[2023 Gib LR 604]

M v. M

SUPREME COURT (Yeats, J.): August 9th, 2023

2023/GSC/030

Family Law—divorce—jurisdiction—divorce proceedings in Gibraltar issued by Irish resident wife against Gibraltar resident husband not stayed pending determination of proceedings in Ireland issued by husband

The respondent applied for a stay of proceedings.

The petitioner wife and the respondent husband were Irish nationals. They met in Ireland and married there in 2006. They moved to Gibraltar in 2010. As a result of marital difficulties, the wife moved back to Ireland in 2020 with the parties' four children. The husband continued living in Gibraltar but spent some time in London and Ireland. He was ordinarily resident in Gibraltar. The wife filed for divorce in Gibraltar in January 2023, although her solicitors were unable formally to effect service until March 2023. The husband acknowledged service in April 2023. In the meantime, in February 2023, he issued a special summons in Ireland seeking a decree of separation or a decree of divorce. The wife acknowledged service but indicated that she would contest the jurisdiction of the Irish court. Matters in respect of custody and contact with the children were to be heard in Ireland in July 2023.

In April 2023 the wife filed a summons in Gibraltar seeking maintenance pending suit for herself and the children. The Supreme Court made orders for payment of interim maintenance which were expressed to be without prejudice to the husband's intended application for a stay. The husband filed a summons seeking a stay of the Gibraltar proceedings on the same day. The court ordered that the preliminary hearing of the divorce petition be adjourned until after determination of the husband's application for a stay.

The husband relied on the following factors to show that Ireland was the more appropriate forum: (a) other than the fact that he was ordinarily resident in Gibraltar, there were presently no links to Gibraltar; (b) the wife had issued proceedings in Ireland in relation to arrangements for the children and had therefore herself engaged the jurisdiction of the Irish courts; (c) there was no doubt that the wife would be able to obtain justice in the Irish courts, which courts might be better placed to assess financial provision; (d) resolving all matters in one jurisdiction would reduce costs, ensure matters were dealt with promptly and reduce the possibility of inconsistent judgments; (e) although the husband controlled businesses in

Gibraltar, any valuation of these businesses would not necessarily involve Gibraltar experts and there was therefore no particular advantage to Gibraltar as a jurisdiction arising from the fact that the businesses were mainly operating from Gibraltar; and (f) the purpose of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility was to provide certainty for the defendant as to where he might be sued, the husband was the defendant and he was content to be sued in Ireland.

The wife submitted that the husband was simply forum shopping. She submitted that the court should have regard to the following factors: (a) she had issued proceedings in Gibraltar first, she was the party in the financially weaker position and she should have a right to choose; (b) the Irish proceedings concerned judicial separation and the wife did not accept that the circumstances were such that the courts there could grant a divorce; (c) the recognition in Gibraltar of orders for disclosure made by the Irish courts was unproven and issues of disclosure were better resolved in Gibraltar; (d) any final order made in Ireland would need to be enforced in Gibraltar; and (e) a hearing in Ireland was unlikely to take place before January 2024.

Held, dismissing the application for a stay:

(1) On an application for a stay, the court had to consider whether the balance of fairness pointed to another jurisdiction being the more appropriate forum. The burden of proof was on the party seeking the stay. If the court considered that another jurisdiction was *prima facie* the appropriate forum for the trial of the action, the court would then determine whether the party who opposed the stay had shown that justice required that the trial should nevertheless take place here (para. 25).

(2) The husband had not shown that the balance of fairness was such that it was appropriate for the proceedings in Ireland to be disposed of before any further steps were taken in Gibraltar. The court did not consider any of the connecting factors relied on by the parties to be particularly decisive. Whilst the proceedings in Ireland could no doubt also fairly deal with the issues arising from the break-up of the marriage, the court did not consider that Ireland was any more appropriate a forum than Gibraltar. Jurisdiction in Gibraltar was properly established. The wife was entitled to issue the proceedings. Gibraltar was clearly an appropriate forum because the parties lived here for the better part of their married lives; the businesses were established, grew and remained operating mainly from Gibraltar; and the husband, who was the paying party, was ordinarily resident here. The husband's application for a stay of the proceedings would be dismissed (paras. 49–51).

