A v B

Jurisdiction:	Jersey
Judge:	Anderson JA
Judgment Date:	26 May 2016
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[2016] JCA 098

COURT OF APPEAL

Before:

Sir David Calvert-Smith., President;

Robert Logan Martin, Q.C., and David Anderson, Q.C.

In the Matter of A v B (Family)

Between
A
Appellant
and
B
Respondent

Advocate V. Myerson **for the Appellant**

Advocate J. F. Orchard **for the Respondent**.

Authorities

A v B (Family) [2015] JRC 262.

Children (Jersey) Law 2002.

Royal Court Rules 2004.

United Kingdom Children Act 1989.

J v J (A Minor: Property Transfer) [1993] 2 FLR 56.

T v B [2010] 2 FLR 1966.

Matrimonial Causes (Jersey) Law.

Children Act 1989.

Adoption (Jersey) Law 1961.

In the matter of the representation of Gutwirth [1985–86] JLR 233.

Brunei Investment Agency and Bandone SDN BHD v Fidelis Nominees Limited and seven others [2008] JLR 337.

Re Luck [1940] Ch 864, 871–2.

Dicey, Morris and Collins, The Conflict of Laws (15th edition. 2012).

Latvian Civil Code.

1980 Hague Child Abduction Convention.

1996 Hague Child Protection Convention.

D. Adams, “Conceptualising a Child-Centric Paradigm”, Bioethical Enquiry (2013) 10: 369–381).

M v W (Declaration of Parentage) [2006] EWHC 2341 Fam; [2007] 2 FLR 270.

Marriage and Civil Status (Jersey) Law 2001.

Carl Zeiss Stiftung v Rayner & Keeler (No.2) [1967] 1 AC 853.

Pell Frischmann Engineering Ltd. v Bow Valley Iran Ltd [2007] JRC 105A.

Foreign Limitation Periods Act 1984.

Rowe v Rowe (1980) Fam 47.

Re M (Child Support Act: Parentage) [1997] 2 FLR 90.

Salvesen v Administrator of Austrian Property [1927] AC 641.

Family — Appeal against judgment of the Royal Court dated 17th December 2015

Anderson JA

This is the judgment of the Court.

1 The appellant appeals against a judgment of the Royal Court (Le Cocq, DB and Jurats Marett-Crosby and Nicolle) of 17 December 2015 (*A v B (Family)* [2015] JRC 262. That judgment partially upheld an order made by the Registrar on 22 July 2014, ordering the appellant to make certain payments to the respondent for the benefit of her child, pursuant to Article 15 of and Schedule 1 to the Children (Jersey) Law 2002 ("the Law").

2 The sole substantive issue on this appeal is whether the appellant is to be treated as a parent for the purposes of Schedule 1 to the Law. If he is not, it is common ground that the Registrar had no power under the Law to order the disputed payments.

The factual background

3 We take the factual background from a chronology helpfully prepared for this appeal by the appellant, on which the respondent has indicated certain limited areas of disagreement. Though there are disputed matters of fact, none of them is relevant to the resolution of this appeal.

4 The appellant, a Jersey resident, met the respondent, a Russian national and Latvian citizen, in Latvia in late 2000. They began a relationship and he funded the purchase and renovation of a flat for her in Riga. The relationship ended at some point between August 2002 and early 2003. The respondent, who was then a student in her early 20s, conceived a son in October 2002. The son was born on 30 June 2003 and named Matthew (this is not his real name). C, a Latvian, was originally registered as the father.

5 The parties now agree (as they did in the Latvian proceedings commenced in 2011, to which we refer below) that the appellant is not Matthew's biological father. But the Latvian courts declined to make a finding to this effect; and as will be seen, the appellant was asserted to be the biological father in the application that he made in June 2006 for recognition of his paternity. In view of those facts and in the absence of DNA evidence

(which the appellant rejected the opportunity to provide in the Latvian proceedings), we do not consider that it is open to the courts of this jurisdiction to make any finding of biological paternity.

