courts of the first Member State to be seised before those of the second Member State, are relevant for the purposes of answering that question".

The Court ruled that the French court had ceased to be the court first seised when the proceedings for judicial separation had expired. At that point, jurisdiction had no longer been established in France and the only court seised had (subject to the English court having been correctly seised under Article 16) been the English court. When the husband had subsequently issued divorce proceedings in France, therefore, whilst the French court had become seised, it had become the court second seised.

Accordingly, the lack of diligence on the part of the husband to pursue the first set of proceedings had been irrelevant, as had the time difference between France and England.