Agnetha's acceptance of the jurisdiction of the English court could affect her in terms of prorogation.

Finally we dealt with enforcement under Brussels IIr rather than under the 1996 Hague Parental Responsibility Convention.

All in all, an extremely informative, albeit terrifying, workshop, and it completely fulfilled its brief in that regard. A definite for anyone contemplating this work when it is run at any subsequent conference.

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The international committee is running a one-day conference in Birmingham on 1 July 2015. See the website for more detail.

CFA 2014 – a year on

Sean Hilton *Russell-Cooke Solicitors*

A fascinating review of case law in the wake of the new Act raises the question of whether it is a new direction, or just codification of existing trends

This time last year we queued with generic coffee cup in hand waiting for the doors of the new single Family Court to open, full of anticipation as the Children and Families Act 2014 rolled out. It was expected that there would be a marked shift in the approach of the court, a new robustness procedurally and a renewed focus on placing children at the heart of the matter. So what has changed? It was that expansive question which Anthony Kirk QC, Markanza Cudby, Philip Marshall QC and Christopher Pocock QC of 1kbw chambers sought to address on a bright and blustery Brighton morning at the Resolution National Conference 2015.

Where are we now? – Anthony Kirk QC

The reality is that the expected deluge of case law has not yet materialised. Anthony Kirk QC discussed why this might be, summarising the reasons into three headlines;

1. In essence the legislation has placed on statutory footing models of already accepted best practice. There is little in the Act's main provision that is terribly controversial.
2. It is likely that, as a result of the new "gatekeeping" strategy, far fewer cases are being heard by more senior members of the judiciary and, as such, fewer are being reported.
3. Finally LASPO, coupled with the placing of MIAMs on a statutory footing, has severely reduced the opportunity for the courts to consider points of law and statutory construction.

We are no doubt all aware of s11 of the new Act and the amendment it makes to that most sacred of doctrines, s1 of the Children Act 1989. The presumption that the involvement of a parent in a child's life will further their welfare is now there in black and white. This is subject to it being shown that a parent's involvement with a child will not put them at risk of harm. It is important to note that if harm is alleged it must exist whatever the form of contact (even indirect) and in practice therefore it is likely that only in the most exceptional of cases will the court say that a parent should have absolutely no involvement.

The true nature of the presumption principle is yet to be tested. It is definitely significant, but is it really a change? Is this not something which practitioners and the judiciary have been considering for some time? Mr Kirk QC thought so and there was general consensus in the room.

The use of experts in cases involving children – Markanza Cudby

The recurring theme of Ms Cudby's engaging talk was of a return to the principle of the overriding objective. Whilst it sits at the core of all cases it can sometimes be overlooked and the purpose of the changes made by the new Act is to redress this.

Judges are now being strongly encouraged to actively case manage (see the case of *Re C (Family Proceedings: Case Management)* [2013] 1 FLR 1089 as a prime example of this) and all agreed that we are now witnessing this robustness in practice.

The key word now on whether to instruct an expert is "necessary". It is not "desirable" or "helpful", but "necessary". Practitioners will recognise this as a much higher test and we must therefore think very carefully before pursuing our applications whilst also bearing in mind the overriding objective in public children cases. The sooner

an application can be made, the more likely it is to succeed given the restrictions on timetabling.

If it is a case where an expert is needed then how do we maximise our chances of success? Ms Cudby helpfully reminded us that we need the expert's CV, details of their field of expertise and what issues their evidence addresses. Whilst an application is likely to tick these boxes it is best to be proactive and also prepare a letter of instruction. Unless you go fully prepared, your application is likely to be refused. You have been warned!

Setting aside financial orders – Philip Marshall QC

June 2015 will see the Supreme Court tackle two conjoined appeals on this topic. *Sharland v Sharland* (most recently *S v S (Financial remedies: Non-disclosure: materiality)* [2014] EWCA Civ 95) and *Gohil v Gohil* (most recently *Gohil v Gohil (No 2)* [2014] EWCA Civ 274).

Both cases involve findings and/or strong prima facie evidence of non-disclosure and deliberate concealment on the part of a husband, and the wife's subsequent application to set aside an existing order.

The issues identified by the Court of Appeal in these cases are (inter alia) as follows:

1. What jurisdiction, if any, does a court at first instance in family proceedings have to set aside an order for financial relief?
2. Does the *Livesey v Jenkins* [1985] FLR 813 test apply in a case involving fraudulent misrepresentation (see below)?
3. What, if any, relevance does the case law following *Ladd v Marshall* [1954] 1 WLR 1489 have to an application made to set aside an order at first instance?

The test of *Livesey v Jenkins* is twofold. First, has there been non-disclosure? Secondly, is this non-disclosure such that the order would be substantially different had there been full disclosure?

Ladd v Marshall contains a secondary element: has new evidence arisen which is such that it would probably have an important influence on the result of the case?

It is important that the two tests above are considered separately, given their distinctive elements. So to set aside an order based upon non-disclosure it must first be proved, most likely by way of a fact-finding hearing, that there has actually been material non-disclosure. If this can be shown then it must then be determined whether, as a result of this non-disclosure, the order should be set aside.

The mere existence of new evidence which satisfies the test in *Ladd v Marshall* is not sufficient grounds for an action to set aside an existing order. At the first stage of proceedings it can be determined whether new evidence should be admitted under this limb but it should then be subject to a full fact-finding hearing so that a finding of non-disclosure can be made.

Clearly guidance is required on the role of the judge at first instance in cases of this nature. As made clear by Mr Marshall QC it is certainly needed.

Maintenance and compensation – Christopher Pocock QC

Given the upcoming changes to the administration of financial applications and the centralisation of these cases, practitioners must prepare to be allocated to unknown judges in unknown courts. In light of this inescapable fact it is now more important to practitioners than ever that consistency between judges can be obtained regardless of their locality. Needless to say this issue raised a few eyebrows from those in attendance.

This led to Mr Pocock's summary of the trends in maintenance and compensation cases. In perfect synergy with the reality in the courts and the difficulties faced by judges, what followed was an anonymised selection of recent cases and consistently inconsistent predicted indications from those in attendance.

So does the recent case law give us any clarity or indication as to where this area of law is moving? It no longer seems controversial to state that joint lives orders are less common. From *Cornick v Cornick (No 2)* [1995] 2 FLR 490, in which a two-year termed order made at first instance was varied to a joint lives order, to the now infamous *Wright and Wright* [2015] EWCA Civ 201, in which it was stated that a party had an obligation to acclimatise to financial independence, we have certainly come a long way. Save for those cases for which it is clearly appropriate, joint lives orders could now be a rarity.

B v S [2012] 2 FLR 502 contains some pertinent words from Mostyn J on the issue of the quantum of spousal maintenance – we need "simplicity and clarity". In this case Mostyn J stated that he felt that quantum should "be adjudged (or settled), generally speaking, by reference to the principle of need alone". Since then it seems that this clarity has been hard to grasp. Perhaps by next year's Resolution Conference we will have a clearer picture?

It may be that the new Act is still bedding down and that the courts are yet to see those necessary test cases. It may also be that, in reality, the Act simply reflects the pre-existing practices of the courts and those of us who frequent them. I am sure that all those in attendance would gladly sign up to hear the excellent members of 1kbw deliver a further update at next year's conference.

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