

JERSEY / JUDGMENT

C -v- D (Matrimonial) [2013]

JRC 056 (14 March 2013)

[2013] JRC 056

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judgment

the bailiff: 1. In circumstances we shall describe shortly, the Court has before it four separate applications in connection with this dispute over ancillary relief in divorce proceedings. First, there is an appeal by the appellant ("the husband") against the order of the Registrar of the Family Division dated 14th March, 2012; secondly, there is a cross-appeal by the respondent ("the wife") against a particular aspect of the Registrar's decision; thirdly, there is a representation by the wife alleging contempt of court by the husband in failing to comply with the Registrar's order; and finally, there is an application by the wife under Article 33 of the Matrimonial Causes (Jersey) Law 1949 ("the 1949 Law") to vary the Registrar's order. The background 2. The parties were married in 2001 and they have two children. At the time of the hearing before the Registrar the husband was aged 39, the wife was 34 and the children were 9 and 6. The parties separated in November 2010. The wife has remained in the jointly owned former matrimonial home ("the matrimonial home") with the two children. At the time of the hearing before the Registrar, the husband lived in rented accommodation with his new partner and her children. There was an agreed valuation of the matrimonial home before the Registrar of £535,000. There are two loans secured on the property, namely the mortgage and an equity release loan which was taken out principally to buy a motorhome. The equity in the matrimonial home after deduction of the two loans and selling costs was agreed at just over £231,000. The motorhome was valued at £17,000. 3. The matrimonial home and the motorhome are the only assets of significance. The wife has a car and the husband a van. The wife has two modest pensions. The husband apparently cashed in his police pension back in 2010. 4. As to income, the wife has three part time jobs as a school assistant, a swimming instructress and an ironing lady. Her gross income, including income support, is £16,245 per annum. The husband was at the time of the hearing before the Registrar in partnership with his brother as a builder. There was some confusion before the Registrar as to his income. His affidavit of means apparently declared a net income of £49,956 whereas, in evidence, he said that this was a pre-tax figure and his open position recorded his net income as £41,147. He also gave evidence that times are extremely hard in the building trade and he expected his income to decline. Proceedings before the Registrar 5. The wife's open position before the Registrar was that a Mesher order should be made, in that the matrimonial home should be retained in the parties' joint names until the children reached 16 or ceased full time

secondary education, whichever was the later. In the meantime the parties should each pay half of the mortgage payments and related life insurance policies, foncier rates and building insurance and the wife should meet all other expenses, such as contents insurance, occupiers' rates, the utility bills etc. She contended that the motorhome should be sold with the proceeds being applied to discharge her legal fees, the husband should be ordered to pay child maintenance and there should also be spousal maintenance of £250 per month. 6. The husband's open position was that there was insufficient income to retain the matrimonial home and that his income would decline because of the downturn in the building industry. He contended that the matrimonial home should be sold and the net proceeds of sale divided equally between the parties, the husband should retain the motorhome and each party should retain their own assets. He accepted that child maintenance should be ordered but said that there should be no spousal maintenance. 7. The Registrar concluded that the right course was to make a Mesher order so that the wife and children could remain in the matrimonial home and the husband could retain his share in the property. He found that the mortgage costs etc in relation to the matrimonial home were less than the rental which the wife would have to pay for equivalent accommodation. If the property were sold, her capital would be swallowed up over a period in rental payments. 8. He concluded that the parties could just afford this solution. He assessed the wife's monthly outgoings at £1,997 (including £661 in respect of half the mortgage costs etc in relation to the matrimonial home) and he took her monthly income as £1154 assuming the loss of income support after the making of the order. He said that the parties were agreed that there should be child maintenance of £708 per month in total for the two children, so the wife would therefore have £1,862. This was still less than her expenditure, so that she would need some spousal maintenance. 9. In this respect, he held that he had been given inconsistent information about the husband's income and he proposed to take the monthly figure of £4,163 (based on the figure of £49,956 in the affidavit of means) rather than the figure of £3,428.97 (based on the figure of £41,147 per annum in his open position). He noted that the husband had contributed a total of £17,923 in 2011 towards his new partner and her family and that this was a greater level of funding than he had been giving to the wife and children. 10. He noted also that the husband's partner had received a divorce settlement recently and intended to purchase a new property. The husband proposed to pay rent to his new partner of £1500 - £1600 per month. 11. The Registrar concluded that the husband should pay spousal maintenance of £200 per month in addition to the child maintenance of £708. He worked out that this would be 37% of the husband's net monthly income of £4,163. He noted that the husband also paid maintenance of £200 per month for his older son, who lived with his mother - this was an error as the figure is in fact £230 - and some additional expenses for the children. Nevertheless, having considered the husband's figures, he concluded that it should just be possible for the husband to make the payments which he proposed, namely £661 towards the matrimonial home, £708 child maintenance and £200 spousal maintenance making £1569 in all. He also ordered that the motorhome be sold and that the proceeds be used towards legal fees, the wife's fees being paid first. 12. In summary, he made a Mesher order to the effect that the matrimonial home should remain registered in the joint names of the parties for the occupation of the wife and children until the first to occur of the trigger events, namely (i) the youngest child attaining 16 or leaving full-time secondary

