the respondents have a good defence based upon their claim that they are *bona fide* purchasers for value. Further, it is not necessary to look at the balance of justice.

29 For the reasons I have given, I would allow the appeal.

30 **PARKER** and **TUCKEY, JJ.A.** concurred.

Appeal allowed.

[2010–12 Gib LR 96]

PRATTS v. PRATTS

SUPREME COURT (Dudley, C.J.): October 6th, 2010

Family Law—financial provision—costs—costs normally follow event—presumption more easily displaced than in non-matrimonial proceedings—affected by conduct during litigation—costs order may be stayed pending determination of ancillaries if child maintenance burden mainly falls on party ordered to pay

Jurisprudence—reception of English law—incorporation of English law—costs in family proceedings—English Family Proceedings Rules 1991 inapplicable in Gibraltar—by Supreme Court Rules 2000, r.7, English practice and procedure incorporated only until 1967 cut-off point

A husband and wife were engaged in matrimonial proceedings in the Supreme Court.

The wife obtained an order for the sale of the matrimonial home and the division of the proceeds. The issue of costs was adjourned and now fell to be determined.

The husband submitted that (a) the costs provisions of the English Family Proceedings Rules 1991 were incorporated into Gibraltar law by the Supreme Court Rules 2000, r.50 and the Matrimonial Causes Act 1962, s.9, such that, by the 1991 Rules, no costs order should be made in matrimonial proceedings in which both parties had acted reasonably; and (b) costs should not, therefore, follow the event.

The wife replied that (a) the English Family Proceedings Rules 1991 had no application in Gibraltar, having been made after the cut-off period in the Supreme Court Rules, s.7 for the incorporation of English practice

and procedure in matrimonial cases; and (b) she was entitled to her costs on the basis that, at common law, costs follow the event.

Held, awarding costs to the respondent:

(1) Although the Supreme Court Rules 2000, r.50 enabled costs to be awarded in accordance with the practice and procedure of the English High Court "from time to time," and although the Matrimonial Causes Act 1962, s.9 applied the practice and procedure of English law in the absence of special provisions under that Act as to costs, those provisions did not incorporate the English Family Proceedings Rules 1991. By the Supreme Court Rules, rr. 6 and 7, only the English Matrimonial Causes Rules 1957 were incorporated, together with any changes to English practice and procedure in matrimonial cases until the cut-off point of April 10th, 1967. The 1991 Rules, which post-dated this cut-off point, would therefore not be applied (para. 7).

(2) Consequently, the respondent would be entitled to costs on the basis that, at common law, costs followed the event. That presumption could be displaced more easily than in non-matrimonial proceedings, and could be affected by the manner in which parties conducted their litigation and the adequacy of their assets, especially when children were involved. In the present case, that presumption had not been displaced. However, as the burden of maintaining the children of the marriage had almost exclusively fallen on the petitioner, enforcement of the costs order would be stayed pending determination of the ancillaries (paras. 8–10).

Cases cited:

(1) *Gojkovic* v. *Gojkovic (No. 2)*, [1992] Fam. 40; [1991] 3 W.L.R. 621; [1992] 1 All E.R. 267, followed.

(2) *Parody* v. *Parody*, 1997–98 Gib LR 201, followed.

Legislation construed:

Matrimonial Causes Act 1962, s.9: The relevant terms of this section are set out at para. 3.

Supreme Court Rules 2000, r.6: The relevant terms of this rule are set out at para. 4.

r.7: "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 . . ."

r.50: The relevant terms of this rule are set out at para. 5.

R. Pilley for the petitioner;
Ms. G. Guzman for the respondent.

1 **DUDLEY, C.J.:** On May 14th, 2009, I handed down a ruling and made orders whereby, premised upon the wife's lack of capacity, I set aside a consent order entered into by the parties. The issue of costs was adjourned, given that a novel proposition was being advanced for the husband.

2 Fundamentally, the legal argument advanced is to the effect that when awarding costs in family proceedings this court should apply those parts of the English Family Proceedings Rules 1991 (as amended) which deal with costs. These essentially provide that, subject to the parties conducting the litigation reasonably, no order as to costs should be made.

3 To do merit to the submission it is necessary to set out the relevant statutory provisions applicable at the time of the substantive hearing. The Matrimonial Causes Act 1962, s.9 provides:

> "The jurisdiction vested in the court by this Act shall so far as regards procedure, practice and powers of the court be exercised in the manner provided by this Act and by any subsidiary legislation made hereunder; and where no special provision is contained in this Act or in any such subsidiary legislation with reference thereto, any such jurisdiction shall be exercised in accordance with the practice, procedure and powers for the time being in force in the High Court of Justice in England with reference to matrimonial proceedings."

