

JERSEY / JUDGMENT

F v H (Matrimonial)

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Matrimonial - Petitioner's application for ancillary financial relief. [2020]JRC140C Royal Court (Family) 20 July 2020 Before : Elizabeth Daultrey, Esq., Registrar, Family Division Between F (the Mother) Petitioner And H (the Father) Respondent Advocate J. F. Orchard for the Petitioner. H (the Father) representing himself.

judgment

reasons

the Registrar: The application 1. This hearing relates to the Petitioner's application for ancillary financial relief in divorce proceedings. 2. The Petitioner applied on 16th December, 2019 for orders relating to child and spousal maintenance, including interim maintenance and secured provision, also for a lump sum order. 3. At the date of the hearing, the petitioner is seeking orders for child maintenance and a lump sum only. 4. The petitioner filed and served a position statement dated 8th June, 2020, in anticipation of the final hearing, in this document she asks that the court attach a wage arrest to any order for maintenance and also an order that the respondent pay her costs on an indemnity basis.

Background

5. The parties married in 2015. The parties have 4 children together: Child 1 born in 2012; Child 2 born in 2013; Child 3 born in 2014; Child 4 born in 2016. The parties separated in 2019. During the marriage the parties were provided with low-cost accommodation, comprising 5 bedrooomed accommodation at the home of the petitioner's parents. Since separation the petitioner and the children have remained living with the petitioner's parents, the petitioner has no plans to move from this accommodation. Since separation, the petitioner's parents have provided financial support to the petitioner. 6. During the marriage, the respondent was the main breadwinner working as a plumber in employment. The parties kept their finances separate but the respondent gave the petitioner £240 per week to meet the children's expenses and to pay for food for the family. The petitioner has always worked throughout the course of the marriage and continues to do so, currently working as a teaching assistant. 7. Following separation in June 2019, the respondent continued to make payments to the petitioner but soon reduced his contributions to £100 per week. In October 2019 the respondent increased his weekly payments to £200 a week and this continued until January 2020. From January 2020 the parties set up a joint account

and the respondent has made a weekly payment into this account for the benefit of the children of the family. The payments vary between £150 per week to £30 per week. The respondent does not draw on this account intending the monies to be for the sole use of the petitioner. 8. It is a striking feature of these proceedings that the respondent entirely failed to play any part until one week prior to the hearing. There have been three preliminary hearings, on the 2nd of January 2020, the 4th of March 2020 and the 7th of April 2020. The respondent did not attend at any of the hearings, nor make any contact with the court, nor comply with any of the orders made, despite having been personally served by the Viscount, with the application and each of the orders. 9. The petitioner's application was originally listed for final hearing on the 21st of April 2020, but was adjourned following lockdown in Jersey.

10. The Court made an order for interim child maintenance in the sum of £200 per week on the 4th of March 2020 against the respondent. The order gave leave to the respondent to be heard if he objected to any part of the order including the provision for interim maintenance, the respondent did not indicate to the court or to the legal representatives acting for the petitioner that he had any objection to or difficulty with this or any of the interim orders made by the Court.
11. The respondent has not complied with the order, he continued to make weekly payments to the petitioner, but in lower weekly amounts. Arrears arising under the interim maintenance order as at the date of the hearing are in the sum of £2,050.
12. The respondent does not seek an adjournment of the final hearing he wishes the hearing to proceed in the knowledge that the Court has no documentary evidence as to his financial position.
13. In 2018 the children of the family were removed by the Children's Service. The children were returned after several weeks. The family subsequently issued a human rights act claim against the States of Jersey. The costs of these proceedings were initially funded by the petitioner's parents. It is primarily with relation to the costs of those separate proceedings that the petitioner seeks a lump sum from the respondent. Documents
14. The court has a sworn affidavit of means from the petitioner with accompanying documentation. The petitioner has also filed a position statement dated 8th June, 2020. The respondent sent an email to the court on 9th June 2020, which sets out his position and responds to the petitioner's application. I take this as the respondent's position statement. Petitioner's evidence and position
15. Regarding child maintenance, the petitioner's evidence is that she works as a teaching assistant at a school. Currently she earns £801.19 per month, from September 2020 this will increase to approximately £1,100 per month net. Her outgoings are £2,012 per month. Of this, £486 a month is attributable directly to the children's expenses, in addition to which she must provide them with entertainment, food and accommodation. Fortunately her accommodation expenses are low, she contributes £400 a month to her parents which covers

rent and utilities, she also pays £77 per month for oil.

