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UK: Ex-wife cannot claim increased maintenance to compensate for lost capital

Thursday, 19 July, 2018

The UK Supreme Court has ruled that Maria Mills is not entitled to higher maintenance payments from her husband to make up for the fact that she has lost most of the capital sum she was granted on their divorce 16 years ago.

The couple divorced in 2002, after a long marriage. Maria Mills was granted a GBP230,000 cash settlement – most of the couple's liquid assets – plus a lifetime maintenance order of GBP13,200 per annum.

The capital settlement was intended to allow Mrs Mills to buy a home, mortgage-free, for herself and their son. She was, at the time, in poor health and could not work, so was not likely to be able to get a mortgage, it was argued. However, she did in fact borrow over GBP100,000 to buy a house for GBP345,000. A series of trading-up sales and purchases over the next 15 years over-committed her, and by 2015 she had lost all her capital, owed GBP42,000, and was living in rented accommodation.

At that point, Graham Mills applied to have her periodical payments stopped, or at least reduced, on the grounds that she should now be able to earn her own living. Maria Mills cross-applied to have her periodical payments increased, because she could no longer afford to pay the rent, which had not of course been factored into the original award.

In February 2017, the case went to the England and Wales Court of Appeal (EWCA), which agreed with Maria Mills and increased her annual maintenance to GBP17,292.

Her ex-husband then took the case to the Supreme Court, arguing that the EWCA was wrong to take Maria Mills' housing costs into account, these having already been incorporated in the original consent order.

The case was heard in June, and the court has now delivered judgment in favour of Graham Mills. It unanimously agreed with him that provision for Mrs Mills' housing needs had already been made in the 2002 capital settlement, and it was unfair to ask him to pay twice when her situation was a result of choices she had herself made after the settlement.

The EWCA should, said the Supreme Court, have considered the impact of the original capital payment on the wife's current need to pay rent, and that the first instance judge was obliged to decline to require the husband to fully fund the payment of her rent.

'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', it commented (*Mills* v *Mills*, 2018 UKSC 38).

'The Supreme Court's ruling today endorses the equitable principle that you cannot have two bites of the cherry in respect of a capital claim, despite having a maintenance claim still open', commented Charmaine Hast, of law firm Wedlake Bell. 'The effect of this judgment will be to send a message to those who have already received a divorce settlement that there will be no more capital after this even under the guise of the word maintenance. Perhaps the English courts will now no longer pander to those who make risky financial decisions post-divorce, believing that they can always go back for more capital.'

However, Mrs Mills' joint lives maintenance award against her ex-husband remains in place, so press reporting of the ruling as 'the end of the meal ticket for life' are exaggerated.

The judgment does, however, emphasise that the English courts are increasingly looking to encourage spouses to have financial independence from one another, commented Ros Bever of law firm Irwin Mitchell.

Ultimately, though, only a change in the legislation – such as the *Divorce (Financial Provision) Bill 2017-19*, proposed by Baroness Deech – can bring about real change in spousal maintenance claims. 'Until that time, England will remain regarded as the divorce capital of the world', remarked barrister Charles Hale at 4PB.

Sources

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- Irwin Mitchell
- Kingsley Napley

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