6 In November 2005 the appellant's wife died. The appellant and the respondent resumed their relationship and began to take steps for a future together. In June 2006, they made a joint application in Latvia for recognition of the appellant's paternity of Matthew. It will be necessary to describe this application in more detail below. In December 2006, the declaration of paternity was registered and the appellant was registered on the birth certificate as Matthew's father. In September 2008, the respondent and Matthew moved to Jersey to be with the appellant. Matthew attended private school in Jersey.

7 In 2010 the parties became engaged, but there was no marriage. In July of that year the respondent left Jersey, with Matthew, and returned to Latvia. It became apparent that she did not intend to come back. Matthew was enrolled in a Latvian School. The parties then became embroiled in litigation on two fronts:-

(i) In December 2010 the respondent started proceedings in Jersey (“the Jersey proceedings”), seeking financial relief from the appellant under section 15 of and Schedule 1 to the Law.

(ii) In April 2011 the appellant filed an application in Latvia, challenging the paternity recognition (“the Latvian proceedings”). In June 2011, proceedings in Jersey were adjourned pending the outcome of the Latvian proceedings. The applicant's challenge in the Latvian proceedings was rejected by the Zemgale District Court in March 2012, by the Riga Court in November 2012 and by the Latvian Supreme Court in March 2013.

8 The Jersey proceedings then resumed. By order of the Royal Court, a Latvian lawyer, Advocate Sanita Rubene, was jointly instructed by the parties and reported in September 2013 on the financial obligations of the appellant to provide maintenance payments under Latvian law. In March 2014 the Registrar ordered interim maintenance of £2,500 per month to be paid by way of contribution to Matthew's maintenance and his school fees. In July 2014, she ordered payments of £5,000 per month for the benefit of Matthew until his 18th birthday, together with various further sums. Numerous Acts of Court followed, culminating in the Royal Court's decision of December 2015 which is the subject of this appeal.

9 Meanwhile, the respondent moved to Mauritius with Matthew (now 10 years old) in around April 2014, and was employed there as an intern at an architect's practice. She married G in Mauritius in September 2014.

10 As the Royal Court recorded, in the judgment under appeal:-

“ ***We are further informed that the Father has taken steps before the courts***

of Latvia in reliance on his status as the child's father in that he has sought contact, residence and an order seeking the return of the child to Latvia from Mauritius even though he, the Father, did not live in Latvia."

This Court has been shown translations of Latvian court documents that demonstrate this, dating from between October 2014 and July 2015. The appellant has thus sought to use his status under Latvian law in Latvia to assert parental rights over Matthew. He denies however that this status can or should be recognised in Jersey as a source of financial obligations in relation to the child.

The issues on this appeal

11 This appeal turns on whether the Jersey courts had the power to order the appellant to make financial provision for Matthew. The Registrar exercised that power, and the Royal Court held that she was entitled to do so. The appellant, represented by Advocate Myerson, challenges that ruling. In essence, his case is that he is not a *"parent"* against whom an order for financial relief may be made under the Law; and that the reliance of the courts below on his declaration in Latvia and the judgments of the Latvian courts is in any event misplaced.

12 In that context, three issues (or groups of issues) present themselves for decision:-

(i) Is the appellant barred from making his case?

(ii) How is the Law to be interpreted?

(iii) What is the relevance of the paternity declaration and/or the Latvian court decisions?

13 We consider each in turn.

Issue 1: Is the appellant barred from making his case?

14 The respondent submits that by virtue of Rules 6/7(4)(f) and 6/7(8) of the Royal Court Rules 2004, the appellant is deemed to have submitted to the jurisdiction of the Royal Court to make orders against him in the proceedings, and is therefore barred from challenging the jurisdiction of the Court to make the contested orders.