Cases cited:

(1) *A* v. *B*, Case No. C-489/14; [2015] Fam. Law 1466; [2016] 3 W.L.R. 607; [2016] Fam. 345; [2016] 1 FLR 31; [2016] 1 F.C.R. 303; [2016] ILPr 10, considered.

(2) *Butler* v. *Butler*, [1998] 1 W.L.R. 1208, followed.
(3) *Chai* v. *Peng*, [2014] EWHC 3518 (Fam), considered.
(4) *de Dampierre* v. *de Dampierre*, [1988] A.C. 92; [1987] 2 All E.R. 1, considered.
(5) *JKN* v. *JCN*, [2010] EWHC 843 (Fam); [2010] Fam. Law 796; [2011] 1 FLR 826; [2011] 2 F.C.R. 33, considered.
(6) *Krenge* v. *Krenge*, [1999] 1 FLR 969, considered.
(7) *Spiliada Maritime Corp.* v. *Cansulex Ltd. ("The Spiliada")*, [1987] A.C. 460; [1986] 3 W.L.R. 972; [1986] 3 All E.R. 843; [1987] 1 Lloyd's Rep. 1, considered.
(8) *T* v. *P (Jurisdiction: Lugano Convention & Forum Conveniens)*, [2013] 1 FLR 478, considered.
(9) *V (European Maintenance Regulation)*, *Re*, [2016] EWHC 668 (Fam); [2017] 1 FLR 1083; [2016] Fam. Law 682, considered.
(10) *Villiers* v. *Villiers*, [2020] UKSC 30; [2021] A.C. 838; [2020] 3 W.L.R. 171; [2021] 1 All E.R. 175; [2020] 2 FLR 917; [2020] 2 F.C.R. 815, considered.

Legislation construed:

Matrimonial Causes Act, s.8: The relevant terms of this section are set out at para. 1.

Schedule, para. 3: The relevant terms of this paragraph are set out at para. 19.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, art. 3(1):

"1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:
- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses."

art. 19: The relevant terms of this article are set out at para. 16.

N. Anderson with *J. Hawkins* and *J. Hammond* (instructed by Ellul & Co.) for the petitioner;
P. Caruana, *K.C.* and *C. Allan* (instructed by Peter Caruana & Co.) for the respondent.

JUDGMENT (No. 1)

1 **YEATS, J.:** There are two applications before the court. The first, an application by the petitioner wife ("the wife") for interim relief pending suit. The second an application by the respondent husband ("the husband") for a stay of these proceedings in favour of proceedings which he has instituted in the Republic of Ireland. This first judgment deals with the husband's application which, for obvious reasons, should be determined first.

2 The husband and the wife are both Irish nationals. They met in Ireland and married there in 2006. They moved to Gibraltar in 2010. They have four children all of whom are between 7 and 15 years of age. As a result of marital difficulties, the wife and the children moved back to Ireland on or around August 2020. The husband continued living in Gibraltar but spent time in London and Ireland. Attempts at reconciliation were made, but the husband eventually left the family home on December 26th, 2022. The husband is ordinarily resident in Gibraltar.

3 The wife filed a petition for divorce here in Gibraltar on January 4th, 2023. On January 13th, 2023, the wife's solicitors emailed the husband informing him that proceedings had been issued and inviting him to propose arrangements for service of the petition. The husband's London solicitors responded to the communication on January 13th, 2023 but they did not confirm that they were instructed to accept service. The wife's solicitors were unable to formally effect service until March 3rd, 2023. In the meantime, on February 9th, 2023, the husband issued a special summons in the High Court of Ireland seeking a decree of separation or, in the alternative, a decree of divorce. A short summary/chronology of the steps taken in both the proceedings in Gibraltar and in Ireland is the following.

