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Judgment: approved by the Court for handing down (subject to editorial corrections)*	*Delivered:*	**15/01/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

_____

Between:

JK

Appellant

-v-

LM

Respondent

_____

JK appeared as a litigant in person
Ms Lisa Moran (instructed by Rosemary Connolly) for the Respondent

_____

McFarland J

Introduction

[1] JK has appealed against an order of Master Bell dated 4 August 2020 whereby Master Bell declined to set aside an order registering three money judgments, in the form of costs orders, ("the ROI judgments") granted by courts in the Republic of Ireland which he registered on 2 April 2015 as judgments of the High Court by virtue of the provisions of Order 71 of the Court of Judicature Rules and what is commonly referred to as "Brussels I". Brussels I is the convention within the European Union (at that time - 44/2001) which dealt with, amongst other things, the registration and enforceability of judgments granted in one European Union country to be enforced in another.

[2] I have anonymised this judgment as the ROI judgments relate to a child of the appellant and the respondent, and the anonymisation will protect the identity of the child, and for no other reason.

[3] I conducted the appeal by a video live link hearing on the 10 December 2020

under the provisions of Schedule 27 to the Coronavirus Act 2020. JK, the court clerk and I were present in the Queen's Bench 3 Courtroom in the Royal Courts of Justice. Ms Moran and Ms Connolly attended by video live link. There were no issues relating to the ability of all parties to participate in the hearing. At the conclusion of the hearing, I reserved judgment and permitted the respondent to file court documentation relating to the ROI judgments and other related litigation, and they did so on the 11 January 2021. Both parties then made brief written submissions which I have considered.

The appeal

[4] JK appeals on three grounds. Firstly, the provisions of Order 71 whereby the initial registration of the ROI judgments took place after an *ex parte* application were contrary to the right to a fair hearing guaranteed to him under the Human Rights Act 1998 and in particular Article 6 of the European Convention on Human Rights ("the Convention"). Secondly, the ROI judgments no longer had any effect, pursuant to a subsequent judgment of the High Court in Dublin on 31 July 2017. Thirdly, the judgment of Master Bell did not, in JK's words, contain "adequate and intelligible" reasons.

Human Rights

[5] In the context of civil proceedings, Article 6 (1) of the Convention provides as follows –

> *"In the determination of his civil rights and obligations … , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society"*

[6] The application to register the judgment was made under Order 71 Rule 15 of the Court of Judicature Rules which allows for an application to register a European Union country judgment to be made, and dealt with, *ex parte*, in other words, without notice to, or hearing from the other party.

[7] JK asserts that the *ex parte* nature of the registration proceedings under Order 75 Rule 15, meant that he was not given notice of the hearing, was not aware of the nature of the application, was not able to attend at the hearing, and could not make representations to the court.

[8] Not all litigation which can be categorised as 'civil' litigation (in the sense of 'non-criminal' litigation) engages the provisions of Article 6 of the Convention. It is necessary to show that there is a dispute (described in the French text as '*contestation'*) and that the dispute is both genuine and serious. The European Court

of Human Rights in *Benthem v The Netherlands* [1986] 8 EHRR 1 at 32 set out the principles that had emerged from the Strasbourg jurisprudence in relation to this matter as follows –

> *"(a) Conformity with the spirit of the Convention requires that the word "contestation" (dispute) should not be "construed too technically" and should be "given a substantive rather than a formal meaning"*
>
> *(b) The "contestation" (dispute) may relate not only to "the actual existence of a ... right" but also to its scope or the manner in which it may be exercised… It may concern both "questions of fact" and "questions of law"*
>
> *(c)* ***The "contestation" (dispute) must be genuine and of a serious nature***
>
> *(d) According to the Ringeisen judgment of 16 July 1971, "the ... expression 'contestations sur (des) droits et obligations de caractère civil' [disputes over civil rights and obligations] covers all proceedings the result of which is decisive for [such] rights and obligations"…However, "a tenuous connection or remote consequences do not suffice for Article 6 para. 1: civil rights and obligations must be the object - or one of the objects - of the 'contestation' (dispute); the result of the proceedings must be directly decisive for such a right""* (my emphasis).

(For convenience, case references have been omitted from this quotation.)