15 Rule 6/7 is headed ***"Dispute as to jurisdiction"***. Rule 6/7(1) states that the appearance of a party to any proceedings before the Court shall not be treated as a waiver of any irregularity in the proceedings or service thereof or in any order giving leave to serve the proceedings out of the jurisdiction. Rule 6/7(3) sets out specific procedures for disputing the jurisdiction of the Court ***"by reason of any such irregularity as is mentioned in***

paragraph (1) or on any other ground". Rule 6/7(4) sets out the types of order that may be applied for under Rule 3, including an order:-

> " ***(f) declaring that in the circumstances of the case the Court has no jurisdiction over that party in respect of the subject matter of the claim or the relief or remedy sought in the proceedings***".

Rule 6/7(8) provides that a person who has failed to make an application in accordance with paragraph (3) shall be deemed to have submitted to the jurisdiction of the Court in the proceedings.

16 The respondent submits that by failing to take issue with the jurisdiction of the court within the timeframe set out in the Rules, the appellant should be deemed to have accepted the jurisdiction of the Court to deal with the matter, following Rule 6/7(8), and is debarred from arguing otherwise.

17 We have no hesitation in rejecting this submission. The appellant is domiciled and resident in Jersey. Despite taking every point that has been open to him in these proceedings, he has never contested the jurisdiction of the Jersey courts to adjudicate on the subject matter of the respondent's claim, or to order relief pursuant to Schedule 1 to the Law. He contests the claim on the substance: but that is an entirely different matter. The fact that he may be deemed to have submitted to the jurisdiction of the Royal Court pursuant to Rule 6/7(8) has no bearing on his ability to advance the arguments he put forward in the Royal Court or on this appeal.

Issue 2: Scope of the Children (Jersey) Law 2002

18 Central to the remaining arguments in the case is the issue of whether the appellant, who claims not to be the biological father of Matthew and has never been married to the respondent, may nonetheless be classed as a ***"parent"*** against whom financial relief may properly be ordered under the Law.

19 Article 1 of the Law ("Interpretation") contains the following partial definition of the word ***"parent"***:-

> " ***'parent' includes the father of a child whether or not he was at any time married to the child's mother and the biological father of a child where he has been granted parental responsibility under Article 5(2)***."

That definition is expressed to apply "[i]n this Law, save where the context otherwise requires". It is not exhaustive: it says nothing of when a mother will be a parent, and is expressed only as including certain categories of father.

20 There is no equivalent general definition in the United Kingdom Children Act 1989, which

in most respects was the basis for the Law. No clue as to the purpose of the insertion is given in the Report or Explanatory Note that accompanied the *projet de loi*. It may have been intended to do no more than clarify two specific points: that parenthood under Jersey law is not confined to marriage, and that a biological father who applies for parental responsibility under Article 5(2), "notwithstanding that he is not in law the child's father", is also to be classed as a parent. But the breadth of the phrase "father of a child whether or not he was at any time married to ***the child's mother"***, particularly when it is contrasted with the later formulation "biological father of a child", leaves open at least the possibility that there may be circumstances (such as the existence of a foreign judgment) which might cause a man to be recognised as a father under Jersey law despite there being neither biological parentage nor a marriage, past or present, with the child's mother.

21 Financial provision for children is governed by Schedule 1 to the Law, para 1(1) of which empowers the court to make an order requiring ***"either or both parents of a child"*** to make specified payments and transfers to a parent or guardian for the benefit of the child.

22 Schedule 1 has its own interpretation provision, in paragraph 13(b), which provides that:-

> " ***except in paragraphs 2 and 12, 'parent' includes any party to a marriage or civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family, and any reference to either parent or both parents shall be construed as references to any parent of the child and to all of the child's parents***".

The intention appears to have been not to displace the partial definition in Article 1 of the Law, but to supplement it by making clear that an adoptive parent or step-parent may constitute a parent from whom financial relief may be ordered (save in the context of paragraphs 2 and 12 which concern, respectively, orders for financial relief for persons over 16 years and contributions to a child's maintenance by the Minister). Paragraph 13(b) also acknowledges that a child may have more than two parents: putting the two definition clauses together, it is evident that there will cases in which a biological father and the mother's husband may both constitute parents from whom financial relief might be sought.

