



25 July 2018

PRESS SUMMARY

Owens (Appellant) v Owens (Respondent) [2018] UKSC 41
On appeal from [2017] EWCA Civ 182

JUSTICES: Lady Hale (President), Lord Mance, Lord Wilson, Lord Hodge, Lady Black

BACKGROUND TO THE APPEAL

The Appellant, Mrs Owens, and the Respondent, Mr Owens, were married in 1978 and have two adult children. Mrs Owens had been contemplating a divorce since 2012 (when she consulted solicitors who prepared a draft divorce petition for her) but it was not until February 2015 that she left the matrimonial home. The parties have not lived together since her departure. In May 2015 Mrs Owens issued the divorce petition which is the subject of the current proceedings. It was based on s.1(2)(b) of the Matrimonial Causes Act 1973, and alleged that the marriage had broken down irretrievably and that Mr Owens had behaved in such a way that Mrs Owens could not reasonably be expected to live with him. It was drafted in anodyne terms but when it was served on Mr Owens he nevertheless indicated an intention to defend the suit, arguing that the marriage had largely been successful.

In October 2015 the matter came before a recorder for a case management hearing. In light of Mr Owens' defence, the recorder granted Mrs Owens permission to amend her petition so as to expand her allegations of behaviour. The recorder also directed that the substantive hearing of the dispute would take place over the course of a day (Mrs Owens had originally suggested a half-day would suffice) and that there would be no witnesses other than the parties themselves. Mrs Owens duly amended her petition so as to include 27 individual examples of Mr Owens being moody, argumentative, and disparaging her in front of others, but at the one-day hearing her counsel ultimately focussed on only a very few of these.

The judge found that the marriage had broken down, but that Mrs Owens' 27 examples were flimsy and exaggerated, and that those relied on at the hearing were isolated incidents. Accordingly, the test under s.1(2)(b) was not met and Mrs Owens' petition for divorce was dismissed. Mrs Owens appealed against this decision to the Court of Appeal, but her appeal was also dismissed. She now appeals against the Court of Appeal's decision to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal, with the result that Mrs Owens must remain married to Mr Owens for the time being. Lord Wilson gives the majority judgment, with whom Lord Hodge and Lady Black agree. Lady Hale and Lord Mance each give a concurring judgment.

REASONS FOR THE JUDGMENT

It is important to bear in mind the legal context to this dispute, namely that defended suits for divorce are exceedingly rare. While the family court recognises that s.1 of the Matrimonial Causes Act 1973 must be conscientiously applied, it takes no satisfaction when obliged to rule that a marriage which has broken down must nevertheless continue in being [15]. The expectations are that almost every petition under s. 1(2)(b) will succeed, that the evidence before any contested hearing will be brief, and that the judgment

of the court in such a hearing will almost certainly result in the pronouncement of a decree [17]. This is the background to the contested hearing in this case, and explains why Mrs Owens' advisors agreed to a short hearing with no external witnesses to corroborate her evidence [14-15].

When applying s. 1(2)(b) the correct inquiry is: (i) by reference to the allegations of behaviour in the petition, to determine what the respondent did or did not do; (ii) to assess the effect which the behaviour had upon this particular petitioner in light of all the circumstances in which it occurred; and (iii) to make an evaluation as to whether, as a result of the respondent's behaviour and in the light of its effect on the petitioner, an expectation that the petitioner should continue to live with the respondent would be unreasonable [28]. This test has been applied for many years but the application of the test to the facts of an individual case is likely to change over time, in line with changes in wider social and moral values [30-32]. The most relevant change over the past forty years is the recognition of equality between the sexes, and of marriage as a partnership of equals [34].

At the hearing, the judge gave himself the correct self-direction; he understood he was applying an objective test, but with subjective elements [39]. The majority nevertheless have concerns about other aspects of the judge's analysis. In particular, they have an uneasy feeling about the summary despatch of a suit which was said to depend on an authoritarian course of conduct, when the judge had scrutinised only a few individual incidents of Mr Owens' behaviour [42]. However, uneasy feelings are of no consequence in an appellate court. A first-instance judge has many advantages in reaching the relevant conclusions, and Mrs Owens' complaints about the judgment have already been rehearsed and dismissed by the Court of Appeal. In such circumstances it is most unlikely for it to be appropriate for the Supreme Court to intervene [43]. However, the majority invite Parliament to consider replacing a law which denies Mrs Owens a divorce in the present circumstances [44-45].

Concurring judgments

Lady Hale agrees with Lord Wilson as to the legal analysis, but has several misgivings about the judge's judgment [47-48]. Her gravest misgiving relates to the fact that this was a case which depended upon the cumulative effect of a great many small incidents (which were said to be indicative of authoritarian and demeaning conduct over a period of time), yet the hearing before the judge was not set up or conducted in a way which would enable the full flavour of such conduct to be properly evaluated [50]. In light of her misgivings, she considers that the proper disposal is to allow the appeal, and send the case back to the first-instance court to be tried again. However, this is not a disposal which Mrs Owens is actually seeking, and Lady Hale is therefore reluctantly persuaded that the appeal should be dismissed [53-54].

Lord Mance also agrees with Lord Wilson as to the wider legal analysis, however he does not share the concerns expressed by Lord Wilson and Lady Hale about the judge's judgment. Lord Mance considers that the judge did not misdirect himself at any stage, and that the judge properly concluded that there was nothing in the case overall [57, 59]. Moreover, although the hearing of the defended divorce petition was listed for a relatively short period, this was how the judge was invited to decide the matter. It would be inappropriate for the Supreme Court to interfere at this stage and say it was not possible in the circumstances for the judge to have reached a fair determination [58].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>