

JERSEY / JUDGMENT

C v L [2009] JRC 165A (18 August 2009)

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judgment

the REGISTRAR: 1. The parties in this are not married but, when they learned that C was pregnant, they planned together for the birth of their daughter C. 2. The mother is applying to the Court, not only for an order that the father should pay maintenance to her for C (this is agreed at the rate of £690 per month), but that he should pay her a lump sum of £15,000. The lump sum applied for is in respect of two things:- (i) "extraordinary expenditure", during 4 ½ years, between now and C going to school for such items as child seats, pushchair, weaning products and appropriate toys and equipment, which will change as the child grows older. The mother calculates the father's half share at £10,000 for this period. (ii) £5,000 for setting up an independent home for herself and C. Presently she lives with her mother. 3. The mother is also applying for the payment by the father of other expenses ("extras"), some of which are agreed. Unfortunately, others are not. Matters which are agreed include paying one half of C's private school fees in Jersey and that he should pay one half of agreed school trips. 4. Extras which are not agreed include the payment of one half of extra curricula activities of the mother's choice, one half the cost of nursery fees until C goes to school and the receipt of tax allowances by the mother for C. I did not think it wise to make the choice of activities dependent solely on the mother's choice. This could give unreasonable control of the choice to the mother. However, there is liberty to apply in case the mother feels aggrieved that certain activities are reasonable and will benefit the child. As for tax allowances, I saw no reason to depart from a commonly used formula in these cases. As for nursery fees see below at paragraph 38. 5. Finally, it is not agreed how and when the child maintenance should be reviewed. 6. I think it is useful to set out in some detail the facts leading up to the application. I take these from the chronologies filed by the parties and from their evidence insofar as it did not reveal any dispute as to facts:- April 2007 Parties commence relationship. 10th December 2007 Parties move in together. June 2008 Mother ceases work. Her last full pay packet was in June, but she received payment for some additional work during July. Thereafter, she ceases work altogether. August 2008 Father pays 2 instalments of £500 per month (one for July) to the mother for her to prepare for C's birth. Payments continue at the rate of £500 per month until December. 10th September 2008 Birth of C. 10th October 2008 Relationship terminated by the respondent. Respondent requests that the applicant and C move out. 10th November 2008 Parties reconcile. 10th December 2008 Relationship finally terminated. January 2009 Following separation, (i.e. from January) maintenance of £250 per month paid. Later made up retrospectively to £400 per month up to and including 1st March payment. 10th March

2009 Parental Responsibility Agreement sealed by the Court. nd April With effect from April payment, interim maintenance increased to £600 per month until hearing. th July 2009 Court notified that £690 per month is agreed. 7. I should draw attention to the fact that between the mother leaving work in July and the hearing, the father paid £6,000 to the mother, an average of £500 per month for 12 months. 8. Altogether she had accumulated £11,000 in savings between February 2008 and December 2008, due to the fact that he paid the mortgage and all utility bills. She contributed only to the cost of food and everything for C. By the end of June, she agreed in the course of giving evidence that she had about £9,000 left. 9. In addition, she sold her engagement ring for £2,000 and a car, given to her by the father, for £400. 10. At first glance, due to the thrift of the mother, and, it has to be said, the generosity of the father, her situation appears secure. 11. Contrasted with her sensible attitude to financial matters, the father admits to having debts, to a habit of gambling and having preferred to leave the mother to make her own arrangements for the birth of their child. 12. In the light of this, the mother's advocate pointed to the "flashy" lifestyle enjoyed by the parties when they were together, to his poor debt management now that they are separated and generally to the mother's uncertain future if she has to depend on him to pay maintenance consistent with his potentially high income. 13. Before dealing with the issue of the lump sum and the payment of "extras", I would like to explain how I think the maintenance should be reviewed to take account of the father's unpredictable financial affairs. 14. I say "unpredictable" because:- (i) of his debts and his gambling habit, but also (ii) because of his relatively high bonus in proportion to his annual salary. The bonus is approximately one third of the total. He was not sure he would necessarily achieve a bonus at all in 2010. 15. The calculation for agreed maintenance, as I understand it, is derived from the father's net salary of £412,321 and his net bonus of £13,940 received in February 2009. 16. Supposing the bonus is not received at all in 2010, it would be wrong for the maintenance of £690 to automatically increase with the cost of living. However, if the bonus is increased, it would be wrong to tie the maintenance to the cost of living index. 17. Therefore, it seems fair to order that any increase in maintenance should be calculated annually in accordance with a CSA style calculation using the last year's net salary and the bonus received in February as base figures. 18. I therefore reject Advocate Field's argument that there should be a review of maintenance when the mother goes back to work or the child goes to nursery. I agree with Advocate Colley's argument that maintenance, in this particular case, should be recalculated annually and not be tied to the cost of living index as maintenance commonly is, nor be subject to review when the mother commences work. However, see below (paragraph 38) with regard to nursery fees. 19. In my judgement, maintenance at the agreed rate should commence from the final separation date, less amounts already paid. So as to avoid any dispute about what day this is and what should be deducted, the backdating should commence on 1 st January 2009, the month after the final separation. 20. I have received an e-mail from Advocate Colley's Office asking me to explain in my reasons why I have changed the wording of paragraph 3 of my order under the "slip" rule. I had omitted to make it clear exactly when the date backdated maintenance, less amounts already paid, would commence. This I have now done. It is misleading for Advocate Colley's assistant to suggest that, on her interpretation of the original version, as compared to the revised version, the mother will "lose" £222 for December. Indeed I calculate the daily rate "lost", taking into account