The Gibraltar proceedings

4 On April 3rd, 2023, the husband acknowledged service by filing his form M3.

5 Also on April 3rd, 2023, the wife filed a summons seeking maintenance pending suit for herself and the children pursuant to s.33 and s.47 of the Matrimonial Causes Act. The matter was listed for April 26th, 2023.

6 On April 24th, 2023, the husband applied for an adjournment of the interim financial relief application pending determination of an application for a stay which he intended to make.

7 On April 26th, 2023, this court made orders for payment of interim maintenance which were expressed to be without prejudice to the husband's intended application for a stay. The husband filed a summons seeking a stay of the Gibraltar proceedings on that same date.

8 On May 16th, 2023, the court made an order by consent that the preliminary hearing of the divorce petition, which the court had listed for May 19th, 2023, was to be adjourned until after the husband's application for a stay is determined.

The Irish proceedings

9 The husband filed the special summons in Ireland on February 9th, 2023. The wife acknowledged service on February 23rd, 2023 but indicated that she would be contesting the jurisdiction of the Irish court.

10 On March 16th, 2023, the husband filed a notice of motion seeking orders for contact with the children and for interim maintenance. This was set down for April 17th, 2023. On April 17th, 2023, the court made directions and adjourned the matter to May 3rd, 2023.

11 On March 28th, 2023, the wife filed a special summons for custody of the children and orders with regards to access. On March 29th, 2023, she filed a notice of motion seeking directions. By further notice of motion dated April 4th, 2023, the wife sought an order relating to holiday contact with the children. (In relation to this last notice of motion, the court made an order by consent on April 7th, 2023.)

12 On May 3rd, 2023, the court gave directions on the husband's notice of motion of March 16th, 2023 and the wife's notice of motion dated March 29th, 2023. The matters were adjourned to June 12th, 2023. This was subsequently re-listed for July 20th, 2023.

13 Separately to the above, the wife made an *ex parte* application for a protection order on February 28th, 2023. The District Court made an order and set a return date of July 5th, 2023. By summons dated March 23rd, 2023, the husband applied for a safety order against the wife. That was also set down for July 5th, 2023.

Council Regulation (EC) No 2201/2003

14 Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ("the Regulation") applies to this case notwithstanding the United Kingdom's withdrawal from the European Union. This is because it was retained as part of Gibraltar's domestic law by s.6 of the European Union (Withdrawal) Act 2019. (The application of the Regulation has now in fact been revoked by the Jurisdiction and Judgments (Family) (Amendment) (EU Exit)

Regulations 2023, but it continues to apply to proceedings which were instituted between December 31st, 2020 and May 4th, 2023.)

15 The wife's petition asserts that this court has jurisdiction pursuant to art. 3(1) of the Regulation. This article provides that the court shall have jurisdiction in a number of scenarios, one of which is that the proceedings are instituted in the place where the respondent is habitually resident. The court does not however have to exercise its jurisdiction. In *JKN* v. *JCN* (5) Deputy High Court Judge Miss Theiss, Q.C. said the following in relation to art. 3 ([2010] EWHC 843 (Fam), at para. 147):

> "[The Regulation] facilitates jurisdiction with no corresponding obligation on a court to exercise that jurisdiction or on the applicant as to where he or she must bring proceedings."

16 Article 19 of the Regulation deals with *lis pendens*—what the courts of the European Union member states should do when there are pending actions in different countries. It provides as follows:

> "1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
>
> . . .
>
> 3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court."

By virtue of this provision, the Irish High Court would have to stay its proceedings until jurisdiction in Gibraltar is established. Once established, the Irish court would have to decline jurisdiction. Article 19 does not however have any effect in this case because, despite the temporary retention of the Regulation as domestic law, Gibraltar is no longer (part of) a Member State. The Irish courts cannot therefore apply the *lis pendens* provisions of art. 19 to the proceedings instituted by the husband there.

