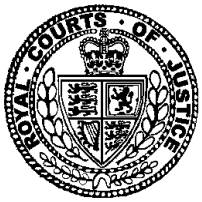

Neutral Citation Number: [2022] EWCA Civ 641

Case No: CA-2021-001813

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT BLACKPOOL
HIS HONOUR JUDGE BOOTH
19067022H/NW/R

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 May 2022

Before :

LORD JUSTICE LEWISON
LORD JUSTICE MOYLAN
and
LORD JUSTICE BAKER

- -

D (A Child)
(Appeal from the Registration of a Maintenance Order)

- -
- -

The Appellant Father appeared in person
The Respondent Mother appeared in person
Mr Andrew Venables (instructed by **Treasury Solicitor**) for the **Lord Chancellor as Intervenor**

Hearing date : 28 April 2022

- -

Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 11 May 2022.

Lord Justice Moylan:

1. This case concerns the extent of the right to appeal from the registration in England and Wales of a foreign child maintenance order. The father appeals from the order made by His Honour Judge Booth ("the Judge") on 14 June 2021 by which he dismissed the father's appeal, from the order made by the Family Court sitting at Leyland on 29 April 2021 ("the Leyland Order"), on the basis that the "court has no jurisdiction as there is no right of appeal against registration". This was stated by the Judge, who determined the appeal without a hearing, to be because of the effect of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ("the MO(RE)A 1972") and of Schedule 2 of the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007 ("the 2007 Order").

2. The Leyland Order had dismissed the father's appeal from the registration by the court officer at the Maintenance Enforcement Business Centre at Bury St Edmunds, Suffolk of the maintenance order made on 11 February 2019 (and sealed on 3 April 2019) by the District Court, Elbert County, Colorado, USA ("the Elbert County Order").

3. An application for the enforcement of the Elbert County Order was transmitted on 17 April 2019 by the relevant agency in the USA to the Reciprocal Enforcement of Maintenance Orders Unit ("REMO") in England and Wales. The application stated that it was being made under the provisions of the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("the 2007 Convention"). The initial registration of the order was effected expeditiously on 28 June 2019. However, since then, the progress of dealing with the father's appeal proceedings has, regrettably, been very slow. It is clear from the history of the proceedings that, as identified in their Reasons by the Justices who made the Leyland Order, this was "much attributable" to the effects of the pandemic. Whatever the cause, I would simply point out that article 23(11) of the 2007 Convention requires that:

> "In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously."

I would emphasise the requirement that the court deals with registration and enforcement applications expeditiously because the underlying obligation will comprise or include maintenance intended to meet *current* needs. I would also draw attention, in this context, to the provisions of article 23(10) of the 2007 Convention (set about below) which state that, absent "exceptional circumstances", a "further appeal" will "not have the effect of staying the enforcement of the" order.

4. The parties to this appeal are both acting in person. They have filed written submissions and also made very brief oral submissions at the appeal hearing.

5. When giving permission to appeal, I requested assistance from the Lord Chancellor. I am extremely grateful to him for agreeing to intervene and for the comprehensive written submissions provided on his behalf by Andrew Venables. I had initially sought assistance from the Official Solicitor but she indicated that, although she has administrative responsibility for REMO, REMO carries out its functions on behalf of the Lord Chancellor as the Central Authority for England and Wales under the 2007 Convention.

Background

6. The father and the mother were married in the USA but made their home in England. Their only child, R, was born in England in 2013. In 2016, the mother was given permission to relocate with R to the USA. The father commenced divorce proceedings in England which led to a decree of divorce in 2019.

7. The Elbert County Order requires the father to pay child maintenance to the mother for R at the rate of $1,828.61 per month, $841.49 in respect of "current child support" and $987.12 in respect of, what was called, "retroactive support", being backdated child support for the period 1 March 2016 to 31 January 2019 in the total amount of $23,690.83.

8. As referred to above, an application for the enforcement of the Elbert County Order was sent to REMO by the relevant agency in the USA on 17 April 2019 and expressly stated that it was being made under the provisions of the 2007 Convention. Additionally, the documents provided with the request included a "Statement of Enforceability of a Decision" pursuant to article 25(1)(b) of the 2007 Convention.

9. REMO sent the enforcement application to the Maintenance Enforcement Business Centre ("the MEBC") at Bury St Edmunds on 15 May 2019, as required by the provisions of article 23(2) of the 2007 Convention. The administration of maintenance enforcement in England and Wales has been concentrated in three MEBCs since 2015.

10. The Elbert County Order was registered by a court officer at the MEBC on 28 June 2019. The Notice of Registration is headed "Civil Jurisdiction and Judgments Act 1982, Hague Convention 2007". The father was notified of this by letter dated 4 July 2019 which also informed him of his right to appeal and the grounds on which he could appeal. I would also note that in other orders made by the Family Court sitting at Leyland the heading included reference to the 2007 Convention.

