[2003–04 Gib LR 425]

CARUANA v. CARUANA

SUPREME COURT (Schofield, C.J.): April 6th, 2004

Family Law—divorce—costs—broad scope of Supreme Court Rules, r.50 allows courts to apply costs regime of CPR even though other matrimonial issues excepted from CPR

An application was made for a decision upon whether the costs regime in Gibraltar in matrimonial causes was that existing under the Civil Procedure Rules or that under the Rules of the Supreme Court, O.62, r.22.

In matrimonial proceedings between the parties the Registrar awarded costs against the respondent and, when he failed to respond to the petitioner's bill of costs, the Registrar, applying the CPR, issued a default costs certificate.

The respondent, in objecting to the issue of the costs certificate, submitted that (a) the Supreme Court Rules adopted the CPR into Gibraltar law, but expressly excluded them from the practice and procedure, including issues of costs, in matrimonial causes; (b) the procedure for matrimonial causes in Gibraltar should be the same as the English procedure as it was on April 10th, 1968, pursuant to rr. 6 and 7 of the Supreme Court Rules, and the assessment of costs in matrimonial causes should therefore be governed by the Rules of the Supreme Court, O.62; (c) this was supported by the fact that when English law adopted the CPR, matrimonial causes were specifically taken out of their scope, and in order to bring costs under them a specific exception had to be made in the rules, of which there was none in Gibraltar law; and (d) the Rules of the Supreme Court, O.62, r.22 should therefore have been applied rather than the CPR, and under that rule he should have been given notice of the assessment of the petitioner's bill of costs.

Held, making the following ruling:

The Registrar had been correct in following the procedure laid down in the CPR as regards costs in matrimonial causes. Rule 50 of the Supreme Court Rules, in stating that costs ought to be awarded in accordance with the practice and procedure in force in England, was meant to apply to all civil matters. Matrimonial causes had been specifically excepted from the application of the CPR in Gibraltar because of the inherent differences between the substantive law in England and Gibraltar—but this did not apply to the costs regime, in which there need be no differences, and so the costs regime of the CPR had been correctly applied by the Registrar (para. 9; para. 11).

Legislation construed:
Supreme Court Rules (L.N. 2000/031), r.6(1): The relevant terms of this paragraph are set out at para. 2.
r.6(2): The relevant terms of this paragraph are set out at para. 3.
r.6(3): The relevant terms of this paragraph are set out at para. 4.
r.7: The relevant terms of this rule are set out at para. 5.
r.50: The relevant terms of this rule are set out at para. 9.

Matrimonial Causes Rules 1957 (S.I. 1957/619), r.68:
"(1) . . . The bill shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill who shall give the other parties to be heard on the taxation at least three clear days' notice of appointment, and shall at the same time . . . deliver to them a copy of the bill to be taxed."

Rules of the Supreme Court (No. 3), 1959 (S.I. 1959/1958), O.62, r.22:
"(2) . . . [A] party who has begun proceedings for taxation . . . must . . . give to any other party entitled to be heard in the taxation proceedings to which the notice relates not less than four days' notice of the day and time appointed by the notice."

H.K. Budhrani, Q.C. for the respondent;
Ms. J.A. Evans for the petitioner.

1 **SCHOFIELD, C.J.:** In this application I am called upon to decide whether the costs regime in Gibraltar in matrimonial causes is that existing under the Civil Procedure Rules or whether the old Rules of the Supreme Court, O.62, r.22, apply. The Registrar applied the CPR and in this case, where costs were awarded against the respondent and he failed to respond to the petitioner's bill of costs, issued a default costs certificate. Mr. Budhrani has objected to that certificate and argues that the RSC, O.62, r.22 applies, under which his client is entitled to a hearing.

2 Mr. Budhrani's argument is as follows. Rule 6(1) of the Supreme Court Rules applies the English CPR to this jurisdiction, in the following terms:

> "Where no other provision is made by these rules or by any 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."

