

JERSEY / JUDGMENT

E v P and G [2004] JRC 170 (23 September 2004)

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judgment

the Registrar: 1. The husband and wife in this case were married in 1968. They are aged respectively 58 and 57. 2. The husband has had a career in banking until, in 1995, he was appointed to an important position in Parish administration. The wife has a job as bursar for a school and for many years, has taken in foster children. 3. According to the husband, and I have no reason to doubt his explanation, the time taken up looking after foster children had an impact on the marriage and it seems that the parties may have, in fact, been starting to go their own separate ways as long ago as 1990. The wife would agree that the husband has been leading a "double life" for a long time. Be that as it may, he continued to fund the matrimonial home and household bills up to the present time. 4. The husband suffered a surprise setback in the year 2000 when he was made redundant. A redundancy payment was negotiated and in August of that year, he received a payment of £113,286.13. 5. The focus of the dispute between the parties, is on how to distribute their assets fairly between them, in time for his retirement on reaching his 60th birthday in November this year. 6. These assets most certainly include the former matrimonial home, where the wife still lives. It is subject to a mortgage. There are insurance policies, some shares and a number of pension policies in the name of the husband, including a States of Jersey PECRS pension. 7. Whether or not the husband should account for his use of the sum of £113,286, (the redundancy money) and pay the wife a proportion of it, is disputed. It is, however, clear that there will be little left of this sum, or of any value in the insurance policies and shares referred to in paragraph 6 if he redeems the mortgage secured on the former matrimonial home as planned soon after his 60th birthday. This he plans to do in order to give the wife vacant provision and sole title to the home. 8. Furthermore, the children are specifically relevant because the wife is applying for at least nominal maintenance in respect of their own daughter and maintenance in respect of a foster child. 9. For the moment, leaving the subjects of the redundancy money and of child maintenance on one side, so much is clear: the wife will have the home and he will have his pension. 10. However, the difficulty as I see it is that the combined CETV of his pensions comes to £379,649. The valuation of the former matrimonial home is less, namely, £290,000, less the costs of sale, say £7,000, plus the value of contents to be retained by the wife, say £12,000, which makes a total of about £295,000. Mr Benest, for the husband would have me value the home and contents at £310,000. My feeling is that this would be on the high side, and that I should be

considering how best to "balance the books" in a situation where there is an apparent difference of at least £80,000 between the wife's assets and the husband's. 11. Looking at the parties' income positions, the wife will be content with her earnings as a school bursar of £14,040 plus her foster child allowance. However, on her retirement, all she will have will be the States of Jersey Old Age Pension of about £6,000. She may be forced to sell the former matrimonial home and derive an income from the capital. A half way position would be for her to let part of the home, assuming that is viable. 12. The husband's net income will, on retirement, at the very least, amount to £20,569 assuming he does not commute part of his pension into a lump sum. Although he has not been successful in finding employment, possibly his sights have been set too high and any kind of employment would serve to boost his income if he thought it essential. As far as I know he is fit and well and has obviously had an accomplished career, which should stand him in good stead. 13. So not only will the husband hold more than his fair share of assets, but his income will be superior. 14. The husband maintains that a high proportion of the redundancy money was spent on his ex-wife and children. However, the wife maintains that a high proportion was spent for his own purposes including holidays with the co-respondent, and on maintaining the co-respondent's ailing business. Whatever the truth of this, the fact remains that the sum of £95,317 appears to have been spent between August 2002 to date which is a substantial sum, even if there were large payments for income tax and even if it is right that £44,263.19 was spent providing for the children and funding the mortgage. 15. It was the husband's evidence that he did not think it would be so difficult to return to a finance sector job. He evidently tried to secure employment, but failed. It seems likely that funds disappeared quickly in the belief that it would not be long before he obtained a job. There would have been an opportunity to make some financial settlement earlier, before the funds disappeared. This is probably easier to say in hindsight. Even if the opportunity was there at one time, it doesn't exist now. 16. So the situation, with which we are faced, is this:- (i) The wife will have the house and contents worth nearly £300,000; (ii) The husband will have his pensions worth (CETV) £379,649; (iii) The husband has little capital to pay a lump sum now or ever in the future; (iv) After each party has retired, the husband will have a pension of £20,569 per annum, the wife a Jersey Old Age pension of about £6,000 per annum, plus anything she can earn from the property. 17. The solutions proposed in open correspondence between the parties are as follows:- (i) The wife's advocate's letter of 10th December 2003 (erroneously dated 13th December) reads as follows:- "Dear Advocate Benest We write further to our first letter of today's date. In the light of the same we are instructed to put forward the following proposals in settlement of this matter:- Your client to pay to our client forthwith a lump sum of £25,752.43. This equates to 50% of the shares and policies held by your client. Our client would consider, alternatively, the transfer of assets of an equal value. 1. Your client to pay to our client a further lump sum on or before 1 November 2004 representing the sum required to redeem in full the mortgage secured upon the former matrimonial home... 2. Upon the redemption of the mortgage in paragraph 2 above your client to transfer all his share and interest in the former matrimonial home into our clients sole name on the basis that your client meets the costs of the transfer. 3. Pending transfer of the former matrimonial home into our client's sole name our client to be entitled to occupy the property to the exclusion of your client, and on the basis that your client is responsible for all capital and interest repayments in respect of the

