

The Meaning of Maintenance in the Brussels I Regulation

James Bernard Moore v Kim Marie Moore [2007] EWCA Civ 361 (handed down on 20 April 2007).

A former husband's application to the Spanish court was an application for the division of the wealth or assets to which the former married couple had a claim and was not related to maintenance within the meaning of Regulation 44/2001 Art.5(2).

The appellant husband (H) appealed against a decision giving his former wife (W) leave to apply for orders for financial relief pursuant to the Matrimonial and Family Proceedings Act 1984 Part III. H and W had separated after being married for the last five years of a relationship lasting over 15 years. They had three children. They had emigrated to Spain for tax reasons. H had filed for divorce in Spain. He had offered to pay W £6 million in addition to such properties as were registered in her name. W issued a divorce petition in England, which was stayed in accordance with the provisions of Council Regulation 1347/2000. H then applied for the Spanish court to deal with the financial aspects of the divorce but on the basis that English law applied.

The Spanish court declined to deal with the financial claims and H appealed against that decision. Meanwhile W had obtained leave under s.13 of the 1984 Act to apply for financial relief after an overseas divorce. H applied to set aside that leave. The judge confirmed the leave obtained by W, holding that H's application in Spain was not a claim for maintenance within Regulation 44/2001 Art.5(2) and that there was a close connection with England, which made England the appropriate venue. H submitted that (1) the judge had been wrong to hold that his application to the Spanish court was not to be characterised as relating to maintenance within Regulation 44/2001 Art.5(2); (2) the judge should have stayed the English proceedings as related proceedings under Regulation 44/2001 Art.27 or Art.28 on the basis that H's Spanish proceedings remained on foot; (3) leave should not have been granted under s.13 of the Act.

The Court of Appeal (Thorpe LJ, Lawrence Collins LJ, Munby J) held that:

- Whether an application was to be regarded as a matter relating to maintenance depended not on Spanish law, nor on English law, but on the autonomous concept of Community law derived from the judgments of the European Court of Justice, *De Cavel v De Cavel* (143/78) (1979) ECR 1055, *De Cavel v De Cavel* (120/79) (1980) ECR 731 and *Van den Boogaard v Laumen* (C220/95) (1997) QB 759 applied. On that basis H's application was plainly not related to maintenance, but was an application for the division of the wealth or assets to which the couple had a claim. The essential object of H's application was to achieve sharing of the property on his terms rather than an order based on financial needs, *Miller v Miller* (2006) UKHL 24, (2006) 2 AC 618 considered. Consequently the application was not a matter relating to maintenance for the purposes of Regulation 44/2001 Art.5(2).
- Since H's application was not a matter relating to maintenance within Regulation 44/2001 Art.5(2), there was no basis for the application of Art.27 or 28 even if those proceedings were still pending, and it was not necessary to decide whether Art.27 applied where the court first seised had declared that it was without jurisdiction but an appeal was pending.
- The judge had been entitled to find that the connection with England was overwhelming for the purposes of s.13 and s.16 of the 1984 Act and that W had established a substantial ground for making her application. There was no error in the judge's approach or conclusion.

Source: Lawtel.