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IN THE CENTRAL FAMILY COURT

Neutral Citation: [2023] EWFC 76
No. 1654-6338-8553-6198

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Monday, 13 March 2023

IN THE MATTER OF THE DIVORCE, DISSOLUTION AND SEPARATION ACT 2020
AND IN THE MATTER OF THE DOMICILE AND MATRIMONIAL PROCEEDINGS ACT
1973

Before:

HER HONOUR JUDGE LYNN ROBERTS

(In Private)

B E T W E E N :

AR

Applicant

- and -

BR

Respondent

MS J O'DRISCOLL-BREEN (instructed by Expatriate Law) appeared on behalf of the Applicant.

THE RESPONDENT appeared In Person.

J U D G M E N T

(Hybrid Hearing)

HER HONOUR JUDGE LYNN ROBERTS:

- 1 In these divorce proceedings, the applicant wife (“W”) is AR, represented by Ms O’Driscoll-Breen. The respondent husband (“H”) is BR, who is in person. Both parties have attended this hearing from Dubai via CVP and counsel has attended before me today.
- 2 I have read a bundle of documents prepared by W’s solicitors and, as I shall return to, a statement by H, and I have looked at the accompanying documents.
- 3 The relevant background is as follows. Both parties are British citizens. They lived in this country until the end of 2020, when they moved to live in Dubai. Their lengthy marriage broke down in Dubai and, on 15 June 2022, W commenced divorce proceedings in England. On 28 June 2022, H began divorce proceedings in Dubai.
- 4 On 7 July 2022, H was served with W’s English proceedings and, on 14 July, he responded to the divorce and indicated that he did not dispute the divorce, but then proceeded to say that he did not agree jurisdiction. From what H has told me today, it seems that he thought he was making an application for the court to deal with jurisdiction, but that is not the case.
- 5 On 8 September 2022, W’s Form A was issued and she has also, in August 2022, applied for maintenance pending suit and litigation funding.
- 6 On 7 September 2022, W learned of the Dubai proceedings. There then followed four hearings in Dubai, which I am told were each adjourned. W wished to have the Dubai proceedings dismissed, but I understand that her application for that has not been heard.
- 7 Meanwhile, W’s application for divorce in England continued and the certificate of entitlement was issued on 9 December 2022. I also see that H was trying to get the issue of jurisdiction considered by various emails and calls to the divorce centre, but the proceedings here operate on the basis of applications and he did not make one until December, which was then not quite on the point.
- 8 In any event, on 17 January 2023, the conditional order was made in England. Until April last year, that would have been called a “decree nisi”, just so that people are aware of the change in terms here.
- 9 On 20 January 2023, there was the first directions appointment in the financial remedy proceedings and the hearing of W’s interim support applications. Interim orders were made, but the first directions appointment was adjourned to 27 April 2023.
- 10 On 23 February 2023, there was a hearing in Dubai, which I understand was a remote hearing, where divorce was granted. W’s case is that she was not represented and that the proceedings were in Arabic, which neither she nor H speaks, and she says she was not admitted to the hearing until it was over. H was represented, but it is W’s perception that H’s lawyer did not mention to the Dubai court the pre-existence of the conditional order in England.
- 11 On 28 February, H applied in this country for the financial remedy proceedings to be adjourned, but W only learned of that at a later date, from the court. However, it was this application by H which prevented W’s application for her conditional order to be made final, being made final. As a result of the application by H, W’s application was stayed. DDJ Stuart, on 2 March, made an order which said that:

“1. The Applicant wife having obtained a conditional order on the respondent having been served by email only and the service deemed. The respondent having made the Court aware of proceedings in Dubai, which he alleges finalise a Divorce in that Jurisdiction on 22.02.23. The wife's solicitor alleging that this is subject to a period of delay to allow for an appeal.

2. The parties having proceedings in the Central Family Court for Financial Relief. The matter of the validity of the Dubai proceedings and whether the applicant may or may not apply for a Final Order, as a result of those proceedings and whether a Divorce has been finalised shall be transferred urgently to the Central Family Court and marked urgently [for my attention].”

This hearing was listed as soon as possible, because it was clearly very urgent because of the competing jurisdictions and the appeal period, as it appears applies in Dubai.

- 12 On 8 March 2023, W did indeed appeal the order in Dubai. I am told, and I shall return to this, that in Dubai if an appeal is lodged within 30 days of the divorce hearing then the divorce is not final.
- 13 The hearing today then is, in effect, to determine jurisdiction. DDJ Stuart so ordered and, if England is the correct jurisdiction, W wishes to apply for a final order of divorce immediately, which could mean that the divorce is finalised today in any event. It would also mean that the financial proceedings that are currently in existence would continue.
- 14 I ordered skeleton arguments from both sides to be filed by 9 March. It was a tight timetable, but the matter was urgent. By this morning, I had only received one from W's counsel, but then just before the case was called on I received a statement from H with various documents attached. I have read his statement and looked at his accompanying documents, as far as I could see they were relevant or I had not already seen them.
- 15 At the start of the hearing, counsel made an application for expert evidence to be admitted. Having by that time read H's statement, I decided to admit this expert evidence. H had stated in his document that the February hearing in Dubai was irrevocable and I needed to understand what the legal position in Dubai was, which I was told the expert evidence would tell me.
- 16 The expert evidence is an opinion from Mr Ousamma, a legal consultant in Dubai on the relevant Dubai law, and it says that W has the right to appeal the divorce order within 30 days of it having been made and it was his opinion that the divorce order in Dubai was likely to be revoked. Mr Ousamma doubted that the Dubai court dealing with the matter in February had sight of the English conditional order when it made its decision, because it is his opinion that the Dubai court would not make a divorce order in circumstances where W has a conditional order in this country and is likely to have a final order shortly. I should add that is the general state of the law in most of the countries that we deal with here. The court in one country respects an earlier order of another country.
- 17 H did not want the opinion admitted as he said it was not relevant, but in my view it was relevant. He did not wish to ask Mr Ousamma questions when that was offered.

