

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0039

IN THE MATTER OF AN APPLICATION FOR REGISTRATION OF JUDGMENT FOR ENFORCEMENT
PURSUANT TO SECTION 3 OF THE COMMONWEALTH COUNTRIES JUDGMENT ENFORCEMENT
ACT CAP 121 OF THE LAWS OF ST. VINCENT AND THE GRENADINES 2009 REVISED EDITION

and

IN THE MATTER OF AN APPLICATION FOR RECIPROCAL ENFORCEMENT OF JUDGMENT
PURSUANT TO PART 72.2 OF THE CIVIL PROCEDURAL RULES 2000

BETWEEN

CALVIN ANDREW CADDLE

APPLICANT

and

HELEN PATRICIA CADDLE

RESPONDENT

Appearances:

Mr. Jomo Thomas for the applicant.
Respondent in person, unrepresented.

2017: Jun. 12
2018: Feb. 5

DECISION

BACKGROUND

- [1] **Henry, J.:** Mr. Calvin Caddle and Mrs. Helen Caddle are the divorced parents of two minor children. Mr. Caddle resides in Barbados with the children. His ex-wife lives in Saint Vincent and the Grenadines on the mainland. Mr. Caddle claims that Mrs. Caddle has since the divorce in December 2007, failed to make her contribution to the care of the minor children. On 22nd October 2012, he obtained an order of the High Court of Barbados directing Mrs. Caddle to pay him the sum of \$120.00 per week for the children's maintenance. He complained that Mrs. Caddle has not complied with the order.
- [2] He subsequently applied for and obtained an order on 9th May 2016 that Mrs. Caddle is indebted to him in the sum of BDS\$20,760.00 for arrears of maintenance. By Notice of Application filed on 10th March 2017 Mr. Caddle applied to this court for an order that 'leave be granted for the Order of the Supreme Court of Judicature High Court (Family Division) Barbados made on the 9th day of March 2016 ... be registered in the High Court of Justice Saint Vincent and the Grenadines for enforcement against' Mrs. Caddle.
- [3] Mrs. Caddle represented herself. She asked the court not to make the order because things are hard on her and she cannot get a job. She stated that she has paid maintenance for the children since the divorce, the last such occasion being March 2016 when she paid upwards of \$800.00 to Mr. Caddle's lawyer (Mrs. Delves) on the children's behalf.

ISSUE

- [4] The issue is whether the court should register the Order made by the Supreme Court of Judicature High Court (Family Division) Barbados.

ANALYSIS

Issue – Should the court register the Order made by the Supreme Court of Judicature High Court (Family Division) Barbados?

- [5] The evidence was recorded on 12th June 2017. Mrs. Caddle at first denied that the Barbados court had made an order for her to pay arrears in the amount claimed by Mr. Caddle. She later accepted

that such an order was made on 9th May 2016. It is therefore not in dispute that the High Court of Barbados made the order as alleged by Mr. Caddle. Mr. Caddle produced a copy of the order, which was not certified or otherwise authenticated.

[6] The matter was adjourned to permit the parties to file skeleton arguments and list of authorities. Learned counsel Mr. Jomo Thomas filed skeleton arguments on Mr. Caddle's behalf. He submitted that section 3 of the Commonwealth Countries Judgment Enforcement Act¹ allows for the registration of judgments given in the superior courts of any foreign country which is a party to the agreement. He submitted further that in family matters, especially those dealing with the children the applied standard is 'best interest and welfare of the child'.

[7] Learned counsel Mr. Thomas argued that the Schedule to the Act names Barbados as one of the countries to which the Act has application and on that basis the court should allow the registration of the referenced order. He contended that although no certified copy of the order was produced that the copy presented had the seal of the Barbadian authorities. He added that Mrs. Caddle never denied that she had these children and had not provided for them in some time, but rather admitted being taken to court in Barbados where the order was made by the judge.

[8] He contended that Mrs. Caddle admitted owing over \$20,700.00 dollars in arrears. No such admission was made. Although Mrs. Caddle admitted that the court found that she owed \$20,760.00 was made, she maintained that it was reduced by the sums she paid to Mr. Caddle since that date.

[9] Learned counsel Mr. Thomas submitted that although no original or certified copy of the order was produced, the court should not refuse to register the order for this reason, since in these types of matters the Court should be guided by the legal standard of what is in the child's best interest and in the interest of justice.

¹ Cap. 121 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009 ('the Act').

[10] The Court can do no better than highlight the provisions of section 35 of the Evidence Act² which provides that an order of a foreign court may be proved by production of an examined copy which must be authenticated by:

1. being sealed with the seal of the overseas court to which the original belongs; or
2. where the overseas court has no seal, by the signature of the judge or one of the judges of the overseas court, accompanied by a written statement by the judge that the court has no seal.

[11] The document exhibited by Mr. Caddle appears to be a copy of the referenced court order. It contains the vague outline of a seal over the signature appearing above the words 'Dep. Registrar'. I am unable to discern the embossed words which seem to be impressed within the image of what appears to be the seal. It is worth noting that the Evidence Act speaks to 'a seal' and not a 'copy of a seal'. More critically, the purported copy of the Order is not authenticated as stipulated in the Evidence Act.