[9] In this case the issue before Master Bell in 2015 was whether or not the ROI judgments should be registered in Northern Ireland so that they could be enforced. There was clearly a dispute between JK and LM in relation to the residence and contact arrangements for their child, but that dispute had been determined by the ROI judgments. The registration of the ROI judgments is not a genuine dispute or of a serious nature, as far as the Northern Ireland court is concerned. They were judgments which determined that JK owed LM a certain amount of money. Whether he owed the money and the amount that he owed had been determined by the courts in the Republic of Ireland. That was a genuine dispute of a serious nature. Unlike the litigation in the Republic of Ireland, the mere registration of those judgments in Northern Ireland is not determinative of JK's rights and therefore his Article 6 Convention rights to a fair civil trial are not engaged in the process of registration of the judgment.

[10] Brussels I is based on the promotion of judicial cooperation and recognition (Recital 3) and in particular the free movement of judgments in civil matters (see

Recital 6). Of particular relevance are Recitals 16 to 18, which I have set out below –

> *"(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.*
>
> *(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.*
>
> *(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected."*

[11] The Regulations themselves envisage a very streamlined system. In particular Article 33(1) provides that a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required. Article 36 provides that under no circumstances may a foreign judgment be reviewed as to its substance.

[12] Therefore, the system envisaged by Brussels I is properly reflected in Order 71. The hearings dealing with civil rights and obligations have been heard in the Republic of Ireland. JK's Article 6(1) Convention rights were protected in those hearings. Judgments have issued from those hearings. Those are final orders and there is no longer a genuine or serious dispute. The registration of those orders is therefore an administrative process. JK's rights were protected as he was able to apply to set aside the order, and that application, and the appeal thereafter, were dealt with, with proper Article 6(1) compliant procedures.

[13] Order 71 correctly applies European Law, and is also Convention compliant.

[14] JK asked that I make a declaration that Order 71 is incompatible with the Convention. This is not the method by which such a power is exercised, and in any event, for the reasons that I have given, I do not consider Order 71 to be incompatible.

[15] A final point raised by JK in his supplementary submission is that as the

United Kingdom has now left the European Union, the European Law no longer applies. Not only is that submission inaccurate in substance as it ignores the transition provisions which covered the period from 31 January 2020 (when the United Kingdom actually left the European Union) to 31 December 2020, and the provisions of the future relationship agreement. Master Bell in any event was dealing with, and applying the law as at April 2015.

The validity of the ROI judgments

[16] Before considering the ROI judgments it is important to recognise that the regime for enforcement of foreign judgments is one that is based on mutual respect for the courts in other jurisdictions, and this is particularly the case in relation to the Brussels regulations and the courts of European Union members. This means that this court will not attempt to overrule or adjust the court orders from the other jurisdiction. The courts in that jurisdiction have made their rulings and the High Court's function is largely administrative in the registration of the judgments so that their terms in relation to the recovery of money due on foot of the judgments can be enforced.

[17] JK argues that as the judgments are never final and conclusive in relation to children and the welfare of children, this court must take into account a judgment of Reynolds J of 31 July 2017 which he says overturned the ROI judgments.

[18] This is a seriously flawed argument, not least when one considers the chronology of events leading up to the ROI judgments, and then the 2017 judgment of Reynolds J. As previously indicated the core litigation in this case relates to a child of the parties. JK applied for what would be considered a Residence Order in this jurisdiction. Those proceedings culminated in decisions of the Circuit Court and High Court in Dublin and in three judgments dated 17 January 2013, 18 December 2013 and 13 February 2014 (the ROI judgments) costs orders were made against JK. Taxation certificates were obtained on 9 December 2015 and these are the three ROI judgments that have been registered and the registration of which JK now seeks to set aside.

[19] JK then made a series of subsequent applications in 2016 to the courts in Dublin relating to the child. This application was dealt with by Judge Comerford on 15 March 2017 when he made various findings and orders. On a discrete issue of guardianship, Judge Comerford found himself bound by the previous refusal of JK's application for guardianship of the child by Mr Justice White on 18 December 2013. The decision of the 15 March 2017 was appealed by JK, and Ms Justice Reynolds on 31 July 2017, in a short *ex tempore* judgment, determined that applications for guardianship can be renewed from time to time and a court could not be bound by orders of previous courts. Ms Justice Reynolds stated that the 18 December 2013 order could not be regarded as a final or conclusive order in relation to guardianship, and she remitted the matter back to the Circuit Court for determination of that issue having regard to the best welfare interests of the child.