education, whichever was the later, or (ii) the earlier election of the wife. Each party was to contribute one half of the payments in respect of the mortgage, secured loan, the life insurance policies, the building insurance and the foncier rates (£661 per month) with the wife being responsible for all other expenses. The husband was ordered to pay child maintenance of £702 per month together with certain other incidental expenses such as after school activities and was also ordered to pay spousal maintenance of £200 per month. The Registrar further ordered that neither party could make any application for variation or discharge of his order pursuant to Article 33 of the 1949 Law save in respect of certain specified matters (which are not relevant).

Events since the Registrar's decision 13. On 24th March, 2012, - i.e. some two days after the Registrar's reasons were circulated - the husband e-mailed the wife to say that he would be unable to pay the April mortgage instalment. On 26th March Benest and Syvret (on behalf of the wife) wrote to Mr Troy (on behalf of the husband) to say that if the husband did not pay under the order, they would issue proceedings for contempt. The husband responded on 27th March to the effect that Mr Troy was no longer instructed, that an appeal would be lodged and that legal aid was being sought. 14. In the event, the husband did pay the April mortgage instalment but wrote on 15th April to the effect that he suspected that, at the end of the month, he would fail to fully comply with the order and also advising that he had been refused legal aid and would not be pursuing his appeal. The husband in due course also paid all payments due in May, both in respect of the mortgage payments and the spousal and child maintenance. 15. However, on 22nd May, the husband sent an e-mail to the wife advising that he had developed a problem with his back and that this would have a significant effect on his ability to work and earn. He said that he would not be able to make the next payment on the mortgage and that the bank were aware of this. He suggested that she should reconsider her position regarding the matrimonial home and that they should jointly approach the bank in order to put the payments on an interest only basis until the property was sold. 16. In the meantime, on 14th May, the husband had forwarded a cheque of £10,000 to Benest and Syvret as representing the proceeds of the sale of the motorhome. This was of course considerably less than the agreed valuation at the time of the hearing before the Registrar of £17,000. The sum was used towards the wife's legal fees. 17. At the end of May, the wife paid over to the husband her share of the June mortgage instalment but on 1st June, the husband replied saying that he had returned the money to her (apart from the insurance premium) as there were insufficient funds in his account to cover the payment in full, so that a default had occurred. He imagined that the bank would immediately commence process against them. He said that he had paid the child maintenance but not the spousal maintenance as he had insufficient funds. It transpired that the husband had cancelled the direct debit to the bank in respect of the mortgage payments before the instalment fell due. 18. The husband in due course decided to proceed with an appeal against the Registrar's decision and his appeal together with the wife's allegation of contempt came before the Court initially on 3rd December, 2012. The husband was representing himself and there was a complete dearth of information as to his financial position and his medical condition. The Court therefore adjourned the matter and gave directions for the filing of affidavit evidence. It also gave the wife leave to appeal out of time against the Registrar's decision. The matter came back before us on 13th February, 2013. 19. The evidence produced has disclosed a considerable change in circumstances since the decision of

the Registrar. 20. First, on 23rd March, 2012, the husband's partner purchased a property in her own name for £620,000 with a loan secured against the property in the sum of £120,000. She lives there with the husband and her children. According to the husband, he agreed at the time to pay her rent of £750 a month together with half the household bills in the sum of £185.77 per month and an additional £250 per month to cover food etc. (i.e. £1185.72 in total). 21. Secondly, a combination of declining work, the husband's back condition and the fact that his Social Security contributions were high because they were paid on a self-employed basis, led, says the husband, to a decision that the partnership with his brother should cease trading at the end of June 2012, with each brother going his own way. The husband has become the employee of his partner, who on 8th June, 2012, registered a business name under the name of Eastlee Property Maintenance ("Eastlee"). The husband has an employment contract with Eastlee which provides that he is paid £20 per hour for such hours as he works. His Social Security payments (at the lower rate for an employee) and ITIS are deducted before he is paid. He appears to be the only employee of Eastlee although on occasions other people are sub-contracted in to assist. The Court is satisfied that Eastlee has been established as a vehicle to enable him to continue to work in the building trade but with him now being technically an employee of his partner rather than a self-employed trader. The husband has not provided any financial information about Eastlee and accordingly it is not clear whether Eastlee is or is not making any surplus over the amount that it pays him by way of salary together with the associated Social Security and ITIS deductions. 22. Thirdly, the husband has been troubled by back pain since his first visit about the matter to his general practitioner, which was on 2nd May, 2012. He has been referred to the pain clinic and we have been shown a number of items of correspondence and letters from his general practitioner. There does not appear to be a firm diagnosis but it seems clear that the general practitioner and the pain clinic are taking the matter seriously and we were informed that the husband has just been given an epidural injection with steroids with a view to alleviating the pain. The upshot is that, apart from less work in any event because of the economic downturn, the husband says that he has not been able to work all the hours which are available to him. More particularly, in December, he was signed off sick for most of the month, he has been signed off for part of January and continues to be signed off so far in February. He is in receipt of short term incapacity allowance. This has resulted in a substantial decline in his income. 23. The consequences can be seen in tabular form as set out below. This information is taken from the schedule attached to the skeleton argument filed by the petitioner but the husband was taken through it in evidence and accepted its accuracy, subject to one minor matter which we have adjusted in the table.

Month	Money Earned/Received by the husband	Money paid to the wife
March 2012	£5,297.00	Paid in full
April 2012	£4,504.00	Paid in full
May 2012	£2,795.00	£826.50
June 2012	£2,275.00	£1414.67
July 2012	£3,800.80	£1323.95
August 2012	£2,780.80	£850.00
September 2012	£2,622.80	£700.00
October 2012	£2,296.80	£800.00
November 2012	£2,217.60	£nil
December 2012	£930.50 (being £235.00 wages and the balance incapacity allowance)	£850.00
January 2013	£1,058.65 (being £764.40 wages and the balance incapacity allowance)	£150.00

24. This shows a total income for eleven months of £30,578.95 which amounts to an average monthly income of £2,779.90. 25. The evidence also showed that the husband was in arrears in respect of the Registrar's order in the aggregate sum of £8,081.42 as at the date of the hearing. 26. The husband accepted that he had been on holiday to

Thailand with his partner in November but said that this had been paid for entirely by his partner as his birthday present and he had not contributed anything, although he had received holiday pay during this period from Eastlee. It is correct that his bank account and credit card statement show no expenditure in respect of the Thailand holiday. 27. The effect of the failure of the husband to abide by the terms of the Registrar's order has been to place considerable pressure on the wife's financial resources. She says that she has used up all of her modest savings and has had to borrow money from her parents in order to keep up the mortgage instalments. At present she owes them a total of £2,700 and also owes money to the fuel company. She says that her parents are of modest means although they have promised to do all they can to help their grandchildren. Her father has even offered to work beyond retirement if necessary. The wife's appeal 28. Article 33 of the 1949 Law provides as follows:- "33. Power to vary orders (1) The court may from time to time discharge or vary an order made under Article 25, 27, 28, 29, 30 or 31 or suspend any of the provisions thereof temporarily or revive the operation of any of the provisions so suspended. (2) In exercising the powers conferred by this Article, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage." 29. The Mesher order was made under Article 30 of the 1949 Law and accordingly Article 33 is applicable, so that the Court has power to vary the order made by the Registrar. 30. As already stated, the Registrar ordered that neither party may make any application under Article 33 of the 1949 Law for the variation or discharge of his order. We have to say that we do not believe that the Registrar had power to make such an order. Article 33 specifically confers a power of variation upon a court and we do not think it is open to a court to oust the jurisdiction conferred upon it by the legislature. Even if it is theoretically possible, we think that a court should be extremely cautious before making such an order and we do not think there were valid grounds for doing so in this case. It was apparent to the Registrar that the affordability of the Mesher order which he was making was quite marginal and there must therefore have been a realistic possibility that there might need to be a variation because of circumstances not turning out as the Registrar had envisaged. 31. In the circumstances we therefore allow the wife's appeal against the Registrar's decision by quashing the prohibition on applying for a variation of the order. The present position 32. We therefore have before us the husband's appeal and the wife's application for a variation as well as the representation for contempt. We think that the first matter is to consider whether the Registrar's order should stand; and if not what order should replace it. 33. Neither party argues for the retention of the Registrar's order. 34. The husband argues that he cannot afford the payments envisaged. His failure to make them is not as a result of wilful disobedience on his part; it has resulted from a combination of a downturn in the building trade and his back condition. He says in his open position before us that he has debts which total £37,844 made up as follows (in round terms):- Legal Fees to Mr Robin Troy £17,253 HSBC Flexiloan and credit cards £4,952 Court fees £320 Unpaid maintenance for his older son £690 Unpaid rents/food bills to his partner £4,250 48 remaining payments on his van £9,180 Total:- £36,645 35. He further argues that, because of the uncertainty as to whether he will be fit to work because of his back condition, he needs to ensure that he can pay rent and his living expenses for the next twelve months, which would total £14,229. He therefore considers that he requires a total of £53,274. He reminded the Court that on

23rd August, 2011, he had e-mailed the wife suggesting that he should transfer his share in the house to her completely and simply pay child maintenance for the children. He submitted that the house should be sold and that he should receive £60,000 in order to clear his debts, with the balance being paid to the wife. 36. Similarly, the wife no longer wishes there to be a Mesher order. She appreciates that, as long as he retains a half share, there is no incentive on the husband to meet the payments ordered by the Registrar. If he fails to make the payments, the consequence will be that the bank will foreclose and he will then receive the half share on sale which he argued for before the Registrar. She therefore seeks an order for the matrimonial home to remain in the joint names of the parties but with the entire equity being held for her in the event of a sale. She says that a transfer into her name is not possible because she cannot obtain a mortgage of sufficient amount in her own right. Similarly, because of the favourable terms of the existing mortgage, she cannot acquire a smaller home (three bedrooms) in place of the matrimonial home even if she is awarded 100% of the equity, because the required mortgage would still be too large. Thus, she says, the only alternative to her suggestion would be a sale followed by private sector rental of accommodation. In that event, even on the original valuation, her capital would disappear within approximately seven years and thereafter she would be dependent on States rental housing. This would be extremely disruptive for the children. 37. She therefore seeks a variation of the order to the effect that she will be responsible for all outgoings in respect of the matrimonial home despite it being in joint names; the sole obligation of the husband will be to pay the spousal maintenance and child maintenance as ordered by the Registrar. She accepts that this will be difficult for her and will require yet further economising coupled with help from her parents, but she believes she will just be able to manage. 38. We should add that the wife placed an updated valuation of the matrimonial home before the Court carried out by the same valuer as prepared the original valuation of £535,000 (which had been carried out in September 2011). The valuer was of the opinion that the value is now in the region of £475,000. The husband did not accept that valuation and had not been given the opportunity of gaining access to the matrimonial home so that a valuer of his choice could prepare an alternative valuation. We think that was unfortunate as we are left with only one very recent valuation prepared at the wife's request. However, he did accept that, given the difficulties in the housing market, the price had probably dropped from £535,000 but he did not accept it would have dropped nearly as much as was suggested by the latest valuation. If £475,000 is the correct valuation, the net equity is, according to the wife, reduced to £181,641. Decision 39. The Court agrees with both parties that events since the Registrar's decision have shown that a Mesher order is not appropriate in this case. We can understand why the Registrar made the order originally, but such an order depends upon the reliability of the payments to support the mortgage etc. Events have shown that there is no such reliability in this case. It is clear that the husband did not agree with the Registrar's order and threatened to default on payments almost immediately. It is of note that in May he received £2,795 yet only paid £826.50, in June he received £2,275 but paid £1414.67, in July he received £3,800.80 but only paid £1323.95, in August he received £2,780.80 but only paid £850, in September he received £2,622.80 but only paid £700, in October he received £2,296.80 but only paid £800 and finally in November, when he was on holiday in Thailand he received £2,217.60 but did not pay anything. In our judgment the husband

has not made the efforts to pay which he should have and we consider that he could have made larger payments had he wished to do so. However, we accept that his back problem has become worse and that he has not been in a position to make the full payments in December, January and February. There is clearly uncertainty for the future. However, the husband is an able and intelligent man and we have no doubt that in due course, he will be able to earn a reasonably substantial income, even if that has to be in a different field from building work because of the physical problems of his back. We consider his earning capacity to be significantly greater than that of the wife. 40. Having concluded that a Mesher order is not appropriate, the question then is what is the fair order? The husband appeals and asks for an order that the matrimonial home be sold with £60,000 going to him and the balance to the wife. The wife applies for a variation and seeks an order that the matrimonial home be retained in joint names but with her taking over responsibility for the mortgage instalments etc. 41. We remind ourselves of the importance of giving first consideration to the need to provide a home for the children. See for example O-v-O

[2005] JLR 535 at paras 24 - 27 endorsing the observations of Butler-Sloss P in Cordle-v-Cordle

[2002] 1 WLR 1441 at para 33 where she said:- "What White's case essentially decides ... is that it is the first duty of the court of trial to apply the criteria in section 25 ... in search of the overarching objective of fairness. It seems to me that in search of that overarching objective in the typical ancillary relief case the district judge will always look first to the housing needs of the parties. Homes are of fundamental importance and there is nothing more awful than homelessness. So in the ordinary case the court's first concern will be to provide a home for the primary carer and the children (whose welfare is the first consideration). Of course in many cases the satisfaction of that need may absorb all that is immediately available. But, as in this case, where there is sufficient to go beyond that, the court's concern will be to provide the means for the absent parent to rehouse..." 42. In our judgment, the best interests of the children would be served by retention of the matrimonial home if this is at all possible. We cannot agree that the proposal of the husband would be fair. A sale of the property with £60,000 or some lesser sum being paid to the husband would result in the wife having to rent accommodation in the private sector. As the Registrar found, this would result in depletion of her capital and would almost certainly result in a need to move to rental on the housing list at some stage in the future. We do not consider that this would be in the children's interests nor would it be a fair outcome for the wife. 43. We have considered next whether the matrimonial home should be sold with the wife using the net proceeds to purchase a three bedroomed as opposed to a four bedroomed house. However, we are satisfied from the figures which were provided to us that this would not be achievable. The wife has been advised that the maximum mortgage she could obtain relying on her income alone would be £76,600. If allowance is also made for spousal maintenance at the current rate, she could obtain a mortgage of £129,600 but we think that, in the light of the husband's payment record, it would be unfair and unreasonable to rely on this. We accept that it is highly unlikely that she could acquire a three bedroomed house for less than £350,000. Allowing for a mortgage of £76,600 and purchase costs, she would need to provide an equity of £281,590.

Even if the matrimonial home were to be sold for £535,000, her equity after repayment of the mortgage and the selling costs would be in the region of £239,000. She would not therefore be able to fund the purchase. Should anything less than £535,000 be obtained - and we believe that, as the husband conceded, the market value of the matrimonial home has probably declined since September 2011 although not necessarily by as much as the latest valuation suggests- the task would be even more impossible. Thus we are satisfied that the only realistic choice before us is between retention of the matrimonial home in joint names but with the equity being awarded to the wife and a sale with the wife thereafter renting accommodation. We accept that a transfer of the matrimonial home into her sole name is not possible for the reason given at paragraph 36 above, namely that the Bank will not agree to it because her income alone is insufficient to support the level of borrowing which currently exists. 44. In our judgment, the fair outcome in this case is to make the order requested by the wife to the effect that the matrimonial home should be retained but with her being entitled to the entire equity upon sale and being responsible in the meantime for all outgoings in respect of the property. It is always a strong step to award the whole of the equity in the matrimonial home to one of the spouses in the absence of other assets to compensate; however, in our judgment, it is the fair outcome in this case, given the history of this matter and the need to provide accommodation for the children of the family. However, we think that, to reflect the award of the whole equity to the wife and to take account of the husband's current income position, it would be reasonable to discharge the order for spousal maintenance. We appreciate that this will raise a question as to whether the wife can in fact retain the matrimonial home, but we think that it is the only way of giving her the opportunity of keeping it if possible. We do not think it would be right to order spousal maintenance as well as awarding the matrimonial home to the wife. The husband must, on the other hand, continue to pay child maintenance at the rate ordered by the Registrar. We did not have before us a specific appeal against or application to vary child maintenance and in any event we would not think it right to do so on the basis of what has so far been a short term inability to work. 45. We appreciate that this will not release any funds for the husband to settle his debts. However, we think he somewhat overstated the pressing nature of them. In particular, we do not think his partner is likely to sue him or evict him because of the unpaid rent and food bills of £4,300 and the payments on the van are of course only due as instalments under the loan agreement which he took out when he acquired it. Clearly the largest liability is to Mr Troy but we would expect Mr Troy to be realistic and accept that payment will have to be by instalments given the husband's current financial position. We appreciate also that this order will mean that the husband is still shown as a joint owner of the matrimonial property and a joint borrower in respect of the mortgage and that this may disadvantage him in seeking new borrowings in the future. 46. But, ultimately, we have had to stand back and see what is the fairest course in what is a very difficult situation. For the reasons we have given, we dismiss the husband's appeal against the Registrar's order, but we vary paragraphs 1 and 2 of that order on the wife's application so as to provide that the matrimonial home shall be retained until the same trigger events as

