ADULT CHILDREN

Adult children: End of the road

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The appellant in *Siddiqui v Siddiqui* [2021] made an interesting attempt to challenge clear authority and persuade the Court of Appeal to replace it with entirely different judge-made law. The attempt was met with a decisive 'no', but the judgment makes interesting reading, reminding practitioners of the reasons behind the creation of legislation that awards financial provision for children, including the Matrimonial Causes Act 1973 (MCA 1973) and Sch 1 to the Children Act 1989 (ChA 1989), and the parameters of that provision. This is together with an evaluation by the Court of Appeal as to whether there was a need to expand the legislative provision to include adult children whose parents remain together.

Facts

This was a curious case, with Sir James Munby, who heard the matter at first instance, commenting 'I suspect that the initial reaction of most experienced family lawyers would be a robust disbelief that there is even arguable substance to any of it' (*FS v RS* [2020], para 1).

The 41-year-old appellant was the son of parents who were married and lived together. They resided in Dubai and were very wealthy. They had financially provided for their son for over 20 years, allowing him to live in their London flat and paying utility bills on his behalf. They also discharged the costs of his extensive educational qualifications. The appellant had not worked since 2011, but had a first degree in modern history, was a qualified solicitor and had a Masters in taxation. He was now studying for chartered tax advisory and law school admissions test examinations. The appellant said that his parents, upon whom he had depended and continued to depend financially, had decided to reject him and now wished the state to pick up the 'tab' for his costs. He went on to say that they could not be trusted to look after him, and their fight against the provision he sought demonstrated greater justification for seeking the court's assistance.

These claims were strongly disputed by the respondents, the appellant's parents. It was common ground that the relationship between parties had become fractured and that the

parents were now prepared to offer less financial support. It was also common ground that they could comfortably afford to continue financially providing for the appellant. It was not, however, common ground that the appellant was 'vulnerable', as asserted by him, relying on alleged mental health difficulties that were not detailed. Any alleged disability or vulnerability that would give rise to 'special circumstances' (as referred to in MCA 1973 and Sch 1, ChA 1989) was not accepted by his parents, either as a matter of fact or in law.

At first instance, the appellant had sought financial relief against his parents pursuant to:

- s27, MCA 1973;
- Sch 1, ChA 1989; and
- the inherent jurisdiction which applies in relation to adults who, though not lacking capacity, are 'vulnerable'.

The application was for an immediate order for interim maintenance, to include funding for legal costs. At first instance, the applications were dismissed in their entirety. The reasons for this were comprehensive and clearly explained in the judgment. In short, there the court found that there was no jurisdiction to make any of the orders sought. Permission to appeal was initially sought orally and rejected and a costs order was made against the appellant (see also 'No way through' by Hannah Viet, *FLJ*201 (March 2021)).

Relevant law

The appellant's further application for leave concentrated on issues of ambit, status and justification in respect of s27, MCA 1973 and para 2, Sch 1, ChA 1989, which, he asserted, rendered those provisions discriminatory.

A range of legislation and wider authority was considered by the Court of Appeal, not all of which was relied upon by the appellant, in particular given that his parents were still married, but was dealt with at length by Moylan LJ. The judgment was described as 'far longer than necessary… given the history of the proceedings', with the judge noting that provision under ss23 and 24, MCA 1973 may be awarded *only* on the grant of divorce, nullity or judicial separation. Inter alia, the court considered the provisions of:

- **s27, MCA 1973**, as to financial provision in the case of neglect by a party to a marriage to maintain the other party or child of the family, of which s27(1)(b) deals with a failure to provide reasonable maintenance for a child of the family;
- **s27(6A), MCA 1973**, as to an application under s31, MCA 1973 for variation of certain financial orders, under which a child aged 16 or above can make an application in their own right;
- **s27(6B), MCA 1973**, regarding an existing order for a child that terminates at age 16, or at any time before the child reaches 18, where the court may make an order if the child is or is expected to be in education/training or where there are special circumstances that justify making an order;
- financial provision under **Sch 1, ChA 1989**, which at **para 2** provides that, on an application by a person who has reached the age of 18, the court can make orders if the applicant is or will be receiving education/training, or if there are special circumstances justifying an order, and notably also provides that no order shall be made where the parents of the applicant are living in the same household;

- the provisions of **Sch 1, ChA 1989** at **para 3** which states that orders shall not, in the first instance, extend beyond age 17 and shall not, in any event, extend beyond age 18, the latter restriction not applying if a child is or will be in education/training or there are special circumstances that justify the making of an order;
- the **European Convention on Human Rights** (ECHR), in particular:
    - Art 6 (right to a fair trial);
    - Art 8 (right to respect for private and family life);
    - Art 14 (prohibition of discrimination); and
    - Art 1 of Protocol 1 (A1P1) (protection of property and peaceful enjoyment of possessions); and
- the **inherent jurisdiction** to protect vulnerable individuals in limited circumstances.

Permission to appeal application

The appellant's arguments were, in short, first that the legislation was centred on needs and based on the recognition that there will be adult children whose circumstances are such that their needs should be met by their parents. Thus the difference between provision for an adult child of separated parents and provision by parents who have not separated is 'markedly worse' and to differentiate was discriminatory (para 60).

Regarding the ECHR Articles, the question was whether the subject matter was sufficiently close to a substantive right protected by the ECHR so that discrimination would be prohibited. The appellant argued that his claim for financial support consisted of facts that were sufficiently close to Arts 6 and 8 and A1P1. Specifically, Art 6 was engaged because, while there is no freestanding right for a child to seek support from a parent, there is a right to bring such proceedings, thus the access to a court cannot be discriminatory. Regarding Art 8, it was argued that financial responsibility owed by a parent to a child can come within the ambit of this Article, notwithstanding an absence of authority on this point. Finally, regarding A1P1, a wider point as to the peaceful enjoyment of possessions was made. It was argued that Art 14 came into play when considering the treatment of A1P1 rights in the context of the facts of this case (see paras 62-68).

Points made on status were important (given that Sch 1, ChA 1989 and the MCA 1973 jurisdiction are based on the separation of parents). The appellant argued that his status regarding Sch 1 was as 'an adult child whose parents continue to live together' and his status regarding MCA 1973 was as 'an adult child whose parents have not divorced'. He argued that discrimination based on the fact that a child's parents are cohabiting falls within the Art 14 prohibition (see paras 70-72).

In terms of justification, following on from the point about status, the appellant argued that there was 'no adequate justification for enabling some adult children to obtain financial provision from their parents but not others'. Further, that 'the focus should be on the needs of adult children, rather than on their parents' circumstances', and that 'there was no explanation why those adult children whose parents' relationship had broken down were more likely to need financial support' (para 74).

Judgment

The Court of Appeal dealt with the merits of the appellant's case thoroughly. It reiterated that his arguments had no basis under either MCA 1973 or Sch 1, ChA 1989. In respect of the former, this was principally because the appellant's parents remain married, so the appellant had no right to make such an application. Additionally, under s27, MCA 1973 a child may only apply to vary an existing order, or to revive and then vary a periodical payments order which ceased to have effect between the ages of 16 and 18. Under Sch 1, ChA 1989, a periodical payments order cannot be made when both parents are living in the same household.

At first instance, the appellant had argued that, should the court disagree that s27, MCA 1973 and Sch 1, ChA 1989 applied to him 'by a traditional approach to statutory construction', then they would do so by a process of 'reading down' in accordance with s3, Human Rights Act 1998. This was rejected by Sir James Munby at first instance and the Court of Appeal agreed. Sir James stated that the legislation was specifically drafted to prevent a child taking a parent to court to claim money, hence the necessity under MCA 1973 for an application to be made by a party to the marriage. The Sch 1, ChA 1989 provision was made simply to level the playing field for the children of unmarried parents (see paras 25-38 of the first instance judgment). The Court of Appeal also agreed with the judge at first instance that the inherent jurisdiction could not be used, as this was reserved for limited circumstances, including when no statutory legislation was applicable.

In terms of ambit of the ECHR Articles, Moylan LJ set out how the appellant's arguments relating to the ECHR had been dealt with at first instance when the court found that none of the Articles relied upon (6, 8 or A1P1) were engaged as the appellant's claims did 'not fall within the ambit of any of them' (para 79 at first instance), and he agreed with that judgment. Article 6 was not engaged because there was no jurisdiction under MCA 1973 or Sch 1, ChA 1989. Article 8 was not engaged because the 'creation of a right for all children to bring claims against their parents… is unsupported by any authority or principle' (para 121). A1P1 was not engaged because this 'only applies to substantive interests or rights, which can include claims', and 'the obstacle which confronts the appellant is that he has no claim, not even an arguable one' (para 123).

In terms of the appellant's status, the judge at first instance had also rejected the appellant's case in relation to Art 14. Referencing the questions as set out by Lady Hale in *R (Stott) v Secretary of State for Justice* [2018] in relation to Art 14, Moylan LJ concluded that the appellant did not have a status that engaged Art 14 at all, ie he was not suffering from any discrimination (see paras 102-111).

In terms of justification, different treatment must be in pursuit of an objective and reasonable justification, with a legitimate aim and employed via reasonably proportionate measures. The legitimate aim here is to address the financial consequences of relationship breakdown. The limits on a child's right to claim are proportionate. Further, Parliament intended parents to enjoy 'the freedom or autonomy to decide how to spend their money' (para 132).

Moylan LJ concluded that the appellant's proposed appeal was completely without merit and refused the application for permission to appeal.

Analysis

It is difficult to know what to make of this case in terms of its wider impact, if any. It could be viewed as a simple restatement of the boundaries of the current law, without going any further, but it could also constitute a useful clarification of the existing law in the event of claims by an adult child arising in the future. At first instance, Sir James Munby quoted Megarry J in *Hampstead and Suburban Properties Ltd v Diomedous* [1969] when he said (para 2):

> *It may be that there is no direct authority on this point; certainly none has been cited. If so, it is high time that there was such authority; and now there is.*

It is certainly an unusual case. The nature of the claim is unlikely to have been one that most family lawyers have encountered simply due to the age of the appellant, the concept of reasonable 'need' (however flexible this may be) and the well-established principle that once children reach majority, they are considered to be financially independent. It does, however, address wider points in terms of the extent to which the state is willing to interfere in the private sphere. The appellant argued that the law operates in a discriminatory manner by failing to make provision for children whose parents are together when ample provision can be made for those whose parents are separated. This is surely the crux of the issue: is there a need for law reform to accommodate those whose parents are together, or can different treatment be justified? While there is some force to the argument that it cannot be justified, and it is perhaps appropriate that the fairness of this distinction is questioned, to argue that the two positions are comparable is too simplistic.

Conclusion

The court's firm view in *Siddiqui* was that the purpose of the legislation is that (Underhill LJ at para 138):

> *… children – including in some circumstances, adult children – should be protected from the loss of financial support when their parents' relationship breaks down (the paradigm case, as regards adult children, being where their education or training is jeopardised by financial disputes between their parents).*

Careful thought was given to this when the legislation was created and there were deliberate restrictions to prevent freestanding claims by children against parents who lived together. An interference by the state in regulating jointly made financial decisions by married/cohabiting parents in respect of their children would require strong justification if it was to be accepted by society. Further, there would need to be measures in place to assist the already struggling public services that would be forced to carry the weight of increased litigation: the 'floodgates' argument must be taken seriously. It is interesting to ponder whether the court was more likely to have reached a different conclusion if vulnerability had been established, or the adult child had been closer to the age of

majority. For now, however, family lawyers can breathe a sigh of relief that well-established law remains as such.

Cases Referenced

- FS v RS & anor [2020] EWFC 63
- Hampstead and Suburban Properties Ltd v Diomedous [1969] 1 Ch 248
- R (Stott) v Secretary of State for Justice [2018] UKSC 59
- Siddiqui v Siddiqui & anor [2021] EWCA Civ 1572

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