

**PARODY v. PARODY**

SUPREME COURT (Pizzarello, Ag. C.J.): October 28th, 1997

*Family Law—financial provision—disclosure of assets—no order for production of documents by third party under English Family Proceedings Rules—inapplicable in Gibraltar*

The respondent in divorce proceedings applied for an order for the production of documents by a third party, under the English Family Proceedings Rules 1991, r.2.62(7).

She submitted that the rules applied in Gibraltar (a) by virtue of the Supreme Court Rules, r.8(1) because there was no equivalent to r.2.62(7) in force in Gibraltar; (b) since “family proceedings” for the purposes of the 1991 Rules were proceedings “in the High Court which are ... assigned to the Family Division ...”; and (c) under the Supreme Court Rules, r.8(3)(b), rules which related to a Division of the High Court applied to causes or matters here which would be assigned to that Division.

The petitioner submitted in reply that the Family Proceedings Rules did not apply to Gibraltar since (a) they had been made under the Children Act 1989, which created an entirely different regime to that under the Matrimonial Causes Act 1973, on which the Gibraltar Matrimonial Causes Ordinance was modelled; and (b) the area of law governed by the Family Proceedings Rules was already covered by the earlier English rules which were applied to Gibraltar under the Supreme Court Rules, r.8(2)(b).

**Held**, dismissing the application:

The court had no jurisdiction to make the order requested by the respondent, since, under the Supreme Court Rules, r.8(1), currently applicable English High Court rules (in this case the Family Proceedings Rules 1991) were to apply in Gibraltar only if no other provision was made by rules or legislation here. Since r.8(2)(b) of the Supreme Court Rules provided that the Matrimonial Causes Rules 1957 and amendments thereto applied in Gibraltar and since those rules covered substantially the same ground as the 1991 Rules, r.2.62(7) did not apply here and the application would be dismissed (page 203, line 39 – page 204 line 8).

**Legislation construed:**

Supreme Court Ordinance (1984 Edition), s.15: The relevant terms of this section are set out at page 203, lines 10–15.

Supreme Court Rules (1984 Edition), r.8(1): The relevant terms of this sub-rule are set out at page 203, line 44 – page 204, line 3.

r.8(2): “The following rules, formerly in force in England, shall apply in the court, to the exclusion of any rules which in England replace them—

...

(b) the Matrimonial Causes Rules, 1957 (S.I. 1957 No. 619, as amended by S.I. 1957 Nos. 1177 and 2202; 1958 No. 2082; 1959 No. 1958; 1960 Nos. 477, 544, 1213 and 1261; 1961 Nos. 1082 and 2364; 1962 Nos. 839 and 2615; and 1963 No. 989).”

(3): The relevant terms of this sub-rule are set out at page 202, line 39 – page 203, line 2.

Family Proceedings Rules 1991 (S.I. 1991/1247), r.1.2(1): The relevant terms of this paragraph are set out at page 203, lines 33–34.

r.2.62(7): “Any party may apply to the court for an order that any person do attend an appointment (a ‘production appointment’) before the court and produce any documents to be specified or described in the order, the production of which appears to the court to be necessary for disposing fairly of the application for ancillary relief or for saving costs.”

Matrimonial and Family Proceedings Act 1984 (c.42), s.32: The relevant terms of this section are set out at page 203, lines 30–32.

*E.C. Ellul* for the petitioner;

*Ms. J.A. Evans* for the respondent.

