

THE HIGH COURT

2007 77 EMO

IN THE MATTER OF THE MAINTENANCE ORDERS ACT 1974

BETWEEN

K. McC.

COMPLAINANT

AND

A. O'D.

DEFENDANT

JUDGMENT of Mr. Justice Henry Abbott delivered on the 11th day of June, 2009

1. By request dated the 27th May, 2008, from the Scottish Executive for the enforcement in the State of the maintenance order made on the 29th June, by the Sheriff's Court, Paisley, Court Reference No. F128-07, the Scottish Executive applied to the Master of the High Court for enforcement of this State pursuant to the Maintenance Order Act 1974, of the said maintenance order. By order dated the 18th July, 2008, the Master of the High Court ordered that the said maintenance order be enforced in the State to the extent of STG£1,800 for arrears up to and including the 17th September, 2007, together with STG£300 per calendar month for the benefit of the complainant, K. McC. (date of birth 2nd May, 1990), being the daughter of A. O'D., the defendant, until she reaches the age of 25 years, if she is still in full time education. The defendant/appellant was served with notice of the making of the Master's enforcement order on the 2nd October, 2008, by notice of appeal from the Legal Aid Board, the defendant/appellant served notice of appeal in respect of the enforcement order of the Master dated the 31st October, 2008. The grounds of the appeal are as follows:-

"1. The appellant is a 48 year old, unemployed Scottish national with an address at M.. He came to Ireland in June, 2006 from Scotland and has resided in Ireland since then. He has an 18 year old daughter, K. McC., who is the 'complainant' in the within enforcement proceedings and who is a student resident in Glasgow.

2. A Decree was issued by Paisley District court on the 29th June, 2007, in favour of K. McC. to the effect that the appellant is obliged to pay £300 per calendar month to K. McC. together with a further payment of £1,200 in respect of aliment arising from May, 2006 to January, 2007 payable by the 29th July, 2007, with interest thereon at the rate of 8% per annum from the due date until payment. The appellant was also adjudged to be liable to K. McC. for her legal expenses.

3. From June, 2006 to the end of June, 2007 the appellant resided at L.. From the end of June, 2007 to date he has resided at M.. Between January and June, 2007 he was occasionally present at M. as he was carrying out work on the house to which he later moved. He remained resident during that period at L., however. He did not receive any correspondence while resident in either C. or K. notifying him of the claimant's maintenance proceedings.

4. When the appellant moved to M., the local Post Office was informed and arrangements were made for the forwarding of his post.

5. The 'Extract of Decree of Payment' appended hereto at 'C' refers to an address for the appellant at L.. Mr. O'D. does not know to what address Ms. McC's proceedings were purportedly delivered and maintains that they were not served on him.

6. The appellant received a letter from the Scottish Legal Aid Board dated the 29th January, 2007, notifying him of a pending *legal aid* application by Ms. McC. The letter outlined his entitlement to object to the application. He responded by letter dated 9th February, 2007. His response was acknowledged by the Scottish Legal Aid Board by letter dated the 14th February, 2007. This correspondence is appended hereto at 'D', 'E' and 'F' respectively'.

7. Ms. McC. informed the appellant that she did not wish to proceed with the aliment proceedings referred to in the abovementioned correspondence from the Scottish Legal Aid Board.

8. By letter dated the 14th February, 2008, the appellant received notification by letter addressed to him at M., Ireland of a 'Legal Aid Debt'. The letter stated, "*On the 29/06/2007 the court dealt with the case between you and K. McC.. The court decided that you should pay your opponent's legal expenses. A copy of the Court Decree is attached. (If available).*" This letter, appended hereto at 'G' was the first notice of the making of the Decree that the appellant received. Prior to the 14th February, 2008, he was unaware of either the proceeding or the Decree.

9. It appears that in the period between the appellant's correspondence with the Scottish Legal Aid Board in relation to Ms. McC's application for legal aid in early 2007 and the letter from the Scottish Legal Aid Board dated the 14th February, 2008, informing him of his 'Legal Aid Debt' arising from an award of costs against him, Ms. McC's maintenance proceedings issued and were adjudicated on by Paisley Sheriff's Court.

10. By letter dated the 22nd February, 2008, the appellant wrote to the Scottish Legal Aid Board stating "*I feel that it must be pointed out that I was never informed of any imminent court proceedings that I should have been present at or at least have had the opportunity to be represented in order to have a fair hearing.*" He also stated that he had understood that Ms. McC. did not want to pursue the matter. This letter is appended at 'H'.

11. The appellant did not receive notice of and was not served with the maintenance proceedings giving rise to the Decree issued by Paisley Sheriff's Court on the 29th June, 2007.

12. Consequently, the appellant did not have an opportunity to participate in those proceedings. Furthermore, he did not have an opportunity to prepare his defence or to arrange for legal representation.

13. If the appellant had received notice of the proceedings he would have instructed a solicitor to prepare a defence as appropriate.

14. The appellant maintains that it was unfair for said Decree to issue in the circumstances where he did not have an opportunity to prepare a defence or to retain legal representation. He also believes that in those circumstances the Decree should not be enforced against him by this Honourable Court."

THE LAW

2. Section 9 of the 1974 Act provides as follows:-

"9.—A maintenance order made in a reciprocating jurisdiction shall not be recognised or enforceable if, but only if—

(a) recognition or enforcement would be contrary to public policy,

(b) where it was made in default of appearance the person in default was not served with notice of the institution of the proceedings in sufficient time to enable him to arrange for his defence, or

(c) it is irreconcilable with a judgment given in a dispute between the same parties in the State."

DECISION

3. I have considered the terms of the Certification of Citation in family action of P. C., process server, in relation to service of the documents leading to the maintenance order, and, I am satisfied that an issue of fact arises as to whether service was adequate. Accordingly, I direct that the appeal of the defendant/appellant be admitted for hearing before this Court on affidavit. In accordance with the practice of this Court, the appellant/defendant should serve a notice of appeal on the maintenance creditor by pre-paid registered post together with such affidavit upon which he may rely. The notice of appeal with evidence of service of same with grounding affidavit should be filed in the Central Office on or before the 29th June, 2009.