

SUPREME COURT OF QUEENSLAND

CITATION: *Pavitt v Pavitt* [2018] QSC 77

PARTIES: **JOHN PAVITT**
(Applicant)
v
TINA PAVITT
(Respondent)

FILE NO/S: 34 of 2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 18 April 2018

DELIVERED AT: Cairns

HEARING DATE: 23 February 2018, 13 April 2018

JUDGE: Henry J

ORDER: **Application dismissed.**

CATCHWORDS: PRACTICE – REGISTRATION OF FOREIGN JUDGMENT - where the applicant had a judgment against the respondent in England and sought to have that judgment registered in this court

PRIVATE INTERNATIONAL LAW – FOREIGN JUDGMENTS – EFFECT AND ENFORCEMENT – whether UK Family Court is an inferior court specified in *Foreign Judgments Act 1991* (Cth)

In The Marriage of Gilmore (1993) 110 FLC 311
County Courts Act 1984 (UK), cited
Crime and Courts Act 2013 (UK)
Foreign Judgments Act 1991 (Cth) ss 3,5, 6
Foreign Judgments Regulations 1992 (Cth) s 5
Matrimony and Family Proceedings Act 1984 (UK)
Stroud’s Judicial Dictionary of Words and Phrases

COUNSEL: J Jacobs for the applicant

SOLICITORS: The Law Office for applicant
Self-represented respondent

[1] The applicant seeks the registration in Australia of a judgment by the Family Court at Barnstaple, United Kingdom, against his Cairns based former wife. At issue is whether

the judgment is registrable pursuant to s 6 *Foreign Judgments Act 1991* (Cth) (“the Act”).¹

The application

[2] The substantive orders sought by the application are:

- “1. The judgment of Barnstaple Family Court of the United Kingdom dated 5 September 2017, whereby it was ordered that Tina Pavitt pay to John Pavitt the sum of £133,326.70 together with interest and costs of £4,809.70 be registered under Part 2 of the *Foreign Judgments Act 1991* (Cth) or otherwise on any such basis that the court may consider appropriate.
2. The amount payable by the judgment debtor to the judgment creditor is \$224,485.46:
 - a. \$216,669.22 on account of the amount ordered to be paid;
 and
 - b. on account of interests and costs \$7,816.24.”

[3] The application first came before me on 23 February 2018. In the course of argument at that time I expressed concern as to the inadequacy of information before me to show the judgment of the court in question was registrable under s 6 of the Act. I afforded the applicant the opportunity of an adjournment in order to further research the issue.

The judgment

[4] The exhibited sealed certified copy of the judgment demonstrates the judgment was given by District Judge Griffiths sitting at the Family Court at Barnstaple, the Law Courts, North Walk, Barnstaple, N Devon. The judgment stated, inter alia:

“IT IS ORDERED THAT, WITH EFFECT FROM THE DATE OF DECREE ABSOLUTE:

1. The respondent shall forthwith transfer to the applicant all her legal and beneficial interest and estate in the property at 2 Searle Terrace, Northam, Bideford, Devon, EX391DD, UK registered under UK land registry under title number DN370138 subject to the mortgage secured thereon in favour of Nationwide under account number 83027194098
2. Pursuant to paragraph 1 of this order, the respondent shall, forthwith upon service upon her of the Transfer required to effect paragraph 1 of this order, sign and execute the Transfer document and any other document required to give effect to this order, and forthwith return the signed documents to the Applicant’s solicitors by post.

¹ It is unnecessary to consider whether, if registered, it could be set aside, for instance by reason of it having been an action in personam in connection with a matrimonial matter or related to property over which the court had no jurisdiction - see ss 3 and 7 of the Act and *In The Marriage of Gilmore* (1993) 110 FLC 311, 330.

3. In the event that the Respondent refuses or fails, within 28 days of service upon the Respondent of a formal request and copies of the documents required, to execute the Transfer or any other document required to effect the transfer of property ordered by paragraph 1 of this order, a District Judge of the Family Court (County Court) of Exeter or Barnstaple shall be empowered to sign and execute the required documents on the Respondent's behalf, pursuant to the provisions of Section 39 of the Senior Courts Act 1981 (formerly Supreme Court Act 1981) and Section 38 of the County Courts Act 1984.