**PIZZARELLO, Ag. C.J.:** Miss Evans applies for a witness order pursuant to the Family Proceedings Rules 1991 (“FPR 1991”), r.2.62(7) requiring Ruth Cooper and Gary Cooper to attend a production hearing on a date to be fixed, for the purpose of producing to the court documentary proof of certain bank accounts of the petitioner and other persons. The position in England is governed by the FPR 1991. Miss Evans submits that the position is the same in Gibraltar. The FPR 1991 are not specifically cited in the Supreme Court Rules as being applicable (see r.8(2)(b)) but she submits that pursuant to r.8(3)(b), the English provisions have effect because the FPR 1991 “refer or relate to a Division of the High Court” and “shall apply to such causes or matters as would, in England, be assigned to that Division” and there is no provision in Gibraltar which covers the same ground as r.2.62(7) of the FPR 1991. Rule 8(3) of the Supreme Court Rules reads as follows:

“The rules applied by sub-rules (1) and (2) shall apply mutatis mutandis and so far only as the circumstances of Gibraltar may permit; and, without prejudice to the generality of the foregoing—

(a) any reference to an English Act shall, where there is a corresponding Gibraltar Ordinance, be read as a reference to that Ordinance; and

(b) rules which refer or relate to a Division of the High Court

shall apply to such causes and matters as would, in England,  
be assigned to that Division.”

Mr. Ellul protests that the application is misconceived. The court has no  
power to make the order sought as it means impinging on the affairs of  
5 third parties. A court is reluctant to bring in third parties and the right to  
subpoena is a right which the court will exercise only in exceptional  
circumstances. The question whether English practice and procedure can  
be invoked is governed by s.15 of the Supreme Court Ordinance. This  
reads as follows:

10 “The jurisdiction vested in the court shall be exercised (as far as  
regards practice and procedure) in the manner provided by this or  
any other Ordinance or by such rules as may be made pursuant to  
this Ordinance or any other Ordinance and in default thereof, in  
substantial conformity with the law and practice for the time being  
15 observed in England in the High Court of Justice.”

The FPR 1991 are, he submits, made under English legislation which is in  
no way comparable to Gibraltar legislation. He submits that these rules  
are made under the Children Act which provides for a totally new regime,  
which is vastly different in England to that under the Matrimonial Causes  
20 Act 1973—which is the Act to which the Matrimonial Causes Ordinance  
relates—and so statutory instruments made under any other Act ought not  
to be brought into effect in Gibraltar without the specific intent of the law  
maker, even if the English procedures are sensible and lead to a saving of  
court time and costs.

25 Miss Evans does not accept this approach. She submits that whatever  
the origin in England of the FPR 1991 may be, the Children Act 1989  
refers to family proceedings as meaning, for the purpose of that Act, the  
Matrimonial Causes Act 1973. By the Matrimonial and Family  
Proceedings Act 1984, s.32 “family proceedings” are, in effect,  
30 proceedings “of any description which in the High Court [are] for the  
time being assigned to the Family Division and to no other Division by or  
under . . . the Supreme Court Act 1981 . . .” and since in the FPR 1991,  
r.1.2(1) the expression “‘family proceedings’ has the meaning assigned to  
it by section 32 of the Act of 1984 . . .” this clearly brings the matter full  
35 circle as being under the umbrella of the Family Court, which is the  
divorce and matrimonial jurisdiction of this court. This is very important  
as there would be a great saving of time and costs which would reflect on  
the Legal Aid resources.

I have looked at the FPR 1991. Part II deals with Matrimonial Causes,  
40 under which r.2.62(7) falls. In my view, Part II of the FPR 1991 covers  
essentially what is covered by the Supreme Court Rules, r.8(2)(b). There  
being no specific provision in Gibraltar, the matter is governed by r.8(1)  
which states:

45 “Where no other provision is made by these rules or by any other  
Ordinance, rule or regulation in force in Gibraltar, and subject to the

express provisions of these rules, the rules of court that apply for the time being in England in the High Court shall apply to all original civil proceedings in the court.”

The expression “where no other provision is made by these rules” in r.8(1) in conjunction with the expression “to the exclusion of any rules which in England replace them. . .” (setting out particular and successive Matrimonial Causes Rules) in r.8(2), it seems to me that r.2.62(7) regrettably has no effect in Gibraltar.

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*Application dismissed.*

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