



A party's ability to appeal against an ancillary relief order believed to be unfair, is very much constrained by the principles laid down in recent case law.

In a nutshell, it matters not to the court hearing the appeal, that another court on the same day hearing the same facts would have given a substantially different decision. Before an Appeal can succeed, it has to be shown that the decision was so manifestly wrong as to be wholly unjustifiable even within a broad range of discretion, or to be procedurally wrong.

The Court's restrictive attitude regarding Appeals can be seen from the following statements:

- a) An Appeal should not be seen as an automatic further stage in a case
- b) Appeals should be dealt with in ways which are proportionate to the ground of complaint and the subject matter in dispute
- c) More than one level of Appeal cannot be justified except in restricted circumstances

**An appeal should not be seen as an automatic further stage in a case**

All Appeals, whether from the District Judge or from the Circuit Judge, will be dealt with on “**Appellate Principles**”

What this means, is that although a party may be free to make an Appeal, that Appeal will succeed only where it can be clearly demonstrated:

- There has been some **procedural irregularity**
- In conducting the necessary balancing exercise, the original Judge has taken into account matters which were irrelevant, or ignored matters that were relevant, with the result that the Judge had arrived at a conclusion that was **plainly wrong**

The Appeal is limited to a **review**, not a re-hearing, of the decision of the lower Court:

- the court hearing the appeal will not receive any new oral or written evidence that was not before the lower court
- the higher court judge cannot exercise his or her discretion in place of the decision made by the earlier Court

The result in practice, is that even if the second Judge privately believes that s/he would have made a **different** decision had s/he heard the case first time round, that second Judge **cannot** substitute his/her decision, for that of the lower court, unless “plainly wrong” or there has been “procedural irregularity”

Judicial discretion means that two different legal minds may reach widely different decisions on the same facts, without either being appealable. It is only when the decision exceeds the generous ambit

within which reasonable disagreement is possible, and is in fact plainly wrong, that an appellate body is entitled to interfere.

Thus the question for the Judge on Appeal is **not** “would I have done anything different if I had heard the case?”, but rather “is the decision by the lower court **so plainly wrong**, that I should over-turn it?”

In ancillary relief, the Court must consider the various competing factors in the **S25 Checklist** set out in the Matrimonial Causes Act 1973. This takes into account a number of considerations such as the age of the parties and duration of marriage; past and future contributions to the marriage; the parties’ and children’s needs and resources; the income and earning capacity of the parties; the health of both parties; the conduct of both parties; the loss of pension rights and other future benefits; the prospects of remarriage; the previous standard of living before the marriage broke down and the costs of the case.

S25(1) however requires that **first consideration** be given to the welfare, whilst minor, of any child of the family under 18.

Which remaining elements in that checklist should be given priority, is a value judgment, on which reasonable people can differ. As Judges are also people, this means that some degree of diversity in their application of values is inevitable and, within limits, held to be an acceptable price to pay for the flexibility of the discretion conferred by the Matrimonial Causes Act.

The fact that two different court might give two different outcomes from the same facts, is simply reflects the fact that the exercise of discretion in applying the S25 checklist is not an exercise of precise science.

### **Appeals should be proportionate**

There is the principle of proportionality between the amount at stake, and the legal resources of the parties and the community funds (legal aid) it is appropriate to spend on resolving the dispute.

### **More than one level of Appeal can seldom be justified**

Second Appeals are comparatively rare, and will be allowed only

- where there is a compelling reason (including a good prospect of success)
- where some important point of principle of practice arises

### **Appeals from the District Judge (to the Circuit Judge)**

Notice of Appeal must be lodged within 14 days of the decision under appeal, and ideally should give brief grounds for appeal. Permission of the circuit judge is required if the Notice is lodged later.

It is the duty of the Appellant to:

- request notes of evidence from the District judge at the earliest opportunity where it is thought they will be relevant
- prepare a note of the judgment (unless the judgment was given in writing), agree it with the Respondent and submit it to the district judge for approval
- where the Appellant acts in person, the solicitor for the Respondent should do this
- the notes and judgment should then form part of a bundle to be placed before the judge on the hearing of the Appeal

## **Appeals from the Circuit Judge (to the Court of Appeal)**

An Appeal can be made only with permission of the Judge, or if refused, with permission of the Court of Appeal.

Notice of Appeal must be served within 4 weeks of the date of the order or one week of the grant of permission to appeal.

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