

JERSEY / JUDGMENT

D v M [2000] JRC 5 (20 January 2000)

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JUDGMENT

THE REGISTRAR: The parties were divorced by decree nisi pronounced on 20 th January, 1999, but the decree has not yet been made absolute. There are two children, A who is 21 and B who is 19. The wife is asking for the transfer to herself of the husband's share in the former matrimonial home, maintenance, preferably in the form of a capital sum, to be paid to her, the contents of the former matrimonial home, a further lump sum and costs. The husband, who makes out that he has revealed all the financial matters about which he has been asked, is happy to part with his share of the former matrimonial home and contents, but asserts that he can only find £150,000 to settle matters with his former wife. She on the other hand has asked for £250,000 plus a further lump sum to reflect his, as she sees it, considerable undisclosed wealth. I believe the truth of the matter of the husband's disclosure to lie somewhere between the two points of view expressed. Until recently he was a director, and he is still a shareholder in X Trust Ltd. His activities in the name of the Trust were touched upon in his evidence and in the evidence of the wife's accountant instructed for this hearing. There were certainly some unusual transactions, for example, an occasion in January, 1999, when on his private credit card he apparently financed 13 British Airways flight tickets worth £1,565.43 each. The husband explained that he was repaid, as he had expected, by clients. The wife's accountant commented, in his evidence, that he would be seriously worried why this was necessary as it was "highly unusual". The husband has other business interests upon which I am not satisfied any meaningful documents have been provided. It is true that I have a 1998 balance sheet and profit and loss account for a company called TI Limited and a valuation of its property owned by the husband by virtue of his shares in the company. The valuation was produced subsequent to the hearing and shows the value at £65,000. I have a balance sheet and profit and loss account for C Consultancy for the year 1996. I have a balance sheet and profit and loss account for TP Ltd dated February, 1998, but that is all. In the accountant's view the husband's affairs are "quite complex" involving "a myriad" of companies and that it was clear that a lot more was required to find out firm information. It transpired after some investigation that the husband's declared income from X Trust was not all that was actually available to him, after considering his loan account. The husband's case was, in summary, that he had declared all he was asked. Smaller trust companies such as X were suffering because of the introduction of tighter financial controls and would lose custom from the UK. They were being "gobbled up" by the larger companies. X's client base was now reduced by 40% in recent months. The amount apparently available to him as a director's loan was not "real" because it represented

a different accounting policy after the introduction of a new partner into the business. Generally the values of the small trust companies were questionable. The valuation of the former matrimonial home does not include the contents which should be calculated separately in the assessment of a lump sum. He had contributed to bills, such as for the roof, and he still does contribute to the maintenance of his children. He had always paid maintenance for his wife to the best of his ability. To have made it "index linked" would have been unjust. When he paid £15,000 it was all he could afford at the time. It was subsequently reduced because he could not afford so much. He pays the mortgage on the property in England, where he lives with his partner, and he contributes to the support of his mother. It appears from the wife's evidence that he has a child by a relationship in the UK, although I am not clear whether he contributes to the support of that child. The wife's evidence made it clear that she had contributed in all reasonable ways to the marriage, such as keeping a home and being a mother to her two children. She did not really want a career, but she worked for her husband in his business even after the marriage had broken down. At present she is a trainee trust administrator and expects to earn as much as £15,000 per annum in the near future, working full time. Her son B still lives at home at the moment, and two lodgers, but she would prefer not to have lodgers. She has kept a savings account with a view to having some capital when she retires in nine years time when she will be 60. Information on the husband's side was deplorably lacking. The accountant thought so from a financial point of view; but so was information on the husband's personal circumstances. There was a conflict of evidence on the amount he contributed to the bills incurred on where he now lives. It was at least clear that he paid some of them, although this was initially denied. Mrs Whittaker submits that, to some extent, the Court can draw its own conclusions where there has been a failure to disclose. I am satisfied that this is the case here. Assets approaching £1,500,000 have been quite fairly indicated by her and simply denied. It has not been made clear to me why these assets do not exist. A passage from the case of *Baker -v- Baker*

[1995] 2 FLR 829 , at page 831 quoted by Mrs Whittaker, reads as follows:- "Lord Brandon said in his speech in *Jenkins -v- Livesey* (Formerly *Jenkins*)

[1985] AC 424 , sub nom *Livesey* (Formerly *Jenkins*) -v- *Jenkins*

[1985] FLR 813 , unless a court is provided with correct, complete and up-to-date information on the matters to which, under s25, it is required to have regard, it cannot lawfully or properly exercise its discretion in the manner ordained by that subsection, and each party to an application under the Act owes a duty to the court to make full and frank disclosure of all material facts to the other party and to the court. He said at pp 438 and 823C respectively: 'This principle of full and frank disclosure in proceedings of this kind has long been recognised and enforced as a matter of practice. The legal basis of that principle, and the justification for it, are to be found in the statutory provisions to which I have referred.' Particular problems arise in cases where one party has deliberately failed or refused to provide the material facts and has concealed from the other party and the court his true financial position. In such a case, *J -v- J* [1995] P215, Sachs J said at p227: 'In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a

husband has - and his wife has not - detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference - especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative.' And at p 229: '... it is as well to state expressly something which underlies the procedure by which husbands are required in such proceedings to disclose their means to the court. Whether that disclosure is by affidavit of facts, by affidavit of documents or by evidence on oath (not least when that evidence is led by those representing the husband) the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings - insofar as such inferences can properly be drawn." In the light of the information available to me and in the light of the law on the subject of non-disclosure as set out in *Baker -v- Baker* , I have concluded that the husband should, as agreed, transfer his ½ share in the former matrimonial home to the wife. Although she earns a modest wage and has done her best to improve it, he should also pay her a lump sum of £179,000 which is a figure I have taken from "Duxbury" calculations to represent the capitalisation of maintenance to a wife aged 51 at £12,000 per annum for life. He should pay her a further lump sum of £100,000 to represent a fair share to the wife in his business activities, bearing in mind, amongst other things, the age of the parties, the needs of both of them and their individual contribution to a long marriage. Finally, I see no reason why he should not pay the taxed costs incurred by the wife. The assessment of the first lump sum is based on the wife's needs balanced against the husband's ability to pay. As for the further lump sum of £100,000, I again infer that he has indeed in his possession, though not necessarily immediately in liquid form, total assets of at least £1,000,000. This represents a total lump sum of £279,000 plus a half share worth approximately £107,500 in the former matrimonial home making a grand total of £386,500, plus the contents of the former matrimonial home, which, it seems to me, is reasonable in the light of the total assets. I must point out that M can appeal against this decision. However, he must notify me and Mrs Whittaker of his intention to do so within the time limit set out in the Rules.

Authorities: *Baker-v-Baker*

[1995] 2 FLR 829 . Page Last Updated: 24 Apr 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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