11. The father sent a notice of appeal, with his grounds of appeal, which was received by the MEBC on 30 July 2019.

12. The father's appeal was not determined until 29 April 2021 when it came before Justices sitting in the Family Court at Leyland. The appeal was dismissed, as was the father's application for a stay. In their Reasons, the Justices recorded that the Elbert County Order had been transmitted for registration and enforcement pursuant to the provisions of the 2007 Convention. They also referred to the relevant provisions of the 2007 Convention, the International Recovery of Maintenance (Hague Convention 2007) Regulations 2012 and the Family Procedure Rules 2010. When dealing with the history of the proceedings in England, the Justices noted that on 9 August 2018 "DJ Baker made orders dismissing the financial relief applications actually before the Court, namely those of the (father) for a lump sum and a periodical payments order in his favour. No orders were made, nor had been applied for, in relation to the child".

13. The Justices rejected the three grounds of appeal relied on by the father. They were the grounds set out in articles 22(b), 22(d) and 22(e)(i) of the 2007 Convention (which I set out below). It is not necessary to deal with the merits of those Reasons in this judgment because this appeal is only concerned with the issue of whether there was a right to appeal from their order. However, it is clear that the Justices gave careful consideration

to the matters raised by the father and have explained in detail why they decided that none of the grounds were established.

14. As is submitted on behalf of the Lord Chancellor, it is clear that, "at least up to this point, … the entire process was proceeding on the basis that registration had been applied for, and had taken place, under the" 2007 Convention.

15. The Judge determined the father's appeal from the Leyland Order without a hearing. He decided that the father had no right to appeal. He appears, in fact, to have determined that the father had no right of appeal at all from the registration of a maintenance order made by a court in the USA. The Judge's brief reasoning, set out in his order, stated that this was because no right to appeal was given by the MO(RE)A 1972 or the 2007 Order.

16. The Judge's conclusion may have derived from the fact that Part 34 of the Family Procedure Rules 2010 ("the FPR 2010") deals with applications for the enforcement of USA maintenance orders both under the MO(RE)A 1972 and under the 2007 Convention. However, having come to the preliminary view on the papers that there was no right of appeal, it would have been better, and consistent with the overriding objective, if he had then given the parties the opportunity to make further submissions addressing this, new, point. The course he took meant that the parties had no opportunity to deal with the point.

17. The father's application for permission to appeal to this court relied on 5 Grounds of Appeal. I gave permission in respect of only two which, as set out in my order giving permission, "contend, in essence, that (the Judge) was wrong to decide that, pursuant to the MO(RE)A 1972 and/or the 2007 Order, there was no right of appeal from the order made by the Magistrates".

Legal Framework

18. My summary of the legal framework largely derives from Mr Venables' submissions.

19. The UK and the USA have both ratified the 2007 Convention with effect, respectively, from 1 August 2014 and 1 January 2017. The 2007 Convention initially entered into force in the UK as a result of the EU's ratification of the Convention on behalf of all EU Member States (save Denmark). It was, therefore, directly applicable although this was supplemented by The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012 ("the 2012 Regulations"). As a result of the UK's departure from the EU, the Private International Law (Implementation of Agreements) Act 2020 amended the Civil Jurisdiction and Judgments Act 1982 ("the CJJA 1982") by, among other amendments, inserting section 3E which provides that the 2007 Convention has "the force of law in the United Kingdom".

20. The 2007 Convention provides a structure for the international enforcement of maintenance orders. As article 1 states:

> "The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

> a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;
>
> b) making available applications for the establishment of maintenance decisions;
>
> c) providing for the recognition and enforcement of maintenance decisions; and
>
> d) requiring effective measures for the prompt enforcement of maintenance decisions."

I do not propose to set out all of the provisions in the 2007 Convention which deal with the recognition and enforcement of maintenance decisions. They are contained in Chapter V and are intended to support the expeditious recognition and enforcement of maintenance orders.

21. Article 22 sets out the grounds on which recognition and enforcement can be refused:

> "Recognition and enforcement of a decision may be refused if -
>
> a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed;
>
> b) the decision was obtained by fraud in connection with a matter of procedure;
>
> c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
>
> d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
>
> e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –
>
> i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
>
> ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
>
> f) the decision was made in violation of Article 18."

As referred to above, the father relied on the grounds set out (b), (d) and (e)(i).

22. Article 23 sets out the relevant "Procedure on an application for recognition and enforcement". This includes:

> "(1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.
>
> …
>
> (4) A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.
>
> (5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.
>
> …
>
> (7) A challenge or appeal may be founded only on the following –
>
> a) the grounds for refusing recognition and enforcement set out in Article 22;
>
> b) the bases for recognition and enforcement under Article 20;
>
> c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) a), b) or d) or (3) b)."