23 Advocate Myerson urges caution in interpreting the concept of parent in Schedule 1, citing the English cases *J v J (A Minor: Property Transfer)* [1993] 2 FLR 56 and *T v B* [2010] 2 FLR 1966. In *T v B*, Moylan J held at para [57] that the persons against whom an order for financial provision for a child can be made under the English version of Schedule 1 are confined to those who have the status of parent as expressly extended by its paragraph 16 (equivalent to paragraph 13 in Schedule 1 to the Law), describing it as "not .. a discretionary welfare informed decision .. but a matter of status". The appellant emphasised that liability to financial claims for the benefit of children falls to be determined by the legislature, rather than on a discretionary basis by the courts.

24 Advocate Myerson further submitted, in her skeleton argument, that:-

> " *the law of Jersey has taken a restrictive view of the extension of rights and responsibilities to non-biological children, an even more restrictive view than the jurisdiction of England and Wales and one which recognises a class of exceptions wholly dependent on marriage or civil partnership*".

The restrictive nature of Jersey law in this respect was illustrated by reference to the restricted powers to make orders in respect of children under Article 25 of the Matrimonial Causes (Jersey) Law 1949 and the absence of succession rights for non-biological children who have not been formally adopted. Until such time as the States decide to extend financial obligations to unmarried non-biological fathers, it was submitted that the appeal must fail.

25 For the respondent, Advocate Orchard described the case as *"principally one of statutory interpretation"*. He stressed that his client does not seek to impose financial obligations on the basis that the appellant is a social or psychological parent, but *"contends only for the interpretation of parent to include one who has either acquired such status by virtue of relevant foreign law or been determined to be a father in judicial proceedings in a court of competent jurisdiction between the parties to the Schedule 1 application."* Such an interpretation, he said, would conform with the underlying principles of the Law, namely the promotion of the interests of the child, and with the requirements of public policy.

26 We echo the caution expressed by the High Court in *T v B* about allowing judicial discretion to inform the statutory definitions of parent. To open the door to financial orders against social or psychological parents might justifiably be considered a recipe for uncertainty. We confine ourselves to the case before us, without seeking to produce a comprehensive gloss on the statutory words. But there are, as it seems to us, persuasive grounds for interpreting the definitions in the Law as wide enough to embrace, subject to the requirements of public policy and other applicable safeguards, a person who has voluntarily sought the status of parent in another jurisdiction, and had that status definitively declared or recognised by a competent judicial authority.

27 We can summarise our reasons for that view as follows:-

(i) Neither the general definition of ***"parent"*** in Article 1 nor the specific definition in Schedule 1 to the Law is expressed to be exhaustive.

(ii) As we have indicated above, the phrase ***"father of the child"*** in the first part of the Article 1 definition, which has no equivalent in the Children Act 1989, is broader than ***"biological father"*** later on in that definition. Coupled as it is with the phrase ***"whether or not he was at any time married to the child's mother"***, it does not suggest that the legislature has set itself in all circumstances against a non-biological, unmarried father being a parent.

(iii) That is true also for the purposes of Schedule 1, to which we consider that the Article 1 definition applies in conjunction with the supplementary definition in

Schedule 1 itself.

(iv) Jersey has shown its willingness to recognise overseas adoptions, which govern the status of a child, save on grounds of lack of competence or public policy: Adoption (Jersey) Law 1961, Article 39B; *In the matter of the representation of Gutwirth* [1985–86] JLR 233.

(v) The courts of Jersey have a discretion to recognise and enforce foreign non-monetary judgments, albeit that it must be cautiously exercised: *Brunei Investment Agency and Bandone SDN BHD v Fidelis Nominees Limited and seven others* [2008] JLR 337.

(vi) Legitimation by instrument of acknowledgment of paternity in another country has been described as capable of recognition in England: *Re Luck* [1940] Ch 864, 871–2; Dicey, Morris and Collins, The Conflict of Laws (15th edn. 2012), 20–064.

