

Sharon Minkin v Lesley Landsberg (Practising As Barnet Family Law)

*** Start Section

...



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

17 November 2015

Case No: B2/2015/0154

Court of Appeal (Civil Division)

[2015] EWCA Civ 1152, 2015 WL 6966258

Before: Lord Justice Jackson Lord Justice Tomlinson and Lady Justice King

Date: Tuesday 17th November

2015

On Appeal from the Central London County Court

District Judge Jackson

3C110395

Hearing date: 13th October 2015

Representation

Mr Simon Sugar (instructed by Simons, Levine & Co) for the Appellant/Claimant.

Miss Jacqueline Simpson (instructed by Mills & Reeve LLP) for the Respondent/Defendant.

Judgment

Lord Justice Jackson:

1. This judgment is in seven parts, namely:

Part 1. Introduction

2. This is an appeal by the claimant in a solicitor's negligence action against the dismissal of her claim on liability. The central issue in this appeal is whether the solicitor's duties were limited to the extent that the defendant alleged and the judge has held.

3. The defendant solicitor in this case was instructed to put into an acceptable form the terms of a consent order agreed between the husband and the wife following divorce. Although the underlying...

*** Start Section

... the advice given to her by Tilleys in their letter of 12 February 2009.

66. Legal aid is no longer available in financial remedy cases, no matter the level of hardship caused to the protagonists or the complexity of the proceedings. Without becoming embroiled in the effect such legislation may have had upon access to justice, what is indisputable is that one of the consequences of legal advice not being available to those unable to pay, is that where an unrepresented divorcing couple reach an agreement, they are faced with the challenge of producing an order reflecting the settlement, the terms of which must be drafted in proper form to be put before a district judge as a consent order.

67. Since the hearing of the present appeal, in *Sharland v Sharland* [2015] UKSC 60; [2015] 3 WLR 1070 paras [19] & [20], the Supreme Court has highlighted the long established position that an agreement in a financial remedy cases cannot oust the jurisdiction of the court whilst noting the public policy considerations which encourage parties to reach agreements as to the distribution of their assets following divorce and the heavy influence such an agreement will have upon the court when asked to approve the terms of a consent order.

68. Lady Hale said in *Sharland* :

“19. Thus it is impossible for the parties to oust the jurisdiction of the court.....Furthermore, “the court does not either automatically or invariably grant the application to give the bargain [the] force of an order. The court conducts an independent assessment to enable...