£500 already paid as £55, but there may be other ways of doing the calculation. It concerns me that the preparation and sending of the e-mail asking me to deal with this point might well have cost the client just as much. It is just this sort of trivial disagreement which I was hoping to avoid. I fear advocates and their staff concerned in these cases can only too easily forget that they are effectively spending client's money which is more appropriately spent on maintaining the child.

Lump Sum 21. The Children (Jersey) Law 2002 Article 15 Schedule 1 sets out the powers of the Court to award a lump sum to be paid by a parent to provide for a child. It closely follows the provisions of the UK Children Act 1989 . 22. Paragraph 1 of the Schedule is in general terms. A parent, a guardian or a person with a Residence order can apply for the other parent, (or both parents), to pay a lump sum to the applicant for the benefit of the child, or to the child himself.

23. Paragraph 5 gives examples of situations where a lump sum order is appropriate. 5(i) reads:- "Without prejudice to the generality of paragraph 1, an order under this paragraph for payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred before the making of the order to be met which were incurred in connection with the birth of the child or in maintaining him." 24. The purposes for which Advocate Colley is applying for a lump sum do not come under this heading, because the example given in paragraph 5 is for expenses "incurred before the making of the order" (my italics). 25. The example given in Article 5 is, however, a common situation, often encountered in the older cases of 'Pension Alimentaire' like the reported case of *Hullah -v- Lelliot* [1991] JLR N 9b. A lump sum was commonly awarded for the mother's confinement (accouchement) and the first set of clothes and equipment, like a cot and pram for the baby (layette). These were items, which would have been already purchased when the case came to Court, therefore incurred before making the order. 26. This does not mean that I have no power to award a lump sum for future expenditure. I have to consider the matters to which the Court must have regard in paragraph 4 to decide whether to make an award under paragraph 1. In accordance with paragraph 4, I have to consider the financial resources and the financial needs, not only of the child but of the child's parents and other people close to the child who may be relevant in any particular case. 27. This case is relatively simple. There are only the child and the parents to consider, bearing in mind that £11,000 is left over from the mother's confinement and initial cost of her 'layette'. 28. In her evidence, the mother could not be precise about what the future expenses might be. Even the past expenses already incurred were not exactly clear. I was handed a hand written list of items totalling £1,602.30, including a sum of £490 for baby clothes and a baby walker (£41.39) which was returned. It was suggested that the baby's clothes should not be considered extra expenditure. I did not really have any clear idea what future extra expenditure might be. The mother herself admitted that she would have to wait till the time came to see what might be appropriate. Suffice it to say that any special requirement for items which were not covered by regular maintenance did not seem to me to be made out. 29. The claim for future accommodation needs is, similarly, un-quantified, but Advocate Colley asks for £5,000. 30. The mother and child presently live with her parents. He has a well paid job and his own apartment. Should I consider the relative lifestyles of a young mother with a baby living at home as opposed to a young man with his own property and income and try to "balance" them against each other to see what is fair? At the moment, in the short term, the two lifestyles are at odds, but impossible to quantify. She has no spending money of her own except for savings.

However, there is equally no immediate apparent need for the mother to obtain urgent financial support. I can only assume she is adequately provided for with her parents. She is well qualified, and, I have no doubt, will, in the future, obtain employment again easily when the time comes. Both parties have promising futures ahead of them. I don't think that just because a young mother is temporarily without her own income means that her ex-partner has to make up the entire deficiency. Neither do I believe that it is a responsibility of every father of an illegitimate child to contribute to the re-housing of the mother and child. The English cases on this point, such as *Re P* (see below) concern fathers who are very wealthy. Even so, the Court in England will settle a property in favour of the child's mother until the child is adult, not for any longer than that, and second applications will be automatically struck out whether or not a first application is successful. So these cases are still very different from divorce cases in the genre of *White v- White*

[2000] 2 FLR 981 where the courts in England have tended to look towards equality. 31.