(vii) Comity, and the avoidance of ***"limping parenthood"*** in which different parents are acknowledged in different jurisdictions, are served by a power of recognition.

(viii) Recognition may also advance the interests of some children (by making available to them financial provision from a person who has been considered a parent), and reduce the perceived injustice inherent in a state of affairs in which a parent can exercise the rights incidental to his parenthood in one jurisdiction, while refusing to discharge its obligations in another.

28 We are accordingly of the view that the definitions of ***"parent"*** in Article 1 of and Schedule 1 to the Law are sufficiently broad, in principle, to encompass persons who have voluntarily sought the status of parent in another jurisdiction, and had that status definitively declared or recognised by a competent judicial authority.

29 But that is not to say that such recognition should be automatic. We accept, as both parties agree, that the Registrar has the power and indeed the duty to refuse to recognise the status of such persons when to do so would be contrary to public policy in Jersey.

Issue 3: Relevance of status as declared in Latvia

Legal steps taken in Latvia

30 Before determining whether the appellant falls into the category we have identified, it is necessary to set out in more detail the legal steps taken by the parties in Latvia between 2006 and 2013. We do so in order to explain the nature of the relevant proceedings, and to identify what precisely was declared and determined in them. We proceed on the basis of translated documents placed before this Court, which are not perfectly idiomatic in all respects but as to which neither party took objection.

31 The appellant's *"claim statement"* of 12 June 2006 before the Kurzeme District Court, Riga, records that the respondent had told him the previous month that Matthew was his *"true son"*, notwithstanding that the name of C then appeared on his birth certificate. It stated that the appellant and respondent now planned to get married, and recorded that the appellant was glad to learn that Matthew was his son. It continued, in translation:-

> " *I fully acknowledge that Matthew is my son, and I am ready and willing to undertake the responsibility for him as well as all the duties of the parent arising from the law, and therefore I believe the current record on Matthew's' father is to be made void, and me, A, should be filed as the father with the birth certificate of Matthew*.
>
> …
>
> *I believe it is my duty to file this claim statement on the determination of the paternity as I am the biological father of Matthew and plan to marry Matthew's mother and raise our child together.* The defendant would verify these facts with the court as well."

32 According to a subsequent judgment of the Zemgale District Court, the parties made a joint application on the acknowledgment of the paternity to the Riga City Registry Office on 11 December 2006, and that application was satisfied two days later. The birth register was amended to show the appellant as the father.

33 The appellant's attempts to have himself removed from the birth register began on 28 April 2011, when he filed a claim before the Zemgale District Court challenging the paternity assumption on the basis that he was not the biological father of the child and had been deceived by the respondent into believing that he was. The District Court heard written and oral evidence from the respondent, and heard also at the sitting from appellant's lawyer and from the authorised representative of the Riga Orphan's Court, who represented Matthew's interests before the court and gave evidence of a discussion between Matthew and a psychologist of the Orphan's Court to the effect that he believed the appellant and respondent to be his parents, spoke well of them and wished to retain contact with both.

34 In its full and careful judgment of 21 March 2012, which came into effect on 26 April of that year, the District Court rejected the appellant's claim. It applied section 156 of the Latvian Civil Code, which in an official translation supplied to this Court provides as follows:-

> " ***A court may declare an acknowledgment of paternity null and void only if a person who has acknowledged that a child is his, cannot be the natural father of the child and he has recognised the child as his as a result of mistake, fraud or duress***.
>
> ***Paternity may be contested by the person who has acknowledged paternity ..*** within two years calculated from the day when they have found out about the circumstances that preclude paternity ."

As summarised by the Court, the appellant needed to establish three things in order to be successful: (i) that he could not be the biological father of Matthew; (ii) that he had previously acknowledged the child as his own as a result of delusion, guile or coercion; and (iii) that he had brought his challenge within two years of the date of knowledge of the circumstances which preclude the paternity.