It is made clear that article 23(5) does not necessarily limit the right of appeal to one appeal because it is provided by articles 23(9) and (10):

> "(9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.
>
> (10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances."

23. Mr Venables drew our attention to passages in the *Explanatory Report on the 2007 Convention*, by Alegría Borrás and Jennifer Degeling with the assistance of William Duncan and Philippe Lortie, which deal with articles 23(5) and (10). In respect of the latter, it is said, at [514], that "The text only accepts further appeal if it is permitted by the law of the State addressed, which in effect reflects the general rule set out in Article 23(1)".

24. The 2012 Regulations provide that the Lord Chancellor is the designated Central Authority for England and Wales (regulation 4). Schedule 1 provides that an

application for registration is to be transmitted by the Lord Chancellor to the family court (para 2(2)); that the application is to be determined "in the first instance by the prescribed officer of" the court, prescribed meaning "prescribed by rules of court" (para 2(4)); that the "decision of the prescribed officer may be appealed to the (family court) in accordance with rules of court" (para 2(5)); and that, once registered, a maintenance order "shall be enforceable in the family court in the same manner as a maintenance order made by that court" (para 2(8)).

25. Part 4A of the Matrimonial and Family Proceedings Act 1984 deals with the creation of the Family Court. Section 31K deals with appeals and provides:

> "(1) Subject to any order made under section 56(1) of the Access to Justice Act 1999 (power to provide for appeals to be made instead to the High Court or county court, or to the family court itself), if any party to any proceedings in the family court is dissatisfied with the decision of the court, that party may appeal from it to the Court of Appeal in such manner and subject to such conditions as may be provided by Family Procedure Rules.
>
> (2) Subsection (1) does not —
>
> (a) confer any right of appeal from any decision where a right of appeal is conferred by some other enactment, or
>
> (b) take away any right of appeal from any decision where a right of appeal is so conferred,
>
> and has effect subject to any enactment other than this Part; and in this subsection "enactment" means an enactment whenever passed.
>
> (3) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts or judges on questions arising in connection with the transfer, or proposed transfer, of proceedings from or to the family court.
>
> (4) Except to the extent provided for in any order made under subsection (3), no appeal may be made against any decision of a kind mentioned in that subsection.
>
> …
>
> (8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under subsection (3)"

As can be seen, section 31K(1) gives a right of appeal to the Court of Appeal "in such manner and subject to such conditions as may be provided by Family Procedure Rules" but *subject to* any order made under section 56(1) of the Access to Justice Act 1999.

Such an order has been made, namely the Access to Justice (Destination of Appeals) (Family Proceedings) Order 2014 (SI 2014/602). By article 2(3)(q) of that Order, an appeal "lies to the family court (instead of to the Court of Appeal)" from "two or three justices of the peace". Rule 6 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014/840) ("the 2014 Distribution Rules") provides that such an appeal is to a circuit judge (there are limited circumstances in which it is to a High Court judge).

26. The FPR 2010 deal with applications for the enforcement of orders under the 2007 Convention in Part 34, in particular Chapter 3 and PD 34E. The "prescribed officer" is defined by rule 34.2 as "the court officer". Rule 34.30(6) provides that, except where PD 34E provides otherwise, "the court must register the order unless … (c) in the case of an application under Article 23(2) or (3) of the 2007 Hague Convention, Article 22(a) of that Convention applies". This reflects article 23(4) of the 2007 Convention. It is a paper exercise in respect of which, as provided by article 23(4), neither party "is entitled to make any submissions".

27. Rule 34.31(2) provides that an appeal made under article 23(5) of the 2007 Convention "must be to the family court". This reiterates that the right of appeal is that provided under the Convention and is an appeal from the registration of an order or the refusal to register an order by the court officer.

28. As submitted by Mr Venables, the appeal structure is as follows: under the 2007 Convention and its implementing legislation, a party is entitled to appeal to the family court from the registration of a maintenance order or from the refusal to register an order. The 2007 Convention states that any further right of appeal is governed by domestic law. None of the implementing legislation for the 2007 Convention, including the CJJA 1982, the 2012 Regulations and the FPR 2010, contain any provision in respect of further appeals. In particular, they do not provide that there is no further right of appeal. It is, therefore, necessary to look to the general domestic provisions governing family appeals to determine what further appeal rights are available. To quote from Mr Venables' submissions, a party is entitled "to invoke the usual rights of appeal that litigants enjoy in domestic law from any other decision made by the family court".

29. Mr Venables referred in his submissions to the fact that second appeals would be subject to the usual test under section 55 of the Access to Justice Act 1999. It is not clear whether he was specifically including the second appeal with which we are concerned. What he says is, of course, right if the second appeal is to the Court of Appeal. However, section 55 only applies to appeals to the Court of Appeal and does not apply to a second appeal to a Circuit Judge in the Family Court. As referred to below, permission to appeal in such a case is governed by Part 30 and PD 30A of the FPR 2010.