4. The Respondent shall pay or cause to be paid to the Applicant a lump sum of £128,517 on or before 4 pm on 4 December 2017

5. Upon compliance with paragraphs 1 and 4 of this order, all the Applicant's and the Respondent's claims for financial provision, pension sharing and property adjustment shall stand dismissed and neither the Applicant nor the Respondent shall be entitled to make any further application in relation to their marriage under the Matrimonial Causes Act 1973 Section 23(1)(a) or (b) or under the terms of the Married Women's Property Act 1882.

4.(sic – 6.) The court considering it just so to order, neither party shall be entitled, upon the death of the other, to make any application to the court for provision under the Inheritance (Provision for family and dependents) Act 1975

5. (sic – 7.) The Respondent shall pay or cause to be paid to the Applicant £4,809.70 towards the Applicant's legal costs of and occasioned by these financial remedy proceedings, such payment to be made by 4 pm 4 December 2017."

- [5] The judgment is dated 5 September 2017. The decree nisi absolute referred to in the judgment was dated 11 September 2017.
- [6] As is obvious from a comparison of the orders sought with the content of the orders given in the judgment, the applicant is requesting the registration of that component of the judgment which ordered the respondent in paragraph 4 thereof to pay a lump sum of £128,517 and in the final paragraph thereof a sum of £4,809.70 by way of costs.

Relevant statutory provisions

- [7] The Act provides for the enforcement of foreign judgments in the Commonwealth of Australia. In Part 2 of the Act, s 6 relevantly provides:

“6. Application for, and effect of, registration of foreign judgments

- (1) A judgment creditor under a judgment to which this Part applies may apply to the appropriate court at any time within 6 years after:
- (a) the date of the judgment; or

- (b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment in those proceedings;
to have the judgment registered in the court.

(2) For the purposes of subsection (1), the appropriate court is:

- (a) if the judgment is a money judgment and was given in proceedings in which a matter for determination arises under the Commerce Act 1986 of New Zealand (other than proceedings in which a matter for determination arises under section 36A, 98H or 99A of that Act) – the Federal Court of Australia or the Supreme Court of a State or Territory; or
- (b) if the judgment is not a money judgment and was given in such proceedings – the Federal Court of Australia; or
- (c) in any other case – the Supreme Court of a State or Territory.

(3) Subject to this Act and to proof of the matters prescribed by the applicable Rules of Court, if an application is made under this section, the Supreme Court of a State or Territory or the Federal Court of Australia is to order the judgment to be registered. ...

(13) If, on an application to a court for the registration of a judgment, it appears to the court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered, the judgment may be registered in respect of those provisions, but not in respect of any other provisions contained in it. ...”

[8] As to the type of judgment to which Part 2 of the Act applies, s 5(4) provides:

“This Part applies to an enforceable money judgment that:

- (a) is final and conclusive; and
- (b) was given in:
- (i) a superior court of a country in relation to which this Part extends; or
- (ii) any inferior court of such a country, being an inferior court in relation to which this Part extends.” (emphasis added)

[9] Section 5(1) and (3) contemplate the Act’s regulations provide for which countries have superior courts to which the Part extends and for which of the specified inferior courts of such a country are courts to which Part 2 extends.

[10] The schedule to the *Foreign Judgments Regulations 1992* identifies the Supreme Court of the United Kingdom, Senior Courts of England and Wales, Court of Judicature of Northern Ireland and Court of Session as superior courts to which the Act applies.

- [11] The applicant does not allege the Family Court in the UK is a superior court to which Part 2 of the Act applies. His argument is that it is an inferior court, to which Part 2 of the Act applies.
- [12] As to inferior courts of the United Kingdom, Section 5(2) of the *Foreign Judgments Regulations 1992* provides:

“Part 2 of the Act extends in relation to the following inferior courts of the United Kingdom:

- (a) County Courts (England and Wales);
- (b) County Courts (Northern Ireland);
- (c) Sheriff Courts (Scotland).”

Thus it can be seen the Family Court is not one of the inferior courts of the United Kingdom specified in the Regulations.

