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Supreme Court decision in Wyatt *v Vince* [2015] UKSC 14: striking out an application for financial provision nineteen years after decree absolute was wrong

David Sawtell

Today the Supreme Court overturned the Court of Appeal decision in *Wyatt v Vince* ([2013] EWCA Civ 495, [2013] 1 WLR 3225) and restored the decision of the High Court judge at first instance in a case where the applicant wife applied for financial provision under the Matrimonial Causes Act 1973 following decree absolute pronounced in October 1992. In so doing, the Supreme Court referred to a line of case law where parties who have contributed to the marriage by bringing up children have successfully sought awards many years after decree absolute.

The case turned on the provision in the Family Procedure Rules that allows statements of case to be struck out, namely r4.4:

4.4

(1) Except in proceedings to which Parts 12 to 14 apply, the court may strike out (GL) a statement of case if it appears to the court –

> *(a) that the statement of case discloses no reasonable grounds for bringing or defending the application;*
>
> *(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;*

...

This is fleshed out in PD 4A:

2.1 The following are examples of cases where the court may conclude that an application falls within rule 4.4(1)(a) –

> *(a) those which set out no facts indicating what the application is about;*

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(b) those which are incoherent and make no sense;

(c) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable application against the respondent.

2.2 An application may fall within rule 4.4(1)(b) where it cannot be justified, for example because it is frivolous, scurrilous or obviously ill-founded.

The Supreme Court noted that this was analogous to the equivalent strike out rule in the CPR, namely r3.4. What the FPR does not contain is a power to grant summary judgment. The Supreme Court held that this was a deliberate omission. In fact, by virtue of section 25(1) of the MCA 1973, it is the duty of the court to have regard to all the circumstances, and in particular, to the eight matters set out in subsection (2). It was wrong to insinuate into the concept of 'abuse of process' an application for a financial order which has no real prospect of success.

In any case, the facts did not suggest that the applicant wife had no real prospect of success. When the parties separated in 1984 and up to the date of decree absolute in 1992, Mr Vince had no real assets or income, pursuing as he did a new-age travelling lifestyle. During this time, Ms Wyatt brought up the children of the marriage in straightened circumstances.

From the late 1990s, however, Mr Vince was able to monetize his interest in green power and issues. His green energy business, which dealt with wind power generation, took off and he became a multi-millionaire. Even during this time, Ms Wyatt continued to care for the children.

Ms Wyatt faced formidable difficulties in her application. The marital cohabitation lasted scarcely more than two years; it broke down 31 years ago; the standard of living during the marriage was at the lowest end of the scale; the wealth was only created 13 years after breakdown; the wife did not contribute to its creation. The Supreme Court referred to Thorpe LJ in *North v North* [2007] EWCA Civ 760, [2008] 1 FLR 158, who stated at para 32, "… it does not follow that the respondent is inevitably responsible financially for any established needs… [h]e is not an insurer against all hazards…" In order to sustain a case of need, at any rate if made after many years of separation, a wife must show not only that the need exists but that it has been generated by her relationship with her husband: see *Miller v Miller, McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, para 138 (Lady Hale).

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However, balanced against this, the wife was able to point to her considerable contribution in raising the children of the marriage without substantial assistance from 1985 to 2001. The Supreme Court referred to two cases which might avail her application. In *Pearce v Pearce* (1980) 1 FLR 261, the parties separated in 1969; until 1977 the husband was an undischarged bankrupt and did not contribute financial to the wife's household; but in 1978 he received a substantial inheritance. The Court of Appeal upheld an award of a lump sum. Ormrod LJ noted that 'Her claims on the merits certainly go a long way to eliminating the contrary factor, the lapse of time'. Another example of a short marriage, a substantial contribution on the part of the wife in caring for the children, a 30-year delay in her bringing her application (following an overseas divorce) and a significant capital award was *M v L (Financial Relief After Overseas Divorce*) [2003] EWHC 328 (Fam), [2003] 2 FLR 425.

The Supreme Court decision was therefore based on a somewhat technical reading of the Family Procedure Rules. It then goes on to endorse a line of case law that will be of assistance to parties seeking a financial remedy some time after separation.

The decision will close the doors to those who seek a rapid strike-out of so-called old claims. The case will now go to FDR (assuming, of course, it does not settle before then). Furthermore, the Supreme Court restored the deputy judge's costs allowance order and set aside the Court of Appeal's repayment order.

Given the prominence of this decision, this case will encourage those who put up in the bad times and now want their contributions reflected when things are better.

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11 March, 2015

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