mortgage ... and that from 1 January 2004 our client will meet the utility bills and each will indemnify the other in respect of the same. 4. Your client to retain his pensions. 5. Your client to retain the shares... 6. Your client to retain the X insurance policies. 7. Your client to retain the Y insurance policies. 8. Our client to retain the premium bonds in her sole name. 9. Our client to retain the Z account. 10. Your client to retain the A bank account number and the B bank account. 11. The parties joint account numbers C, D and E to be closed forthwith on the basis that your client pays any monies that may be required to bring the accounts to a nil balance for closure. 12. The timeshare to be placed on the market for sale forthwith and the net sale proceeds to be divided as to 50% to our client and as to 50% to your client. 13. Our client to retain the F Vehicle. 14. Your client to retain the G and H vehicles. 15. Our client to retain the contents of the former matrimonial home. 16. Your client is to be solely liable for I debts and shall indemnify our client in respect of the same. 17. Your client to pay nominal spousal maintenance to our client at the rate of £1.00 per annum payable during the parties joint lives until our client shall remarry or further order of the Court. 18. Your client to pay nominal child maintenance to our client at the rate of £1.00 per annum until K completes full time education to the completion of first degree level or further order of the court and on the basis that your client undertakes to continue to pay the costs of K's accommodation in England up until completion of her first degree. 19. Your client to pay to our client for the benefit of V child maintenance at the rate of £50.00 per week payable monthly in advance on the 1st of each month by way of standing order into our clients bank account until such time as she shall attain the age of 18 or further order of the court. 20. The maintenance payments in paragraph 19 and 20 above shall be reviewed on an annual basis in accordance with any increase in the Jersey Retail Prices Index. 21. Upon completion of the payments of the lump sums in paragraph 1 and 2 our clients capital claims against your client to be dismissed and our respective clients claims for capital provision against the other to be dismissed and neither party shall be entitled to make any further application to the Court.. 22. Your client's claims against our client for income to be dismissed forthwith. 23. Upon the above basis there to be no order as to costs. Please note that this is a package offer and is not capable of being accepted as to part only. We reserve the right to rely upon this letter on the question of costs in accordance with the principles in *Calderbank v Calderbank* such that if the court makes an order in the terms of this offer or more favourable to our client we shall be seeking our clients costs from the date of this letter to include the costs of trial. We look forward to hearing from you. Yours sincerely For and on behalf of Mourant du Feu & Jeune" (ii) The husband's advocate's letter also dated 10th December 2003 reads as follows:- "Dear Miss H, Thank you for your two letters received this afternoon by fax. I regret that your proposals are in both my client's and my own view manifestly unreasonable. Having paid the overdraft on the joint account to maintain the mortgage and other standing orders and having paid off the credit card accounts, our client is now left with £33,000 approximately in liquid funds to see him through to the end of November next year. Servicing the mortgage and associated insurance policies alone will cost a further £11,520 and he will need to find and pay for alternative accommodation, his living costs and for K. The only way he can maintain the offer made to your client on 9th July this year to transfer his interest in the home and to be responsible for the mortgage payments and associated insurance is to realise the shares and the policies. He cannot reasonably afford to commute his pension as

this will only produce a fixed net income for him of approximately £20,500 per annum, out of which he intends to continue to pay the parental contribution in respect of K's university expenses, as well as meet his own accommodation and living expenses. Your client will have an unencumbered three bedroom property with two garages (from which she can obtain an income or downsize) and she also enjoys an income of £17,500 approximately taking into account the allowance she receives for V until V reaches the age of eighteen. There can be no justification either in logic or on the authorities for expecting my client to commute his pension in order to pay the mortgage thereby reducing his prospective income given the parties' respective actual and potential financial circumstances. In an effort to avoid a hearing, and for that reason only my client is prepared to make a final offer to pay an additional sum now of £3000, approximating to the cost that would be expended at the hearing. This offer is open until 4 p.m. tomorrow Thursday 11th December 2003 after which time preparation for the hearing will be underway. Your client may also pause to consider that she will have the contents of the home (having an insured value of £40,000) save those few items referred to of sentimental value referred to in our letter dated 9th July 2003, and she has also had the benefit of the insurance policy which matured last year to which our client contributed. Yours sincerely, Advocate F J Benest" 18. The wife's proposals for the payment of 2 substantial lump sums do not appear to me realistic in view of the husband's need for cash to redeem the mortgage and support himself until November. In fact it is clear to me that he should not continue to pay the wife's household bills which he has been doing. The time has come for her to live within her means from her own income. 19. The husband's proposals for a clean break, in that they propose to do nothing to correct the £80,000 difference in asset values seems unfair on the basis of all the principles set out in the case of *White -v- White*

[2000] 2 FLR 981 . 20. It does not seem to me that I have any choice but to:- (i) Order the payment of a lump sum commensurate with the husband's ability to pay. This will be £5000 together with the sum of £3000 in order to acquire sole title to a time-share holiday apartment; (ii) Make up the difference in asset values, by ordering him to pay an on-going contribution towards the wife's maintenance; (iii) Make no order as to child maintenance. I am satisfied that the husband makes sufficient contribution of his own volition toward K who is at university and that an order in relation to V, who is a foster child, is inappropriate. 21. Taking all the circumstances into account, including the husband's apparently permanent relationship with Mrs G, it seems to me that the maintenance contribution should be £50 per week or £216.66 per month, although a review should take place if the wife loses the foster allowance for V. Applying the "check" described by Lord Nicholls on page 990 of the *White -v- White* judgement, it seems to me that the maintenance will replace the wife's share in the pensions to which she has clearly contributed, in running the household and caring for the children during a long marriage. I do not think that it will cripple the husband's ability to provide for himself after retirement. I do not see any reason why the £216.66 per month should not also be subject to review in accordance with the Cost of Living as is commonly included in maintenance

orders.

22. In considering solutions to the problem of how to replace a wife's share in a lost pension, Mr David Salter in his book "Pensions and Insurance on Family Breakdown", published by Family Law, on page 136, cites 2 cases in which the Courts have made periodical payment orders as I propose. These are: M -v- M (Financial Provision)

[1987] 2 FLR 1 and W -v- W (Periodical Payments: Pensions)

[1996] 2 FLR 480. 23. I am confident that this is the only fair solution to this case available in Jersey. Authorities White -v- White

[2000] 2 FLR 981 . M -v- M (Financial Provision)

[1987] 2 FLR 1. W -v- W (Periodical Payments: Pensions) [1996] 2 FLR 480. David Slater: "Pensions and Insurance on Family Breakdown" [published by Family Law]: p136. Page Last Updated: 24 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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