She did not make any mention of any of the costs orders contained in the ROI judgments, and she did not revoke any of them.

[20] The reference to the 18 December 2013 order not being a final order related to the issue of the guardianship of the child, it did not relate to the order to pay costs in that, or any other order.

[21] A full analysis of the Reynolds J judgment indicates that the judge was only dealing with one of the three judgments containing costs orders and the judge did not in any way alter or revoke the earlier costs orders contained in any of the ROI judgments.

[22] In his supplemental submission, JK asserted that the bundle of orders and rulings submitted after the oral hearing should not be considered by me. I agree that some do not have particular relevance to this issue. Some have already been placed before the court, but two documents – the order of Judge Comerford and the reasoned *ex tempore* judgment of Ms Justice Reynolds are particularly relevant, not least because JK referred to them in general terms in his submissions and the court needed to see the actual documents. Seeing the documents has permitted the court to consider, and ultimately reject, the interpretation placed on them by JK. JK has misunderstood what Ms Justice Reynolds had actually decided.

[23] Until such times as JK produces to this court an unequivocal judgment of the Republic of Ireland Courts revoking all or any of the ROI judgments, then as far as this court is concerned the judgments stand as good and proper and can be enforced both in the Republic of Ireland and Northern Ireland after registration.

The reasoning of Master Bell's order of 4 August 2020

[23] JK contends that the order of Master Bell did not contain adequate or intelligible reasons, and it is therefore an error in law. The terms of the order were as follows –

> *"Upon an application by [JK] to set aside the order of this court made on 2 April 2015; and upon considering the written submissions of the parties; and upon concluding that [LM] was entitled under Order 71 of the Rules of the Court of Judicature to apply ex parte for the order made on 2 April 2015; and upon concluding that Regulation 1215/2001 was the correct Regulation which governed the application; and upon concluding that [JK] in his written submissions raised no other valid ground on which the order of 2 April 2015 should be set aside; the Court dismissed [JK]'s application to set aside the order of 2 April 2015 and ordered that [JK] shall pay the costs of this set aside application, such costs to be taxed in default of agreement."*

I consider this order to be intelligible. It is comprehensible and easy to understand.

[24] As for the complaint of inadequacy, I recently dealt with the issue of the adequacy of reasons when dealing with straightforward procedural matters in the case of *Okotete v Chief Constable of the Police Service of Northern Ireland* [2021] NIQB 1 at paragraphs [11] – [16]. I stated at [16] –

> *"This type of application is dealt with day and daily by Masters, and by judges in the County Court dealing with similar applications. These are interlocutory matters relating to procedural issues in preparation for a final hearing of a case. Many are dealt with administratively based on written submissions. There will be occasional applications that will require more detailed scrutiny and reasoned judgments. The vast majority of applications do not, and can be disposed of with the type of order made by Master Bell in this case. It will be (or should be) obvious to the parties, as in this case, and to any appellate court, what the decision is, and why it has been made. That is all that is needed when dealing with an application such as this."*

Although not an interlocutory matter, this case would be very similar as it deals with a simple procedural matter, and these remarks apply equally to this straightforward application to register a foreign judgment.

[25] The process undertaken by Master Bell on 4 August 2020 was to consider the written submissions of both parties, which included a secondary submission from JK, and then issue his judgment. There was no hearing whereby he received oral submissions. His judgment was short, but brevity rather than being a failing is a virtue. The issues in this case were very clear cut. Master Bell had the submissions from both parties. His reasoning is set out in the judgment and deals with each point raised by JK. When considering Master Bell's judgment you have to read the judgment and the submissions together, and if that is done the judgment is more than adequate. In particular it explains to the parties (particularly JK the losing party) and to an appellate court what the decision is and why it was made.

[26] I therefore reject this limb of the appeal.

Conclusion

[27] In conclusion, I consider that none of the points raised by JK are meritorious, and as a consequence I dismiss this appeal and order JK to pay the costs, to be taxed in default of agreement.