[12] By Orders dated 17th July 2017, 2nd October 2017, 13th November 2017 and 11th December 2017 Mr. Caddle was granted an extension of time to file written submissions regarding the interpretation of the expression 'civil proceedings' which appears in the Act. He did so respectively on 20th October 2017 and 29th January 2018. He contended '... there is nothing in the plain meaning of the Act which precludes an understanding that a matter done in the Family Court Division of the Court in any of the signatory states shall not be deemed a civil proceeding.'

[13] Mr. Caddle argued that the court should find that the order from the Barbados Court 'falls within the ambit of the understanding of 'civil proceedings' in Commonwealth jurisprudence.' He submitted further:

'Our court system is divided into Criminal and Civil divisions. Specifically, the Family Court has the jurisdiction to deal with both civil and criminal matters. It is presumed that the Barbados Court is similarly structured. However, the order for default in payment for child support can be deemed to be derived from a civil hearing which established the facts of the case and concluded that the Respondent was in default of payment and was in arrears

² Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

in excess of \$20,000.00 Barbadian dollars. That being the case, there can be no other reasonable conclusion that this judgment falls within the definition of one given or made by a court in any civil proceedings.’

- [14] The relevant provisions are sections 2, 3 and 6 of the Act. Section 3 provides that the High Court may order that a judgment obtained in a superior court in the United Kingdom, be registered in Saint Vincent if in all the circumstances it thinks it is just and convenient that the judgment should be enforced in this jurisdiction. ‘Judgment’ is defined in section 2 to mean a judgment or order given or made in a court in any civil proceedings.
- [15] The Governor-General is empowered by section 6 to extend the provisions of the Act to judgments of other Commonwealth Countries which have made reciprocal legislative arrangements to enable judgments from Saint Vincent and the Grenadines to be registered in their countries. He (‘Governor-General’) has extended the provisions to Barbados. ‘Civil proceedings’ is not defined in the Act.
- [16] Mr. Caddle submitted that the purpose of the Commonwealth Countries Judgment Enforcement Act is to ‘facilitate the reciprocal enforcement of judgments, orders and awards in Saint Vincent and the Grenadines and other Commonwealth Countries’ as stated in the headnote to the Act. He argued that the applicant already has an order from an overseas Commonwealth court of superior jurisdiction and section 3 of the Act provides the gateway for registration of the said Order with this court.
- [17] The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act³ makes provision governing the jurisdiction, practice and procedure in the Supreme Court in Saint Vincent and the Grenadines. This includes the High Court and the Court of Appeal. It contains no definition of ‘civil proceedings’. However, it makes a distinction between the practice of the court in its civil and matrimonial jurisdictions.

³ Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009 (Supreme Court Act’).

[18] In this regard, section 11(1) provides:

'The jurisdiction of the High Court in **civil proceedings** and in probate, **divorce and matrimonial causes** shall be exercised in accordance with the provisions of this Act and any other law in operation in Saint Vincent and the Grenadines and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered in the High Court of Justice in England on the 27th of December, 1989.' (bold added)

[19] Prior to December 1989, the United Kingdom established two distinct streams for reciprocal enforcement of overseas maintenance and other civil orders:

1. the Foreign Judgments (Reciprocal Enforcement) Act 1933 in respect of civil proceedings proper; and
2. the Maintenance Orders (Reciprocal Enforcement) Act 1972.

Neither Act is applicable in Saint Vincent and the Grenadines as they have not been imported by the Application of English Law Act⁴, the Supreme Court Act or otherwise.

[20] Saint Vincent and the Grenadines (like most CARICOM countries) has not taken the step to pass legislation for the reciprocal enforcement of maintenance orders. This is not contemplated by the Act. Mr. Caddle may therefore not avail himself of its provisions for present purposes. His application must be dismissed. He may need to resort to the avenues available to him under the common law as described in various authoritative practitioners' legal texts.

[21] It should be noted that the copy of the order produced by Mr. Caddle is dated 9th May 2016. His Notice of Application refers to an order dated '9th March 2016'. Mr. Caddle referred to the order dated 9th May 2016 throughout his testimony and during the questioning of Mrs. Caddle. He made no application to amend his pleadings. The obvious inconsistency was not addressed by either party. To infer that he made an error while reasonable would be prejudicial to Mrs. Caddle who was unrepresented. I refrain from doing so.

⁴ Cap. 12 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[22] In any event, Mr. Caddle's failure to provide an original or certified copy of the order, authenticated in accordance with the law, created evidentiary problems for him which were not ameliorated by the legislative lacunae addressed in the preceding paragraphs. In all the circumstances, Mr. Caddle has failed to establish a legal or factual basis on which the court could properly make the order sought.

[23] This decision was made sometime after the hearing. The delay is regretted. It is attributable in some measure to the repeated extensions to enable the applicant to file authorities and submissions. It must be stressed that counsel have duties to ensure that they thoroughly research the law before filing applications or claims; and to assist the court on an ongoing basis up to decision. I wish to record my apologies to the parties for the extended break between hearing and delivery of the decision.

ORDER

[24] It is ordered:

1. Calvin Caddle's application for an order to register the order made by the Supreme Court of Judicature High Court (Family Division) Barbados on '9th March 2016' is dismissed.
2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar