
Divorce Lawyer Explains Foreign Divorces

Date : September 11, 2020

Do foreign divorces amount to divorces orders under Australian law? A divorce lawyer examines the leading case on this issue: *Anderson v McIntosh* [2013] FamCAFC 200.

Section 44(3) of the *Family Law Act* provides that leave from the court is required to institute property proceedings if the proceedings are brought 12 months after a divorce order comes into effect.

However, in *Anderson v McIntosh* Murphy J made an order to the effect that a divorce lawyer does not require leave under s 44(3) to commence property proceedings where that divorce was granted overseas.

Facts

The parties divorced in a foreign country in 2010 and reached a property agreement in that country for the property in that country. No orders were made in relation to property held in Australia. In 2012, the wife filed an application pursuant to s 79 of the Act seeking an equal division of the assets of the parties.

Trial Decision

Murphy J considered whether s 44(3) applies to applications for property settlement in cases where the parties are divorced overseas. If so, the wife's application is out of time and leave would be required to continue the proceedings.

Murphy J's decision rested on distinguishing between the words "divorce order" and "divorce". He concluded that while divorces are recognised in Australia, a "divorce order" only encompasses orders made by an Australian court. His Honour agreed with the comments in *Savage and Hodgson* (1982) that leave is not required where the divorce was granted overseas. Accordingly, his Honour found that leave was not required for the wife to institute proceedings for property settlement.

Leave to Appeal

The Husband argued that the trial Judge did not give sufficient attention to the relevant provisions of the Act in its present form and that a serious injustice would arise if leave to appeal is not granted because the wife is seeking, in effect, to re-open final property orders. The husband argued that the court should reconsider whether *Savage & Hodgson* is binding.

Finding

The Court held that the term "divorce order" is used consistently throughout the legislation, that



being divorces orders only pertain to Australian divorces. Accordingly, foreign divorces recognised under Australian law do not have the same temporal limitations imposed where the parties seek a property settlement in Australia.

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