



11 March 2015

## PRESS SUMMARY

**Wyatt (Appellant) v Vince (Respondent) [2015] UKSC 14**  
*On appeal from [2013] EWCA Civ 495*

**JUSTICES:** Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Hughes, Lord Hodge

### BACKGROUND TO THE APPEAL

The appellant, Ms Wyatt, and the respondent, Mr Vince, were married on 18 December 1981 [9]. They had a son, and Mr Vince also treated Ms Wyatt's daughter from a previous relationship as a child of the family. They separated in 1984 [10]. For around 8 years after that, Mr Vince pursued a new-age travelling lifestyle [11]. Ms Wyatt brought up the children in straitened circumstances, and Mr Vince was not in a position to make any substantial financial contribution for them [17]. The couple divorced and their decree absolute was granted on 26 October 1992. Since the court file has apparently been mislaid it is unknown what, if any, order was made at the time regarding financial provision, but the court has no reason to believe that Ms Wyatt's claims were dismissed [14]. Ms Wyatt went on to have two more children. From the late 1990s Mr Vince's green energy business took off [18] and he became a multi-millionaire [7]. In 2001, the couple's son went to live with Mr Vince. Ms Wyatt's financial circumstances continued to be, and remain, very modest [6].

In 2011 Ms Wyatt made an application in the divorce proceedings for financial provision in the form of a lump sum. She also applied for interim payments to fund her legal costs [2]. Mr Vince cross-applied for Ms Wyatt's substantive application to be struck out pursuant to Rule 4.4 of the Family Procedure Rules 2010 ("the family rules"), which provides:

- "(1) ... the court may strike out 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 ..."*

On 14 December 2012 a deputy High Court judge dismissed Mr Vince's strike-out application and ordered him to make interim periodical payments in respect of legal costs directly to Ms Wyatt's solicitors ("the costs allowance order"). Mr Vince appealed, successfully, to the Court of Appeal to have the deputy judge's orders set aside. The Court of Appeal struck out Ms Wyatt's application for financial provision and ordered her to repay part of the money received under the costs allowance order [2]. She appealed to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously allows the appeal [29] and directs that the wife's application proceed in the Family Division of the High Court [36]. The deputy judge's costs allowance order is restored and the Court of Appeal's repayment order set aside [41]. Lord Wilson (with whom Lady Hale, Lord Clarke, Lord Hughes and Lord Hodge agree) gives the judgment.

## REASONS FOR THE JUDGMENT

The court examines the jurisdiction under Rule 4.4 of the family rules to strike out an ex-spouse's application for a financial order [3]. It can be inferred that the references to "no reasonable grounds" and "abuse of the court's process" in Rule 4.4 are intended to bear the same meaning as the equivalently worded strike-out provisions in the Civil Procedure Rules ("the civil rules") [23]. The civil rules also confer upon the court a further power to give summary judgment on the basis that the claimant or defendant has no real prospect of success and there is no other compelling reason why the case should be disposed of at a trial [24]. However, there is no equivalent power of summary judgment in the family rules [25]. This omission is deliberate. When an ex-spouse applies for a financial order, the court has a duty under section 25(1) of the Matrimonial Causes Act 1973 ("the 1973 Act") to determine that application having regard to all the circumstances, including the eight matters set out in subsection (2); this assessment is not apt for summary determination. The Court of Appeal was therefore wrong to insinuate a test analogous to summary judgment into the family rules. Both limbs of Rule 4.4 should be construed without reference to real prospects of success. An application has "no reasonable grounds" for the purposes of Rule 4.4(1)(a) only if it is not legally recognisable, e.g. because there has already been a final determination of the proceedings or because the applicant has remarried. Neither should an application be viewed as an "abuse of process" falling within Rule 4.4(1)(b) solely on the basis that it has no real prospect of success [27]. Ms Wyatt's application is legally recognisable and is not an abuse of process [28] and her appeal against the strike-out therefore succeeds [29].

Lord Wilson identifies the issues in the application for the purpose of efficient future case management [29]. Ms Wyatt faces formidable difficulties in seeking to establish that a financial order should be made in her favour, including the short duration of the marriage and the long delay since then [30-31]. It is not clear whether she will be able to sustain her claim on the basis of need generated by her relationship with Mr Vince [33]. However, section 25(2)(f) of the 1973 Act obliges the court to have regard to "*the contributions which each of the parties has made ... to the welfare of the family, including any contribution by looking after the home or caring for the family*". Ms Wyatt will no doubt rely on her much greater contribution to the upbringing of the couple's children over many years [34], a factor which may justify a financial order for a comparatively modest sum [36].

The court also considers the costs allowance order [3]. Mr Vince argued that even if Ms Wyatt's application were not to be struck out, the deputy judge had been wrong to make the costs allowance order [37]. The threshold test for making such an order was whether Ms Wyatt could reasonably secure legal services by any other means [39]. Given that it would be unreasonable to expect her solicitors to continue to act without payment until the determination of her substantive application (as contended by Mr Vince), this test was satisfied [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:**

[www.supremecourt.uk/decided-cases/index.html](http://www.supremecourt.uk/decided-cases/index.html)