



18 July 2018

PRESS SUMMARY

Mills (Appellant) v Mills (Respondent)
[2018] UKSC 38
On appeal from [2017] EWCA Civ 129

JUSTICES: Lady Hale (President), Lord Wilson, Lord Carnwath, Lord Hughes, Lord Hodge

BACKGROUND TO THE APPEAL

The Appellant and Respondent are former husband and wife. They divorced in 2002 after a marriage of approximately fifteen years, and the financial issues in the divorce were resolved by way of a consent order. Under the terms of that order the wife received £230,000 in settlement of her capital claims against the husband, and it was also agreed that the husband would make periodical payments to her at an annual rate of £13,200.

It was reasonably anticipated by the husband that the wife would use the £230,000 to purchase a suitable home for herself and their son without a mortgage, as the wife had been suffering from ill health which made it difficult for her to work. In the event, however, the wife did manage to take out a mortgage, and she duly purchased a more expensive home for £345,000. Between 2002 and 2009 the wife sold and purchased a series of different properties, and with each purchase the amount which she borrowed increased. In addition, she did not necessarily reinvest all of the sale proceeds from one property into the next and seemingly spent the balance, with the result that the amount of capital she had decreased over time. Eventually, in 2009 the wife sold her final property and began to rent accommodation. By April 2015, when the first-instance judge heard the case, the wife had no capital, and she had debts of around £42,000.

The hearing before the judge was to determine two cross-applications made under s.31(1) of the Matrimonial Causes Act 1973. The husband had applied for the discharge or downwards variation of the order for periodical payments, whereas the wife had applied for the order for periodical payments to be varied upwards. In determining the applications the judge noted that there was a shortfall of £4,092 per annum between the wife's current needs and, when coupled with her own earnings, the existing level of the periodical payments. However, he also held that, although the wife's actions had not been profligate, she had not managed her finances wisely and her current financial needs, in particular her need to pay rent, had been increased by the choices which she had made. Consequently, the judge considered that it would be unfair to the husband if he had to make a full contribution to the wife's rental costs. The judge therefore declined to vary the order for periodical payments either upwards or downwards. This meant that the husband would continue to contribute to around 60% of the wife's rental costs, and the wife would have to adjust her expenditure to accommodate the shortfall.

The wife appealed against this decision to the Court of Appeal, and was successful. The Court of Appeal considered that the judge had not given sufficient reasons why all of the wife's basic needs should not be met by the periodical payments from the husband, and increased the level of periodical payments to cover her shortfall, i.e. to £17,292. The husband now appeals against this decision to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal, concluding that the judge was entitled to decline to vary the order for periodical payments so as to require the husband to pay all of the wife's rental costs. Lord Wilson gives the judgment with which Lady Hale, Lord Carnwath, Lord Hughes and Lord Hodge agree.

REASONS FOR THE JUDGMENT

The husband was granted permission to appeal to the Supreme Court only on a single ground - whether, in light of the fact that provision had already been made for the wife's housing needs in the capital settlement, the Court of Appeal was entitled to interfere with the judge's decision not to increase the periodical payments so as to cover all of the wife's current rental costs [32].

The Court of Appeal had erred in saying that the judge had given no reason for declining to increase the order for periodical payments – the judge had given a clear reason, namely that the wife's unwise decisions in relation to her capital had increased her basic needs by requiring her to pay rent, and that it was consequently unfair to expect the husband to meet these increased needs in full [33].

The Court of Appeal should have considered the impact of the original capital payment on the wife's current need to pay rent, and this involved a consideration of three earlier Court of Appeal authorities: *Pearce v Pearce* [2003] EWCA Civ 1054, *North v North* [2007] EWCA Civ 760, and *Yates v Yates* [2012] EWCA Civ 532 [34-38]. These cases were correctly decided and in light of this the judge was entitled, although not obliged, to decline to require the husband to fund payment of the rent in full. This respects the wide discretion conferred upon the court under s. 31(1) and (7) of the Matrimonial Causes Act 1973 in determining an application for variation of an order for periodical payments. Moreover, a court would need to give very good reasons for requiring a spouse to fund payment of the other spouse's rent in the circumstances of this case. A spouse may well be obliged to make provision for the other spouse, but an obligation to duplicate that provision in situations such as this is improbable [40].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>