The Law

- 18 W's counsel has helpfully set out the legal principles that apply. The court has power to make the conditional order final and this is usually an administrative act. None of the reasons why a conditional order should not be made final apply in this case and, for example, there is no application by H under section 10 of the Matrimonial Causes Act 1973 to have his financial situation sorted out before an order is made final and, indeed, there is no application to set aside the conditional order. On the other hand, the court will not make the order final if there are valid divorce proceedings in another country which should take precedence over the English proceedings.
- 19 The Domicile and Matrimonial Proceedings Act 1973 ("DMPA") applies. Section 5 sets out the grounds for the English court to have jurisdiction. One of them is that one of the parties is domiciled in this country. It is W's case that she remains domiciled in this country. H says he is domiciled in Dubai and he does not accept that W is domiciled here either. However, the burden to show that a party has lost their domicile in this country is on the other party and H has not satisfied me that W has lost her domicile. The case of *R v R (Divorce: Jurisdiction: Domicile)* [2006] 1 FLR 389 supports this conclusion. I am satisfied that W's domicile has remained in England, as evidenced by her expressed intention to return to live in this country and retaining property and bank accounts here.
- 20 It is, therefore, then necessary to decide which of the two jurisdictions should hold sway in this case. As it is set out in the DMPA section 5(6) and in schedule 1, paragraph 9, the court can decide which is the more appropriate court of the two, depending on the balance of fairness and convenience.
- 21 W says that her divorce was issued and served first and that all the family's property is in this country. She says that, although H has a business in Dubai, he still has business in this country, and in Dubai, other than that business, there are no assets other than cars. The Dubai court will not be in a position to determine the financial outcome of the divorce. In any event, neither party speaks Arabic and W has not been able to participate in the Dubai proceedings to-date. She points out it would be a waste of money for her to have to restart Part III proceedings as the financial remedy proceedings here are underway. She says there would be no delay, because her application to have the conditional order made final could be dealt with today.
- 22 H says that the Dubai court has already concluded matters and so this hearing has no point. Otherwise, he says he is not interested in the financial remedy proceedings, either now or if there was a Part III application. The Dubai court has given him custody of their child C, aged 15, and his only concerns are to be divorced and to have custody. He thinks there will be delay if W succeeds today. For the avoidance of doubt, I am not dealing with custody issues.
- 23 H believes the Dubai court is aware of the English proceedings. W's counsel tells me that, although the English proceedings paperwork was handed to a court attendant in December, I believe, there is no evidence to suggest that the Dubai court in February had any awareness of the English proceedings.
- 24 On balance, it seems to me that the English court is the appropriate court for these divorce proceedings. The parties are UK nationals and their property is in England. The English court is already dealing with the financial remedy application by W and the Dubai court would not be in a position to deal with the financial remedy proceedings, which have to take place, if there is no agreement, to sort out the financial outcome of this long marriage.

25 I am concerned that a previous hearing, at least one, was conducted in the Dubai court in Arabic with no interpreter being available for either party. Proceedings in this country would be in English, which is the language both parties speak, and the parties, as they have done today, could attend remotely for the interlocutory hearings and could apply for the final hearing also to take place remotely.

26 It is also the case that the English court proceedings are the first in time. I recognise that H may not have realised that English court proceedings were taking place when he issued his Dubai proceedings, but it does not appear that H has told the Dubai court of the English proceedings, even in the February hearing. There is no mention in the transcript of the decision in Dubai on 23 February 2023 of the English proceedings and the judgment seems to be on the basis that neither party has involved the English court, because in the transcript it says:

“Whereas the two parties are not of the UAE nationality, and neither of them adhered to the application of the law of their country so the law of the United Arab Emirates must be applied”.

I interpret that as saying that the Dubai court was not aware that there had already been a conditional order of divorce, the equivalent of a decree nisi under the old law, in existence in this country.

27 For all these reasons, it is my judgment that the *forum conveniens*, the appropriate court for these divorce and financial remedy proceedings, is the English court. Other than the physical presence of the parties in Dubai and H’s apparent intention not to return to the UK, I do not see a reason for the divorce to be in Dubai and I see plenty of reasons for the divorce to be in England.

28 The application W has made for her conditional order of divorce to be made final I will deal with now and I shall inform the CTSC (the divorce centre) to make the final order today, if at all possible, otherwise I would expect it to be tomorrow.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge

