

JERSEY / JUDGMENT

B -v- B [2009] JRC 092 (05 May 2009)

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[2009] JRC 92,

[2009] JRC 092 [New search] [Help] [2009]JRC092 royal court (Samedi Division) th May 2009
Before : M. C. St. J. Birt, Esq., Deputy Bailiff, and Jurats Le Breton and Bullen. Between B
Representor And B Respondent Advocate C. R. G Davies for the Representor. Advocate M.
P. Renouf for the Respondent. costs judgment the deputy bailiff: 1. This is a case where
the Court has just set aside the original order made by the Registrar on the grounds of
material non-disclosure. I now have to consider the question of costs. 2. Miss Davies
applies for indemnity costs of this hearing. Mr Renouf argues that I should defer the
decision on costs. I think on this aspect he really relies on two main grounds. First of all
he says there has been an offer made without prejudice as to costs. We do not know what
it is, but he says that it will not be known whether the wife beats that offer until the final
hearing on ancillary relief is determined. He says it would be premature therefore to
make an order for costs against his client at this stage when he might eventually do better
than the offer he has made. Secondly, Mr Renouf argues that, in this particular case, there
is an issue as to whether there are now sufficient assets to make an order which will be
better for the wife than that which she originally obtained, because it is said that the
husband's capital has been put into a trust and therefore some difficult trust arguments
may arise. 3. I do not consider that it is right to defer the question of costs. In relation to
the first point, the issue here was whether there had been material non-disclosure. The
husband said there had not; on that he has lost. If, following a hearing on ancillary relief,
he does better than the "without prejudice as to costs" offer he has made, then of course
the offer can be taken into account at that stage and therefore he may not have to pay the
costs of the second part. But I see no reason not to make a decision on costs at this stage
when the sole issue before the Court was whether there had been material non-disclosure
and the Court found that there had been. 4. As to the second point, namely the assets, my
reason is much the same for thinking that one should proceed at this stage. This was not a
case where the husband accepted that he had not made proper disclosure, but said that it
would not make any difference because he had now got rid of his assets; that was barely

touched upon. The issue was fought fairly and squarely on whether there had been material non-disclosure, the husband contending that there had not been. On that he lost and in my judgment there is no reason why the Court should not now visit him with the costs of this hearing. 5. The second question is whether the costs should be on the standard basis or the indemnity basis. Miss Davies refers to two cases; first of all PS-v-C

[2006] JRC 177 , where the order was set aside on the grounds of non-disclosure and the Bailiff said, at paragraph 6 of the costs judgment:- "I entirely agree with counsel for the wife that in circumstances where a material non-disclosure of financial information has taken place and where there has been, furthermore, a failure to provide relevant information since the original judgment and a tendency to prevaricate, there is no doubt that these are sufficiently unusual features to justify an award of indemnity costs". The second case is that of Manley-v-Bell

[2007] JRC 025 where the application to set aside and the re-hearing were all dealt with at the same time. The Court said in relation to costs at paragraph 2:- "In my judgment a material failure to disclose financial information in the context of matrimonial proceedings so that an order is set aside should ordinarily, absent some special or particular compelling circumstance, lead to an order for indemnity costs". 6. I agree with the sentiments expressed there. The duty to make full and frank disclosure is of the first importance to enable the Court to do justice and, in my judgement, those who fail to comply with that duty are likely to find themselves visited with an order for indemnity costs. A similar principle is often applied where injunctions are set aside on the grounds of a failure to make full and frank disclosure. 7. So I start from the premise that an order for indemnity costs would be appropriate. Mr Renouf argues that I should not do so on this occasion. He says that the circumstances of both Manley-v-Bell and PS-v-C were worse and I am willing to accept that they were. In both those cases there appears to have been a material and deliberate mis-statement as to current assets, whereas Mr Renouf argues that in this case there was failure to appreciate that a likely forthcoming asset had to be included. He also points out that the husband was unrepresented in this case. Finally he refers to the fact that an offer for mediation was made. As to the latter, whilst a failure to take up mediation often can be taken into account by the Court when considering costs, I think that the background to this, where the husband was vehemently denying any failure to make material disclosure, rendered it difficult for the wife to think mediation would be a productive way forward and I do not think this is one of those cases where I should penalise her for failing to agree to mediation. 8. I accept that the husband's conduct here was not as bad as in the two cases cited but nevertheless the Court has found that he failed to make disclosure. He knew that he was extremely likely, in the foreseeable future, to receive this capital asset and he chose to tell no-one about it. He must take the consequences and I order indemnity costs against him. Authorities P-S-v-C

[2006] JRC 177 . Manley-v-Bell

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