17 The upshot is that this court does not have to exercise its jurisdiction and it could stay the Gibraltar proceedings in favour of the proceedings before the High Court in Ireland.

The court's power to stay proceedings under the Matrimonial Causes Act

18 The Matrimonial Causes Act contains provisions allowing the court to stay proceedings. (The court also has an inherent power to order a stay.) Section 8 of the Matrimonial Causes Act provides as follows:

"The Schedule to this Act shall have effect as to the cases for which matrimonial proceedings in Gibraltar may be stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, but nothing in the Schedule prejudices any power to stay proceedings which is exercisable by the court apart from the Schedule."

19 Paragraphs 3(1) and (2) of the Schedule then state:

"(1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the court it appears to the court—

(a) that any proceedings in respect of the marriage in question or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and

(b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings so far as they consist of a particular kind of matrimonial proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of subparagraph (1)(b) the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed."

Paragraph 1 of the Schedule defines "another jurisdiction" as being any country outside Gibraltar. It also provides that the term "matrimonial proceedings" includes proceedings for divorce or judicial separation.

20 Paragraph 3 applies because there are proceedings in Ireland which are continuing and which relate to the marriage in question—or are capable of affecting its validity or subsistence. It is immaterial that the Irish proceedings are for judicial separation, or in the alternative for divorce, whereas the Gibraltar proceedings are for divorce. Sir Peter referred to *A* v. *B* (1) where the Court of Justice of the European Union was considering a question related to whether jurisdiction in France had been established where the applicant party had taken no steps to progress the case. In the context of the wording of art. 19, the court said the following (Case C-489/14, at para. 33):

"In order then to determine whether a situation of *lis pendens* exists, it is apparent from the wording of Article 19(1) . . . [that] in matrimonial

> matters applications brought before the courts of different Member States are not required to have the same cause of action . . . Consequently, a situation of *lis pendens* may exist where two courts of different Member States are seised, as in the main case, of judicial separation proceedings in one case and divorce proceedings in the other . . ."

This of course related to the particular wording of art. 19. Be that as it may, I consider the wording of para. 3 of the Schedule to the Matrimonial Causes Act to be clear. The proceedings in the two courts need not have the exact same cause of action. The provisions of the paragraph are engaged as the Gibraltar proceedings are for divorce. The proceedings in Ireland need to be about the parties' marriage or need to be capable of affecting its validity or subsistence. Clearly, they are.

21 The court therefore has to determine whether the balance of fairness is such that it considers that the Irish proceedings should be disposed of before further steps are taken in the Gibraltar proceedings.

The applicable principles

22 The parties are agreed that the principles which this court must follow in determining whether to grant a stay were set out in the House of Lords in *de Dampierre* v. *de Dampierre* (4) where the court was applying the exact English equivalent to s.8 of the Matrimonial Causes Act and the schedule thereto. There, after the husband had commenced divorce proceedings in France, the wife filed a petition for divorce in England. The husband then applied for a stay of the English proceedings. The wife opposed the stay because, under French law, in the event that she were to be found to be at fault for the breakdown of the marriage she would have been at a disadvantage in any financial relief claim. The court held that when considering the balance of fairness and convenience the court should adopt the same approach as that adopted at common law in cases of *forum non conveniens* where there was a *lis alibi pendens*. It allowed the appeal and thereby granted the stay sought by the husband. Lord Goff of Chieveley said ([1988] A.C. at 107–108):

> "Under the principle of forum non conveniens now applicable in England as well as in Scotland, the court may exercise its discretion under its inherent jurisdiction to grant a stay where 'it is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of the parties and for the ends of justice' . . . The effect is that the court in this country looks first to see what factors there are which connect the case with another forum. If, on the basis of that inquiry, the court concludes that there is another available forum which, prima facie, is clearly more appropriate for the trial of the action, it will ordinarily grant a stay,

unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted: see the Spiliada case [1987] A.C. 460, 475–478."