35 It was said to be undisputed between the parties that the appellant was not the biological father of the child. His claim was however rejected by the District Court on three independent bases, as follows:-

> (i) The appellant had "failed to prove that he is not the biological father of the child", having repeatedly declined through his representative to undergo a DNA test as suggested by the District Court.
>
> (ii) The appellant had failed to prove that his previous recognition of the child was the result of mistake, fraud or duress, given the respondent's evidence that he had known since the birth of the child that he was not the biological father.
>
> (iii) For similar reasons, the appellant had failed to prove that his claim was brought within two years of his discovery of the circumstances that exclude the paternity.

36 The District Court referred to the interests of the underage child as being *"of primary importance"*, emphasising in particular Matthew's requirement for *"emotional balance and the state guaranteed protection of his interests"*, and describing it as *"unacceptable and contrary to the interests of the child"* for the voluntary acknowledgment of paternity to be challenged in the circumstances of the case.

37 Three judges of the Riga City Regional Court sat on an appeal from the District Court's ruling. The Regional Court heard once again in person from the respondent, from the appellant's representative and from a different representative of the Orphan's Court. In another full and careful judgment, issued on 12 November 2012, the Regional Court upheld the conclusions of the District Court in all respects. It rejected a submission that a pre-nuptial agreement of 2005 demonstrated that the appellant had considered himself at that stage to be the biological father of Matthew. Like the District Court, it emphasised that the two-year limitation period had been set "with the purpose of safeguarding the child's interests, of avoiding the situations as regards these cases that might traumatize the mental stability of the child".

38 On 22 March 2013, the Supreme Court of Latvia refused to initiate proceedings in cassation on the basis that "the board of senators does not have any doubts on the rule of law as regards the court verdict of the appellate instance court, and the case to be examined has no significance in the development of the judiciary".

39 The upshot is that having fully exhausted all his remedies, in proceedings that allowed the interests of the parties to be adequately represented and that accorded prominence to the interests of the child, the appellant has failed in his attempt to challenge his status as Matthew's father in the place of Matthew's birth. The Latvian courts have definitively rejected his claim. They have done so not only on the basis that his application was time-barred, but in addition and independently on the basis that he had proved neither that he was not the biological father, nor that his previous recognition of the child was the product of mistake, fraud or duress.

Public policy

40 Advocate Orchard reminds us that Latvia is a Member State of the European Union, a party to the European Convention on Human Rights, a signatory of the UN Convention on the Rights of the Child, and a contracting state to both the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. Nonetheless Advocate Myerson contends, as she is fully entitled to do, that considerations of public policy in this jurisdiction militate against the recognition of the Latvian declaration and judgments.

41 She referred, first, to what she described as the importance of the accurate public recording of family relationships. Referring to an academic article (" D. Adams, "Conceptualising a Child-Centric Paradigm", Bioethical Enquiry (2013) 10: 369–381) and to comments of Hogg J in *M v W (Declaration of Parentage)* [2006] EWHC 2341 Fam; [2007] 2 FLR 270, she emphasised the importance of knowing who one's natural father is, both for an individual's sense of identity and because a full genetic history can assist early diagnosis of disease. She also pointed out that this factor is acknowledged in Jersey by the criminal offence of knowingly providing false particulars under Article 77(5) of the Marriage and Civil Status (Jersey) Law 2001.

42 We do not question the importance of the accurate recording of parentage. But the significance of the point in this case is diluted by the fact that despite the common position of the appellant and respondent (which is completely at odds with the position advanced in 2006), the Latvian courts were unable to express a firm conclusion on Matthew's parentage. That was, not least, because of the appellant's repeated refusal to supply the DNA evidence which could have definitively determined the issue. It should also be noted that the Latvian courts paid careful regard to the interests of the child, albeit that they placed particular emphasis on the importance, which might be considered self-evident, of stability and emotional balance.