Nevertheless, I have read with interest the Article in Mrs Colley's bundle by David Burles of 1 Garden Court published in *Family Law Week* under the title *Children Act Schedule 1 claims: Latest Cases*. The author describes a willingness in the Court of Appeal to meet genuine needs in a generous way wherever possible. 32. The helpful considerations proposed by *Body J* in *Re P*

[2003] EWCA Civ 837, in Schedule 1 cases are these:- (i) The welfare of the child while a minor, although not paramount, is naturally a very relevant consideration as one of 'all the circumstances' of the case. (ii) Considerations as to the length and nature of the parents' relationship and whether or not the child was planned are generally of little if any relevance, since the child's needs and dependency are the same regardless: *J v C (Child: Financial Provision)* [1999] 1 FLR 152 at 154B. (iii) One of the 'financial needs of the child' (to which by paragraph 4(1)(c) the court must pay regard) is for him or her to be cared for by a mother who is in a position, both financially and generally, to provide that caring. So it is well established that a child's need for a carer enables account to be taken of the caring parent's needs: *Haroutunian v Jennings*

[1980] 1 FLR at 66C; and *A v A (A Minor) (Financial Provision)* [1994] 1 FLR 657 at 665G. (iv) By paragraphs 4(1)(a) and (b) of Schedule 1, the respective incomes, earning capacities, property and other financial resources of each of the parents must be taken into account, together with their respective financial needs, obligations and responsibilities. So 'the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living' - per Hale J in *J v C (Child: Financial Provision)* [1999] 1 FLR. (v) However, as this latter concept lends itself to demands going potentially far wider than those reasonably necessary to enable the mother properly to support the child, 'one has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child' - *J v C (Child: Financial Provision)* [1999] 1 FLR. (vi) In cases where the father's resources permit and the mother lacks significant resources of

her own, she will generally need suitable accommodation for herself and the child, settled for the duration of the child's minority with reversion to the father; a capital allowance for setting up the home and for a car; and income provision (with the expense of the child's education being taken care of, generally, by the father direct with the school). (vii) Such income provision is reviewable from time to time, according to the changing circumstances of the parties and of the child. (viii) The overall result achieved by orders under Schedule 1 should be fair, just and reasonable taking into account all the circumstances. 33. With regard to subparagraph (iv) above, which advocates a comparative exercise in which the standard of living of both parties should be considered, Advocate Colley asked the questions:- (i) Can the father afford to pay over and above the regular maintenance? (ii) Does the mother have to use her savings for extraordinary expenditure? 34. It was proposed that the father could raise funds by selling his car and by repaying a loan for £12,500 and so afford to pay a lump sum. It was suggested that it was unreasonable for the mother to have to spend her £11,000 savings, of which £9,000 are left. 35. Supposing:- (i) the answer to both questions proposed in 33 above is "yes", and yet (ii) I were to decline the application for a lump sum, would that decision still be fair and reasonable, taking all the circumstances into account? I believe it would still be so. The capital sums (£12,500 and £11,000) are very roughly equivalent. I can see no further value in attempting to compare respective lifestyles, partly because there is insufficient wealth to distribute, but also because the parties' entire lifestyles are, taking a longer term view, as far as I can tell, very roughly equivalent. 36. So these are my conclusions:- (i) the mother's need for a lump sum was not made out with sufficient clarity. (ii) the father's payments of maintenance to date have been regular and his commitment to his daughter has been regular. (iii) The father's agreed payments are in line with the UK Child Support Agency provisions, commonly used as a guide in Jersey. (iv) The father's payments are calculated and should continue to be calculated taking all his income into account. (v) He does not have significant capital resources other than his apartment (£240,000), which is subject to a mortgage of £162,643 and he owes £20,000 to his mother for the deposit. (vi) Indeed he has total debts (including the mortgage of £232,625 and the car loan of £12,500) of £232,625.84. (vii) To encumber him with further debt would not meet the justice of the case and in effect would punish him beyond his resources. 37. It would be unreasonable for me to forecast that this father will default on his obligation to pay child maintenance in future. I should make it clear that I think it is wrong in law to award a lump sum now on the basis of the father's comparatively high earnings, as a kind of insurance for the mother against uncertain times in the future. Any such award must be for a specific purpose. In any event, the father gave me the firm impression that he was a committed parent. 38. I envisage continued dealings between mother and father as the child grows up. The first and most obvious hurdle for this mother is how to overcome the often crippling cost of child care so that she can return to work. I do not see how I can provide for this event now. I do not know the cost or if the father can afford even half the cost in addition to the regular maintenance. The best I can do is to allow the mother liberty to apply nearer the time she considers returning to work. 39. I have been reluctant to deal specifically with the

matter of costs, in spite of the fact that the mother has not succeeded in persuading me that she is entitled to a lump sum. However, the law on this point in Jersey has not until now been tried by bringing a case to Court. I would be reluctant to penalise this mother just because she has failed. In England the law is arguably slowly changing to admit greater flexibility with the result that more cases of this nature might be argued in future. Unless they are, practitioners will not know what the limits on such applications might be. However, I have to say that in my judgement, this case neither demonstrates sufficient need of the mother nor sufficient ability of the father to pay a lump sum. The attempt to consider relative lifestyles has not been of much use. Authorities Children (Jersey) Law 2002. Children Act 1989. Hullah -v- Lelliot

[1991] JLR N 9b. White -v- White

[2000] 2 FLR 981 . Re P

[2003] EWCA Civ 837 . Haroutunian v Jennings [1980] 1 FLR 62 at 66C. A v A (A Minor) (Financial Provision)

[1994] 1 FLR 657 at 665G. J v C (Child: Financial Provision)

[1999] 1 FLR 152. Page Last Updated: 14 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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