

THE HIGH COURT

[2012 No.53 F.J.]

IN THE MATTER OF ARTICLE 29.3 OF THE CONSTITUTION AND IN THE MATTER OF THE JURISDICTION AND ENFORCEMENTS OF JUDGMENTS ACT 1998 AND IN THE MATTER OF ARTICLE 20 OF COUNCIL REGULATION EC NUMBER 2201/2003 AND OR IN THE MATTER OF ARTICLE 31 OF COUNCIL REGULATION EC NUMBER 44/2001

BETWEEN

M.M.

APPLICANT

AND

J.D.

RESPONDENT

JUDGMENT of White Michael J delivered this 26th day of July, 2013

1. The proceedings before this court are an originating notice of motion seeking orders restraining the respondent from dissipating, disposing or removing from this jurisdiction, charging or otherwise dealing with his assets pending the determination of divorce proceedings in England.

2. The applicant married the respondent in Northern Ireland in 2005.

3. The applicant avers that she met the respondent in Dublin when on holiday in 1997 and commenced a relationship with him. She began to reside in a property in Dublin with the respondent from October 1998. The parties separated at the end of September 2011. The applicant moved to England to reside and commenced divorce proceedings in that jurisdiction based on her habitual residence in England and Wales for a period of one year prior to the petition dated the 1st of October, 2012.

4. The High Court of Justice Family Division in England on 12th of October, 2012 granted an order forbidding the respondent from disposing or transferring out of the jurisdiction, charging or otherwise dealing in any way with the property or in the event of a sale or otherwise disposal, not to dispose of the nett proceeds of sale of the said property or any part thereof.

5. Subsequent to the order of the English High Court an application was made to this Court *ex parte*. By order of this Court of 15th of October, 2012 the respondent was restrained until after the 19th of October, 2012 from dissipating, disposing of or removing from the jurisdiction, charging or otherwise dealing with his assets pending the determination of the proceedings referred to in the title hereof.

6. There was also a specific order restraining the respondent from dissipating, disposing of, or charging or otherwise dealing with his interest in the property or in the event that the said property has been sold or otherwise disposed of, the proceeds of sale therefrom or any other property interest pending the determination of the proceedings referred to in the title hereof.

7. By further order of the 19th of October, 2012 this Court accepted an undertaking from the respondent in the terms of the order of the 15th October.

8. The applicant gave an undertaking as to damages.

9. By further order of this court of the 7th of December, 2012 the orders were continued but without prejudice to the respondent's challenge to the jurisdiction of the court to grant such orders.

10. It is common case between the parties that the respondent was married before to F.C. and a divorce was granted to him on the 5th of May, 1994 in England. That divorce is not entitled to recognition in the Republic of Ireland because of the respondent's domicile.

11. It falls to this Court to decide the jurisdiction to grant the order sought and to interpret article 20 of Council Regulation E.C./2201/2003 of 27 November, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, O.J. L 338/1 23.12.2003.

12. Article 20 states:-

"Provisional, including protective, measures.

1. In urgent cases the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this regulation as to the substance of the matter has taken the measures it considers appropriate."

13. Paragraph 16 of the preamble to the regulation states:-

"This Regulation should not prevent the courts of a Member State from taking provisional, including protective, measures in urgent cases with regard to persons or property situated in that State."

14. Article 1 of the regulation states:-

"This Regulation shall apply whatever the nature of the court or tribunal, in civil matters relating to a divorce, legal separation or marriage annulment".

15. Order 42A of the Rules of the Superior Courts (Jurisdiction, Recognition Enforcement and Service of Proceedings) 2005 at rule 1 states:-

"An application for provisional, including protective, measures under Article 31 of Regulation No. 44/2001 or Section 13 of the 1998 Act (including an Application for provisional (including protective) measures under the Lugano Convention by virtue of sections 13 and 20 of the 1998 Act) or of a kind referred to in Article 20 of Regulation No. 2201/2003 shall be made ex parte to the High Court."

16. The standard rules of statutory interpretation apply.

17. The words "as may be available under the law of that member state" do not refer to ancillary relief subsequent to divorce or judicial separation but refer to the law on "taking such provisional, including protective, measures in respect of assets in that state."

18. The fact that the original divorce is not recognised in the State would preclude the applicant from relying on the provisions of section 35 of the Family Law Act 1995 and section 37 of the Family Law (Divorce) Act 1996 but does not preclude the applicant from relying on the inherent jurisdiction of the Court to grant injunctive relief preventing disposal of assets in the State pending the resolution of the substantive proceedings in England.

19. The regulations and the English High Court order provide sufficient comity to invoke the jurisdiction of this Court.

20. This court notes that the respondent may in fact have already disposed of his interest in the property and any proceeds of the disposal.

21. The English High Court order confined itself to that asset and made no order preventing the dissipation of any other assets.

22. Before proceeding to make any orders it is appropriate for this Court to hear submissions on the principles governing injunctive relief, and the nature of the relief sought.