previously (see para 12 above), but that upon a sale the wife will receive the entire sale proceeds. In the meantime the expenses, which under the Registrar's order would have been shared, are now to be paid entirely by the wife. The husband will therefore be relieved of his obligation to pay one half of the payments in respect of the mortgage, the secured loan, the life insurance policies, the building insurance and the foncier rates. We discharge the order for spousal maintenance but we leave in place the order for child maintenance and the other ancillary orders in relation to the children as set out in paragraph 6 of the Registrar's order. We also order that the Act be registered in the Public Registry so that third parties may be aware of the position in relation to the matrimonial home. 47. We have considered what should be done in relation to the arrears. We accept that the husband is not currently in a position to pay them. Given that we have decided to award the entire equity in the matrimonial home to the wife, we think the fairest course is to remit the arrears in so far as they relate to the expenses of the home and spousal maintenance, but to direct that they must be paid in so far as they relate to unpaid child maintenance. We ask the parties to agree exactly what this sum is, as we have not been able to ascertain it from the papers before us. 48. We accept that the order we have made is no guarantee that the wife will be able to retain the matrimonial home and there is a risk that she will still have to sell it with the consequent unsatisfactory solution of having to rent. However, we believe that it is the best we can do in the circumstances of this case. Should the wife conclude at any stage that the matrimonial home has to be sold as she cannot afford to remain there, she will at least have the entire net proceeds of the sale to assist in re-housing herself and the children. 49. As to the representation for contempt, on 10th October, 2012, at a time when he was represented by Viberts, the husband formally admitted his contempt in failing to make the payments ordered by the Registrar. As we have indicated, we consider that the husband could have made greater payments in the earlier months after the award had he so wished, although we accept that he has not been able to do so in recent months. Given the straitened financial circumstances of the parties, we do not think it would be right to inflict further pressure by imposing a penalty for the contempt. 50. Finally, we should add that, at an earlier hearing, the Deputy Bailiff had made it clear that he hoped very much that the husband would be granted legal aid. It would seem that for some time the husband's partner refused to disclose details of her assets in accordance with the requirements of the Legal Aid Scheme but that, following the Court's assurance that any such information would not be made available to the wife, the husband's partner did provide the relevant information. However, legal aid was then refused on the basis that her capital asset precluded the granting of legal aid. We have to say that that decision suggests an urgent need for a review of the legal aid guidelines. The house belongs entirely to the husband's partner and he has no claim upon it. It is clear that, save for the matrimonial home, he has no capital assets and in any event the matrimonial home is desperately needed to provide a home for the children, whether in the form of its retention or the use of its sale proceeds. It is also clear that at present the husband's income position is far from satisfactory. In all the circumstances, it seems extraordinary that legal aid should be denied to the husband. We think that this and

certain other cases which have come to the attention of the Court suggest that a review of the legal aid guidelines is overdue. Postscript 51. A draft of the foregoing part of this judgment was circulated to the parties for comment. In particular, we sought their assistance in relation to paragraph 47 as to what sum was outstanding by way of arrears of child maintenance. It transpires that this is not straightforward to ascertain as monies paid in partial settlement of the husband's obligations under the Registrar's order were not allocated to child maintenance or to his other obligations, either by him or by the wife. What does seem to be agreed is that the total amount which he should have paid from 1st June, 2012, to the end of February 2013 was £14,169.71 and that the child maintenance/ancillary children costs proportion of that figure is £6,644.78 (i.e. 47%). The husband actually made payments totalling £6,088.62. The husband argued that this should all be allocated to child maintenance with the result that he was only in arrears to the extent of £556.16. Advocate Benest, on the other hand, submitted that the payments he had made should be attributed as to 47% to child maintenance i.e. £2,861.65. This would mean that the arrears were £3,783.13 (being £6,644.78 less £2,861.65). 52. It is clear that there is no obviously correct answer to this question. What is, however, clear is that at present the husband's financial position is poor and he is not in a position to pay any arrears. Our main priority is to do all we can to preserve the matrimonial home for the children and we think that to saddle the husband with substantial arrears will simply imperil the continuity of future child maintenance, which is important not only for their maintenance but also to enable the wife and children to remain in the matrimonial home. Accordingly, our decision is to remit not only the arrears in so far as they relate to the expenses of the matrimonial home and to spousal maintenance, but also to remit all arrears of child maintenance save for the sum of £556.16, which the husband agrees to be due. *Authorities Matrimonial Causes (Jersey) Law 1949. Mesher-v-Mesher [1980] 1 All E. R. 126n. O-v-O*

[2005] JLR 535 . Cordle-v-Cordle

[2002] 1 WLR 1441 . Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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