4 The Supreme Court Rules (2000 Edition), r.6 provides:

> "(1) Where no other provision is made by these rules or by any Act, 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.
>
> (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 . . ."

5 Rule 7 then establishes a cut-off date to any amendments to the 1957 Rules by providing that English practice and procedure is to be followed in matrimonial cases as it was on April 10th, 1967. It is not in issue that the 1957 Rules do not have any rules as regards costs. However, the Supreme Court Rules (2000 Edition), r.50 does make provision for costs on the following terms: "Costs may be awarded in accordance with the practice, procedure and scales from time to time in force in the High Court in England."

6 In short, the argument advanced for the petitioner is to the effect that, in the absence of any other provision, by virtue of r.50, that part of the English Family Proceedings Rules 1991 dealing with costs is incorporated into Gibraltar practice and procedure

7 Despite the superficial attraction of the submission, there is a fundamental flaw in the proposition advanced, namely the specific application of the 1957 Rules with the 1967 cut-off date and the specific exclusion of English rules replacing these. Simply put, the 1957 Rules apply and the absence of specific rules as to costs cannot of itself allow for a wider trawl and the incorporation of parts of later English rules. I am fortified in this view by the decision of Pizzarello, Ag. C.J. in *Parody* v. *Parody* (2), in which, in the context of third-party disclosure, the court held that the English Family Procedure Rules 1991 did not apply in Gibraltar. To hold otherwise would bring about a wholly unsustainable position of allowing for the incorporation of secondary English legislation in circumstances where there is no equivalent primary legislation in this jurisdiction. Moreover, at a practical level it would bring uncertainty as to what rules apply in this jurisdiction.

8 For those reasons I am of the view that in determining the issue of costs in family cases the court must look at Gibraltar common law (which essentially mirrors English common law). In that regard the leading authority is *Gojkovic* v. *Gojkovic (No. 2)* (1), where it was held that in the Family Division the award of costs *prima facie* follows the event, albeit the presumption is displaced more easily than in other divisions and affected by the way parties conduct the litigation and the adequacy of assets, especially when children are involved.

9 This is a case which was, in view of the terms of the original consent order, capable of being categorized as largely academic, subject of course to the availability of sufficient assets other than the matrimonial home. That it was resisted leads me to the conclusion that there is an insufficiency of other assets from which the wife could have been compensated for any loss of her interest in the matrimonial home. In those circumstances, the wife's application was wholly justified whilst husband's resistance must have been aimed at avoiding the distribution of the main matrimonial asset. In the circumstances I see no reason why I should depart from the presumption that costs follow the event. The wife is to have the costs of and occasioned by the application to be assessed if not agreed.

10 However, I do not ignore the fact that for very many years the burden of maintaining the children of the marriage has almost exclusively fallen upon the husband. In those circumstances, enforcement of the costs is to be stayed pending determination of the ancillaries albeit with liberty to

apply to lift the stay, particularly if the determination of ancillaries is subject to delay.

Orders accordingly.

[2010–12 Gib LR 100]

EUROPEAN COMMISSION and KINGDOM OF SPAIN v. GOVERNMENTS OF GIBRALTAR and UNITED KINGDOM

COURT OF JUSTICE OF THE EUROPEAN UNION (Skouris, President; Judges Tizzano, Rodrigues, Lenaerts, Bonichot, Prechal (Presidents of Chambers), Rosas, Sciemann, Juhász, Danwitz (Rapporteur), Šváby, Berger, Jarašiūnas): February 18th, 2010

European Community Law—competition law—State aid—selective advantage—selective advantage of proposed tax regime, contrary to art. 107(2) TFEU, for Commission to prove by comparison with "normal" system of taxation for Member State/autonomous region—Commission not required to demonstrate advantageous exceptions from general rules of proposed tax regime—sufficient that proposed basis of assessment distinguishes between comparable undertakings, conferring advantages on certain undertakings when compared with previous regime

The Governments of Gibraltar and the United Kingdom, applied to the Court of First Instance (since November 30th, 2009, the General Court) to annul the decision of the European Commission that Gibraltar's proposed corporate tax reforms infringed the State aid provisions of art. 87(1) EC (art. 107(1) TFEU).

Gibraltar had announced its intention to repeal all its corporate tax laws and introduce a new tax regime for companies registered in Gibraltar. Together with the United Kingdom, it notified the Commission of its proposals. These included the introduction of a payroll tax payable by companies with employees in Gibraltar, a business property occupation tax ("BPOT") payable by companies occupying property in Gibraltar, and a registration fee that was greater for income-generating companies than those generating no income. The payroll and BPOT taxes were payable only by profit-making companies and capped at 15% of profits.

The Commission decided to initiate a formal procedure to review the proposals and invited comments from interested parties. That decision