23 A summary of the law on "appropriate forum" was set out by Lord Goff in *Spiliada Maritime Corp.* v. *Cansulex Ltd.* (7) ([1987] A.C. at 476):

"(a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

(b) . . . [I]n general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay . . .

(c) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact that the plaintiff has, ex hypothesi, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English court will not lightly disturb jurisdiction so established . . . In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum . . .

(d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum . . . 'natural forum' [is] 'that with which the action had the most real and substantial connection.' So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction . . . and the places where the parties respectively reside or carry on business.

(e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay . . .

(f) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances of the case, including circumstances which go

beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction . . . on this inquiry, the burden of proof shifts to the plaintiff . . .”

24 The above summary was however qualified in *Butler* v. *Butler* (2) in so far as it applies to applications for a stay under para. 3(1) of the Schedule. The English Court of Appeal explained that the test under the schedule is not whether the applicant could establish that there is another available forum which is *clearly or distinctly* more appropriate than the Gibraltar forum. The statutory test requires that there be a *balance of fairness*. Hobhouse, L.J. stated ([1998] 1 W.L.R. at 1218):

“The expression ‘balance of fairness’ effectively reflects the same consideration as ‘appropriate’ forum and therefore involves a consideration of what factors connect a dispute with a particular forum and to what extent requiring a case to be remitted to that forum may cause injustice to one or other party. The decision should in either case be in accordance with the underlying principle of justice. Such an approach is as desirable in cases arising under the statute as it is in cases arising under the inherent jurisdiction of the courts. Lord Goff expressly concludes, at p. 109 [in *de Dampierre*]:

‘For these reasons, anxious though I am not to fetter in any way the broad discretion conferred by the statute, it appears to me to be inherently desirable that judges of first instance should approach their task in cases under the statute in the same way as they now do in cases of forum non conveniens where there is a lis alibi pendens.’

It is clear that Lord Goff is providing guidance based upon the degree of assimilation that has occurred, but he is not seeking to restrict the discretion under the statute. Nowhere does he use language which requires a ‘clear preponderance of advantage.’ He expressly recognises that a statutory criterion is ‘balance of fairness.’ I consider that in the present case the judge was in error in substituting for an assessment of the balance of fairness, a test of requiring the applicant to show that the other jurisdiction is ‘clearly or distinctly more appropriate.’ Obviously the applicant for a stay must make out a case for the making of the order. But all that she has to show is that the balance of fairness supports the grant of a stay. It is clear that on the balance of fairness in the present case there should be a stay.”

25 In summary therefore, the court must consider whether the balance of fairness points to another jurisdiction being the more appropriate forum. On this, the party seeking the stay has the burden of proof. If the court considers that another jurisdiction is *prima facie* the appropriate forum for

the trial of the action, the court will then determine whether the party who opposes the stay has shown that justice requires that the trial should nevertheless take place here.

26 At the hearing, Mr. Anderson referred to a number of other authorities which he submitted provide further guidance. He relied on *Re V (European Maintenance Regulation)* (9) in support of the proposition that there is no impediment to pursuing divorce proceedings in one jurisdiction and proceedings relating to the children in another. There, in the context of the European Maintenance Regulation, Parker, J. said ([2016] EWHC 668 (Fam), at para. 43): "there is no reason why divorce should not proceed in one jurisdiction and maintenance in another: indeed the Regulation specifically envisages this."

27 The UK Supreme Court heard an appeal from that case (reported as *Villiers* v. *Villiers* (10) which Mr. Anderson also relied on for a related but different proposition. The majority of the court determined that the wife was entitled to pursue her claim in England because the law was more advantageous to her. Lord Sales said ([2020] UKSC 30, at para. 41):

> "As regards the claim under section 27, the wife is the maintenance creditor. As explained above, the Maintenance Regulation and Schedule 6 give her the right to choose in which jurisdiction, within those listed in article 3 (as adapted by paragraph 4 of Schedule 6), she wishes to bring her maintenance claim. She has an unfettered choice in that regard, and is entitled to choose to bring her claim in an English court on grounds of its convenience for her or because she believes that the law it will apply is more advantageous for her. It is a fundamental object of the Maintenance Regulation to confer that right on a maintenance creditor, and the scheme of that Regulation is replicated for intra-state cases by Schedule 6. Articles 12 and 13 of the Maintenance Regulation (including as they are replicated for intra-state cases by Schedule 6) have to be interpreted in the light of this object."

28 As Mr. Anderson acknowledged, this case concerned the Maintenance Regulation. The Maintenance Regulation specifically protects the maintenance creditor's right to choose, as the UK Supreme Court recognized (*ibid.*, at para. 42):

> "Article 3 of the Maintenance Regulation is concerned with defining the set of jurisdictions in which the maintenance creditor has the right to bring her claim. This is in line with the fundamental object of the Maintenance Regulation to protect the interests of the maintenance creditor as the weaker party and is also indicated by the text of the article itself . . ."

Mr. Anderson nevertheless submitted that the court should have regard to the fact that the UK Supreme Court had protected the wife's right to choose where to litigate. I have some difficulty with this submission. The court in *Villiers* was protecting the wife's entitlement and rights under the particular regulation.

29 Mr. Anderson also referred to *Chai* v. *Peng* (3), where Bodey, J. held that in applying the statutory test under para. 3 of the Schedule, the court had to take a broad view of all the facts and circumstances and it was not limited to the factors directly relating to the litigation.

The factors to consider

30 The following facts are not in dispute. The parties are Irish nationals. They met in Ireland and married there in 2006. The husband lives in Gibraltar and is habitually resident here. The wife and children live in Ireland and are habitually resident there. The family lived in Gibraltar from 2010 to 2020—a period during which the businesses were grown. The wife's petition (issued in Gibraltar) was first in time. She is the party seeking financial relief.

31 The burden is on the husband to show that Ireland is the more appropriate forum. He relies on a number of factors which he says show that this is indeed the case.

32 First, Sir Peter submitted that beyond the fact that the husband is ordinarily resident in Gibraltar (living in rented accommodation and frequently travelling between Gibraltar, London and Ireland), there are presently no links to Gibraltar. On the other hand, the wife has family in Dublin and would visit Ireland regularly when she resided in Gibraltar. She thereby always maintained her links to Ireland. The wife in fact severed all her links to Gibraltar sometime prior to issuing proceedings. Therefore, in terms of *existing* personal links to a particular jurisdiction, it was submitted that there are stronger links to Ireland than to Gibraltar. Whilst this may be so, I agree with Mr. Anderson that the court should not ignore the fact that Gibraltar was the family's home for the better part of the subsistence of the union. That too is an equally important factor.

33 Second, the wife issued the guardianship proceedings in Ireland in relation to the arrangements for the children. She therefore herself invoked and engaged the jurisdiction of the courts in Ireland. Two points arise. First, there is no impediment to the divorce proceedings taking place in Gibraltar and proceedings relating to the children taking place in Ireland. Second, as Mr. Anderson pointed out, proceedings relating to the children must take place where the children are ordinarily resident—in accordance with art. 5 of the 1996 Hague Convention on parental responsibility and protection of children. The wife therefore had no choice but to issue those proceedings in Ireland.

34 Third, it was submitted on behalf of the husband that there is no doubt that the wife will be able to obtain justice in the Irish courts. In fact, it was suggested that the Irish courts will be better placed to assess what financial provision needs to be made for the children and the wife as they all reside there. Such an assessment will involve a consideration of the arrangements for the children—which are being decided in Ireland.

35 In this regard, Mr. Anderson raised the fact that the husband has not said what substantive orders he will be inviting the court in Ireland to make. The wife's position is that she is entitled to one-half of the family's wealth. Mr. Anderson referred to *Chai* v. *Peng* (3), where Bodey, J. considered that in deciding an appropriate forum, the court would be assisted by knowing what the issues in the case are likely to be. Sir Peter's response was that advantage of one jurisdiction over another is not material.