43 Advocate Myerson went on to criticise the two-year time limit in Latvia for challenging paternity as contrary to public policy, describing it as "an aberration and, contrary to the principles of natural justice which underpin modernized western democracies". We disagree. The period runs only from the date on which the father becomes aware of the circumstances that exclude his paternity, and like other limitation or proscription periods is

provided for (as the Latvian courts explained) in the interests of promoting certainty. While opinions may differ as to the importance of that factor when weighed against the interest in a truthful declaration, it was submitted that a considerably shorter time limit on challenge to legal findings of paternity is applied for some purposes in the United States: 42 US Code §666(5)(D). But in any event, the fact that the application was time-expired was only one of three distinct reasons why the appellant did not succeed in the Latvian proceedings. The rulings of the Latvian courts would have been to the same effect, even in the absence of a time limit. In the circumstances, we cannot accept that public policy requires those rulings not to be recognised.

44 While a number of other supposedly awkward or incongruous consequences of recognition were raised in the appellant's skeleton argument, they were addressed in writing by the respondent and not pressed orally. We do not consider that any of them amounts to a public policy obstacle to the recognition of the Latvian declaration and judgments.

45 We conclude that there are no public policy factors that prevent the appellant's status as Matthew's father, as it has been determined in Latvia, from being recognised in the courts of Jersey.

Issue estoppel

46 In view of the conclusion to which we have come, it is not strictly necessary to deal with the respondent's submission, advanced in the alternative, that appellant is estopped from denying that he is the father of Matthew by virtue of the decision of the Latvian courts between the parties in relation to the same subject matter.

47 It is well established that a foreign judgment can give rise to an issue estoppel, preventing a party to it from denying any matter of fact or law necessarily decided by the foreign court: *Carl Zeiss Stiftung v Rayner & Keeler (No.2)* [1967] 1 AC 853. In the words of the leading book on the subject:-

> " *Three conditions must be fulfilled before the doctrine can be applied: (1) The judgment of the foreign court must be of a court of competent jurisdiction, and must be final and conclusive on the merits* ..; (2) there must be identity of parties; (3) there must be identity of subject-matter, that is to say, the issues must be the same."

(Dicey, Morris and Collins, 15th edn. (2012), 14–123). The issue common to the English and the Latvian proceedings is said to be the status of the appellant as father in relation to Matthew.

48 Against that, the appellant submits, first, that the reliance of the Latvian courts on the limitation period means that their judgments were not *"on the merits"* but procedural in nature. In our judgment, that objection founders on the point that there were three

independent grounds for each of the reasoned Latvian judgments. The appellant lost because he failed to prove that he was not the biological father of the child and because he failed to prove mistake, fraud or duress: these are plainly conclusions on the merits, no less so because the courts also ruled that he missed the limitation period. In the circumstances, it is not necessary for us to resolve the issue as to whether the law of Jersey in relation to the procedural nature of limitation was correctly stated by the Royal Court in *Pell Frischmann Engineering Ltd. v Bow Valley Iran Ltd* [2007] JRC 105A, paras [430]–[431], or whether it should adapt so as to reflect the change in practice effected in England by the Foreign Limitation Periods Act 1984.

49 A second and more substantial objection to the application of issue estoppel is the argument that estoppel applies to judgments establishing rights and duties, but not to judgments governing status: *Rowe v Rowe* (1980) Fam 47, per Orr LJ at pages 53–54; *Re M (Child Support Act: Parentage)* [1997] 2 FLR 90, per Bracewell J at page 93. There is authority to contrary effect (*Salvesen v Administrator of Austrian Property* [1927] AC 641, per Lord Phillimore at page 670, and it has been submitted to us that the policy justifications for disapplying issue estoppel are not present in this case. But on the approach we have taken, it is not necessary to resolve these difficult issues. The case is more appropriately determined, in our view, by interpretation of the Law and recognition of the Latvian pronouncements as to the status of father and son than by recourse to the doctrine of issue estoppel.

Conclusion

50 For these reasons we dismiss this appeal.