30. Part 30 and PD 30A of the FPR 2010 contain general provisions governing appeals in the family court. In particular, they deal with when permission to appeal is required. Rule 30.3 provides:

> "(1) Paragraphs (1B) and (2) of this rule set out when permission to appeal is, or is not, required under these rules to appeal against a decision or order of the family court."

Rule 30.3(1B) provides:

> "Permission to appeal is required under these rules -
>
> (a) unless paragraph (2) applies, where the appeal is against a decision made by a circuit judge, Recorder, district judge or costs judge; or
>
> (b) as provided by Practice Direction 30A."

Rule 30.3(2) is not relevant to this appeal.

31. PD 30A, paragraph 2.1, contains a table under the heading "Routes of Appeal". The table has three columns.

> 2.1 The following table sets out to which court or judge an appeal is to be made (subject to obtaining any necessary permission) from decisions of the family court –

Decision of judge sitting in the family court	Permission generally required (subject to exception in rules of court, for example, no permission required to appeal against a committal order)	Appeal to
1 A bench of – • two or three lay magistrates • a lay justice	No	a judge of circuit judge level sitting in the family court; [or, in certain circumstances, a High Court Judge].

I have only set out the relevant parts of the table.

32. Although not directly relevant to this appeal, it would seem from the second column in the table that permission to appeal is *not* required when the appeal is from a bench of two or three lay magistrates or a lay justice. I say "seem" because this issue was not argued substantively in this appeal and it may be that there is some other provision which I have overlooked. However, if I am right, while the absence of a permission filter in respect of the registration of an order under the 2007 Convention (and other maintenance orders governed by the Acts set out in Schedule 1 of the 2014 Distribution Rules) may be deliberate, if it is, as this case demonstrates, it may operate to impede the obligation to "act expeditiously" as required by article 23(11) of the 2007 Convention.

33. I also note that, under the different structure provided by Part 31 of the FPR 2010 to the registration of orders under the 1996 Hague Child Protection Convention, permission to appeal is required in respect of second appeals because such appeals are to the Court of Appeal. This is because the initial registration is undertaken by a District Judge of the Principal Registry and first appeals are to the High Court, rule 31.15 of the FPR 2010. However, although the initial registration is undertaken by a District Judge rather than a court officer, it is, as referred to by Thorpe LJ in respect of the similar procedure for the registration of orders under Council Regulation BIIa, "essentially administrative, although it requires a judicial act": *Re S (Foreign Contact Order)* [2010] 1 FLR 982, at [12]. This might suggest that the same approach should be taken to an appeal from Lay Justices.

34. I propose, therefore, that the President of the Family Division and the Family Procedure Rules Committee should be invited to consider this issue.

35. In summary, as submitted by Mr Venables, "under the 2007 Hague Convention and its implementing legislation, the respondent to an application for registration is entitled to appeal to the family court against registration, and then to invoke the usual rights of appeal that litigants enjoy in domestic law from any other decision made by the family court".

Determination

36. I have not dealt with the provisions of the MO(RE)A 1972 and the 2007 Order because they are not applicable to this case. As submitted by Mr Venables, it is clear that the Judge was wrong when he considered that they applied. I accept Mr Venables' submission that what had occurred in this case was a registration pursuant to the 2007 Convention and that "the application facing (the Judge) was an appeal against an unsuccessful initial appeal … under the 2007 Convention". It is clear from all the relevant documents that the application for enforcement was made by the US authorities under, and registration was effected in this jurisdiction pursuant to, the 2007 Convention.

37. In summary, having regard to the circumstances of this case and the legal framework as set out above, I agree with Mr Venables' that:

(a) Registration of the Elbert County Order was applied for and was effected under the 2007 Convention;

(b) The 2007 Convention, by article 23(5), provides for a right of appeal from the initial registration and, by article 23(1), permits such further right of appeal as exists under domestic law;

(c) A further right of appeal is provided by the relevant legislation and rules and is to a circuit judge in the Family Court;

(d) The Judge was, therefore, wrong to decide that the appeal was governed by the MO(RE)A 1972 and the 2007 Order and was also wrong to decide that there was no right of appeal from the Leyland Order.

38. It is, therefore, regrettably necessary to allow the appeal and provide for the rehearing of the father's appeal from the Leyland Order. This clearly needs to be dealt with expeditiously given the long delays which have already occurred. I propose that MacDonald J, as Family Division Liaison for the Northern Circuit, allocates the rehearing to a Circuit Judge to be listed as soon as practicable.

Lord Justice Baker:

39. I agree.

Lord Justice Lewison:

40. I also agree.