36 It is clear that the parties would be able to obtain justice in the Irish courts. But it is equally clear that this court can also do justice to the case regardless of where decisions in relation to the children are being made.

37 Fourth, resolving all matters in one jurisdiction would reduce costs, ensure matters are dealt with promptly, and reduce the possibility of inconsistent judgments. Mr. Anderson submitted that there needed to be an evidential basis for saying this. He postulated that, for example, the wife's Irish lawyers may only have expertise in child matters and may not be able to represent her in the financial relief aspect of the proceedings. Further, there may be more than one judge dealing with the different aspects of the proceedings anyway. Sir Peter's response was to say that the court could take judicial notice of the fact that two sets of lawyers will be more expensive than one. Whilst Sir Peter's response is hard to argue with, it seems to me that very little weight should be attached to this factor when there is no evidence of likely cost comparisons and on how significant the issue would be in the context of this family's wealth.

38 Fifth, although the husband controls investment businesses in Gibraltar, any valuation of these business will not necessarily involve Gibraltar experts. There is therefore no particular advantage to Gibraltar as a jurisdiction arising from the fact that the businesses are, in the main, operating from Gibraltar.

39 Mr. Anderson submitted that whilst the Gibraltar proceedings are for divorce, the financial relief applications will be an important part of those proceedings. He referred to *T* v. *P (Jurisdiction: Lugano Convention & Forum Conveniens)* (8). The English High Court was considering an application for a stay of proceedings in favour of proceedings in Switzerland. Roderic Wood, J. considered that the location of the parties' assets was one out of a number of decisive factors. He said ([2013] 1 FLR 478, at para. 48):

> "In considering the balance of fairness, I remind myself that this husband lives and works in Switzerland, and the family's income is generated from the husband's work there, even if paid for tax reasons or may, in due course, become paid for tax reasons through a foreign office of his company."

40 Sixth, it was submitted that the purpose of the Regulation is to provide certainty for the defendant as to where he may be sued. The husband is the defendant and he is content to be sued in Ireland. I do not agree with this submission. The Regulation allows an applicant quite a lot of flexibility and does not mandate where proceedings are to be brought. The wife could have chosen to issue proceedings in Ireland under the provisions of art. 3 of the Regulation. She is habitually resident in Ireland and had been resident there for a period of at least one year before the petition was filed. The Regulation differs from, for example, Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which specifies where a defendant is to be sued and provides the certainty to a defendant which Sir Peter described.

41 On behalf of the wife, it was submitted that the husband was simply forum shopping. An opportunity that had only arisen as a result of the United Kingdom's withdrawal from the European Union. Aside from the submissions made in relation to the factors that have just been discussed, Mr. Anderson submitted that the court should have regard to the following factors (notwithstanding the fact that the wife does not bear the burden in the application).

42 First, the wife has chosen to issue proceedings here. She is the party who is in the financially weaker position and she should have a right to choose. She instituted these proceedings first. Sir Peter submitted that this was not relevant. He described it as a *sine qua non* of any stay application. One party will always have chosen a particular jurisdiction first. That may be, but clearly this court must have regard to the words of Lord Goff in *de Dampierre* (4) where he said ([1988] A.C. at 108E):

> "[The existence of proceedings in another jurisdiction] may, depending on the circumstances, be relevant to the inquiry. Sometimes they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction, or the proceedings have not passed beyond the stage of the initiating process. But if, for example, genuine proceedings have been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when considering whether the foreign jurisdiction

provides the appropriate forum for the resolution of the dispute between the parties."

43 Here, genuine proceedings have been started and there has been an order for interim relief—albeit without prejudice to the husband's intention to apply for a stay of the proceedings.