3 There are exceptions to the application of the CPR, one of which is in matrimonial causes. This exception is contained in r.6(2), which reads:

> "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)."

4 For good measure, perhaps I ought to set out here sub-r. (3) of r.6:

"The rules applied by sub-rules (1) and (2) shall apply with necessary changes 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."

5 Rule 7 is also relevant. It reads:

"Subject to the provisions of rule 3(5), English practice and procedure shall be followed—

. . .

(b) in matrimonial causes, as it was on the 10th day of April, 1968 . . ."

Rule 3(5) relates to service of documents and is not relevant to this application.

6 Mr. Budhrani's argument is that the CPR were expressly excluded from the practice and procedure in matrimonial causes in Gibraltar and we must look to the English practice and procedure as it was on April 10th, 1968 in all matters relating to matrimonial causes, including issues of costs. Rule 68 of the Matrimonial Causes Rules 1957 was revoked with effect from January 1st, 1960 by the Rules of the Supreme Court (No. 3) 1959, and from then on assessment of costs was governed by RSC, O.62. It is O.62 which applies in Gibraltar in matrimonial causes, and by O.62, r.22(2), he should have been given notice of the assessment of the petitioner's bill of costs.

7 Mr. Budhrani draws support for his argument from the fact that when the CPR were introduced in England in 1999, matrimonial causes were specifically taken out of the CPR, except for costs, which were brought under the CPR. However, it took a specific exception in the rules to bring costs in matrimonial causes under the CPR (see the Family Proceedings (Miscellaneous Amendments) Rules 1999).

8 Rule 6(2)(b) of our Supreme Court Rules specifically states that the 1957 English Matrimonial Causes Rules apply to this jurisdiction with amendments which are specifically set out in the rule. The Rules of the Supreme Court (No. 3) 1959 are not referred to therein as being incorporated into Gibraltar law. It follows that the application of RSC, O.62 was not made by the Gibraltar rules. If the effect of r.6(2)(b), together with r.7(b), is to freeze the Gibraltar practice in relation to matrimonial causes at the English practice as it was on April 10th, 1968, then the practice the Registrar should follow on assessment of costs is not that laid down in RSC, O.62, but that laid down in the Matrimonial Causes Rules 1957, r.68.

9 However, in my judgment, the question of costs is not governed by the old English practice. Rule 50 of the Supreme Court Rules must be followed. It reads: "Costs may be awarded in accordance with the practice, procedure and scales from time to time in force in the High Court in England." This rule was meant to apply to all civil matters, including those excepted from the general application of the CPR in rr. 6 and 7. The purpose of the Supreme Court Rules was to bring the practice and procedure in the civil courts in Gibraltar in line with the practice and procedure applied in England. Matrimonial causes were specifically excepted because the procedures in such causes are so different from the procedures in ordinary civil causes. Moreover, it would not be possible to adopt the English rules in matrimonial causes because the recent changes in the substantive matrimonial law in England have not been followed in Gibraltar. That is a matter of legislative policy. It would be unworkable for the English procedures to be applied in Gibraltar when the substantive law in the two jurisdictions is so different. However, none of this applies to the costs regime, where the CPR do not conflict so as to make the English costs regime unworkable. Accordingly, r.50 can apply across the board.

10 Although, perhaps, the Supreme Court Rules could have been clearer in this regard, I am fortified in this view by previous practice in relation to assessment of costs. As I say, if Mr. Budhrani's argument is correct, then this court should have been applying the pre-1968 procedure on assessment of costs in matrimonial proceedings. Instead, in applying r.54 of the former Supreme Court Rules, which has the same effect as the present r.50, assessment was conducted under the procedure set out in RSC, O.62.

11 The upshot is that I find the Registrar was correct in following the procedure laid down in the CPR.

12 Costs will follow the event.

Ruling accordingly.