Discussion

- [13] One of the uncertified exhibited copies of the judgment sought to be enforced described the proceeding as having been “Before District Judge Griffiths, sitting at the Barnstaple County Court ..., Devon, UK” but in the same document the particulars of the proceeding in which the order was made were headed, “In the Family Court in Barnstaple”. It is likely that while the order was made by a judge sitting in a geographic sense at a location which may be known as Barnstaple County Court, the court in which the order was made was the Family Court. In any event the certified exhibited copy of the judgment which I must consider is unambiguous as to the fact it was a judgment of the Family Court in Barnstaple.
- [14] In the United Kingdom the Family Court was established by s 17(3) *Crime and Courts Act 2013* (UK) which inserted s 31A into the *Matrimony and Family Proceedings Act 1984* (UK). Section 31A provides:

“31A Establishment of the family court

- (1) There is to be a court in England and Wales, called the family court, for the purpose of exercising the jurisdiction and powers conferred on it –
 - (a) by or under this or any other Act, or
 - (b) by or under any Act, or Measure, of the National Assembly for Wales.
- (2) The family court is to be a court of record and have a seal.”

- [15] Section 31C of the *Matrimony and Family Proceedings Act 1984* (UK) contains a long list of a variety of judicial officers as judges of the Family Court, including, at 31C(1)(n), a district judge.
- [16] Section 31E of the *Matrimony and Family Proceedings Act 1984* (UK) provides, inter alia:

“(1) In any proceedings in the family court the court may make any order –

- (a) which could be made by the High Court if the proceedings were in the High Court, or
 - (b) which could be made by the County Court if the proceedings were in the County Court ...
- (3) Subsection (1) is subject to section 38(3) of the *County Courts Act 1984*.”

Section 38(3) of the *County Courts Act 1984* (UK) provides that neither the County Court nor the Family Court has power to order mandamus certiorari or prohibition or make any order of a prescribed kind.

- [17] The applicant emphasises that where, as here, a District Judge sits in the Family Court, that Judge has the same power as a County Court Judge and has a similar restriction on the power to order certain remedies as a Judge sitting in the County Court. In short, it is submitted that because the judgment was given by a District Judge sitting in the Family Court, it has equivalence to a judgment given by a County Court.
- [18] However s 5(3) of the Act does not refer to inferior courts of a kind similar to, or with powers similar to, those specified in the Regulations. Section s 5(2) of the *Foreign Judgments Regulations* lists the specific inferior courts of the United Kingdom to which Part 2 of the Act extends. The fact that the courts listed by it, relevantly “County Courts (England and Wales)”, may be presided over by judges who are empowered similarly to some judges sitting in the Family Courts in the United Kingdom does not mean that a Family Court when presided over by a District Judge, becomes a County Court. It remains, as the certified copy of the judgment described it, the Family Court.
- [19] This is all the more obvious when it is appreciated that in the United Kingdom the County Court and the Family Court are separately established courts. It will be recalled that s 17(3) *Crime and Courts Act 2013* (UK) inserted a provision in the *Matrimony and Family Proceedings Act 1984* (UK) establishing the Family Court. It is noteworthy that, in a like move, s 17(1) *Crime and Courts Act 2013* (UK) inserted at the beginning of the *County Courts Act 1984* (UK) a similar provision establishing the County Court, namely:
- “A1 Establishment of a single county court**
- (1) There is to be a court in England and Wales, called the county court, for the purpose of exercising the jurisdiction and powers conferred on it –
- (a) by or under this or any other Act, or
 - (b) by or under any Act, or Measure, of the National Assembly for Wales.
- (2) The county court is to be a court of record and have a seal.”
- [20] That the County Court and the Family Court are two separately established courts is powerful evidence that in the United Kingdom Family Courts are not County Courts. The inferior courts to which Part 2 *Foreign Judgments Act 1991* (Cth) applies are, according to section 5(3) those “specified” in the regulations. The Family Courts of the

United Kingdom, as with a variety of other inferior courts of the United Kingdom,² are not so specified.

Orders

[21] It follows the judgment is not registrable and that the application should be dismissed.

[22] The respondent was self-represented and there being no indication of her having incurred legal or registry fees, I will refrain from making any order as to costs.

[23] My order is:

Application dismissed.

² Examples of which appear in the definition of “inferior courts” in *Stroud’s Judicial Dictionary of Words and Phrases*, Ninth Edition pp 1252, 1253.