44 Second, the Irish proceedings concern judicial separation and it is not accepted by the wife that the circumstances are such that the courts there can grant a divorce. There is some dispute as to this and evidence of Irish law was submitted on behalf of the husband. It does not seem to me that I have to decide this point.

45 Third, the recognition in Gibraltar of orders for disclosure made by the Irish courts is "unproven." Mr. Anderson also pointed to how in fact some disclosure had already taken place here whereas in Ireland there had only been limited disclosure in a short affidavit by the husband. Issues of disclosure, it was said, are better resolved in Gibraltar where the husband lives and from which the beneficial ownership in the businesses is managed. Enforcement would have to take place in Gibraltar. Sir Peter's reply, with which I do not disagree, was that focusing on procedural issues was wrong because it is focusing on juridical advantage. The connection has to be between the case and the country. He referred to *de Dampierre* (*ibid.*, at 110, *per* Lord Goff):

> "The weight to be given to what has been called a 'legitimate personal or juridical advantage' was considered by your Lordships' House in the *Spiliada* case [1987] A.C. 460, 482–484. The conclusion there reached was that, having regard to the underlying principle, the court should not, as a general rule, be deterred from granting a stay of proceedings simply because the plaintiff in this country will be deprived of such an advantage, provided that the court is satisfied that substantial justice will be done in the appropriate forum overseas. Reference was made, in particular, to cases concerning discovery where, as is well known, there is a spectrum of systems of discovery applicable in various jurisdictions; and the opinion was expressed that, generally speaking, injustice cannot be said to be done if a party is compelled to accept one of these well recognised systems of discovery in another forum."

Furthermore, Sir Peter submitted that the businesses are regulated entities and it would be inconceivable that the husband would put his ability to deal with these regulated entities at risk by ignoring any court orders. The court should proceed on the clear basis that any orders as to disclosure and eventual division of assets will be complied with. I will limit myself to observing that this is not an unfair assumption.

46 Fourth, any final order made in Ireland would need to be enforced in Gibraltar. In relation to this issue, Mr. Anderson relied on *Krenge* v. *Krenge* (6), where Holman, J. said ([1999] 1 FLR at 981):

> "Any maintenance claim which the wife has is against German income earned in Germany. Any enforcement proceedings would have ultimately to be pursued in Germany. Both parties' pensions will be payable in Germany. As Mr Scott said, the remaining issues between the parties are economic, but there are no economic factors connecting the case with England other than the fact that the wife now lives here."

47 Sir Peter however submitted that any judgment of the Irish courts will be recognizable and enforceable in Gibraltar under the provisions of the International Recovery of Maintenance (2007 Hague Convention) Regulations 2018. I accept that this is so.

48 Fifth, a hearing in Ireland is unlikely to take place before January 2024. Strictly, there is no evidence before the court as to what the likely timeframes for the proceedings would look like in Ireland. Even accepting January 2024 as the likely date for a hearing, this would not be too dissimilar to what parties could expect here in Gibraltar. The decree absolute in Gibraltar is not ordinarily granted until a period of six months has passed from the grant of the decree nisi.

Conclusion

49 It will be apparent from my discussion of the "connecting factors" relied on by the parties that I do not consider that any of them is particularly decisive. Whilst the proceedings in Ireland could no doubt also fairly deal with the issues arising from the break-up of the marriage, I do not consider that Ireland is any more appropriate a forum than Gibraltar is. In my judgment, the husband has not shown that the balance of fairness is such that it is appropriate for the proceedings in Ireland to be disposed of before any further steps are taken in Gibraltar. In other terms, the factors that the husband relies upon do not tilt the balance in favour of the stay.

50 Jurisdiction in Gibraltar is properly established. The wife was entitled to issue the proceedings. Gibraltar is clearly an appropriate forum because the parties lived here for the better part of their married lives; the businesses were established, grew and remain operating mainly from Gibraltar, and the husband, who is the paying party, is ordinarily resident here.

51 The husband's application for a stay of the proceedings is dismissed.

Judgment accordingly.