16. The respondent accepts the petitioner's figures for her income and outgoings: "I accept what [the Mother] has said is the truth, I understand the children's outgoings".
17. With regard to the petitioners claim for a lump-sum payment, this predominantly relates to legal fees concerning separate and unrelated court proceedings brought by the parties against the Children's Service for the return of their children, and a separate and subsequent human rights claim against the States of Jersey. The latter proceedings remain ongoing, although the respondent is no longer involved in these proceedings. The petitioner now receives full legal aid and therefore there is no ongoing expense to her. It may be that in due course the petitioner will receive compensation and costs.
18. The petitioner produced invoices relating to these proceedings dated between November 2018 and July 2019. Upon cross-examination by the respondent, the petitioner agreed the monies paid towards legal fees by the petitioner's parents were made without any requirement that they be repaid. The parties had however, agreed between themselves that they would repay the petitioner's parents from any monies they received as a result of the proceedings. The petitioner's evidence is that the costs relating to the previous children proceedings undertaken prior to separation are in sum of £15,201.
19. The petitioner also claims a further lump sum of £1,647.80. This relates to expenses met by the petitioner's parents to fund work undertaken by the respondent upon their property. The petitioner confirmed that the respondent carried out plumbing work to the property as well as other jobs and maintenance, the materials were paid for by the petitioner's parents. The petitioner does not assert that there was ever a formal loan relating to these monies nor that there was an understanding that they be repaid. Respondent's position and evidence
20. The respondent has filed no evidence in these proceedings. At the hearing he explained that he had not agreed with the nature of the divorce, that he had picked up a blank affidavit of means form, but he did not understand how to fill it in. He sought advice from citizen's advice, and a free half hour appointment with a lawyer. He applied for legal aid but was told that he was not eligible because of his earnings.
21. The respondent gave evidence that he is in full time employment as a plumber. He works 40 hours a week based on an hourly rate of £22.34 which makes a total of £893.60 per week gross. After tax and social security he receives a net payment of £750 per week. He denies that he undertakes any overtime or carries out private contracts. The respondent's evidence is that his rent for a one bedroomed apartment where he lives alone is £1,280 per month, he pays utility bills of £130 per month and his vehicle costs him £100 a month, he was unable to give more detail of his outgoings.
22. During the pandemic the respondent was not in work, his employer having closed down. During this time he received benefits of £400 per week. He was not clear when he had stopped working but said that he had been back in work for the past three weeks.

23. The respondent agreed that prior to separation he paid the petitioner £240 per week, that after separation he reduced this to £100 a week, increased it to £200 per week between October 2019 and January 2020, and that he has paid a variable amount since January
2020. He confirmed that he was aware of the interim order that he pay £200 per week, but that he doesn't agree with it. The respondent struggled to explain why he had reduced the payment in January 2020. He said that such capital monies as he had had at separation had been expended, he said that this had been approximately £2000, however he also said that he had left the matrimonial home with no capital assets whatsoever. The respondent's position statement states that over the past year since separation, he has had to fund new accommodation, including the purchase of "all the furniture, fittings and many incidentals necessary to live".
24. The respondent said that he was willing to pay what he could but if he was ordered to pay anything that he regarded as unfair that he would quit his job and live in a shelter. He said that he had been devastated by the breakdown of the marriage and now has to start again at the age of 44.
25. The respondent offers to pay child maintenance in the sum of £100 per week, linked to RPI, with an additional £20 to meet such arrears as the court find applicable. The Law
26. The power of the court to make orders for periodical payments for a child of the family in divorce proceedings arises from Article 25 (1) of the Matrimonial Causes (Jersey) Law 1949 as follows: "25 Provision for children
 - (1) In any proceedings for divorce or nullity of marriage or judicial separation, the court may from time to time, either before or after the final decree, make such provision as appears just with respect to the maintenance of any children of the family in relation to the parties to the marriage which is the subject of the proceedings."
27. The power of the court to award lump sum orders derives from Article 29 (1) (b) and (2) of Matrimonial Causes (Jersey) Law 1949 as follows: "29 Financial provision for party to a marriage in cases of divorce etc.
 - (1) (b) that one party to the marriage shall pay to the other party to the marriage such lump sum or sums as the court may think reasonable whether or not any sum is ordered to be paid under sub-paragraph (a);
 - (2) Without prejudice to the generality of paragraph (1) (b), an order under this Article that one party to the marriage shall pay a lump sum to the other party to the marriage –
 - (a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before the making of an application for an order under this Article;

- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order.”
28. Advocate Orchard on behalf of the petitioner refers to the recent decision of E v F (2019) JRC 218 as authority for the court to approach a calculation of child maintenance by reference to affordability and the needs of the children rather than a calculation by reference to the UK CSA formula. Whilst this is helpful, the issue in the present matter is the lack of information regarding the respondent’s income and outgoings which creates a barrier to calculating child maintenance by reference to anything other than the children’s needs.
29. The relevant law relating to attaching a wage arrest to an order for maintenance is set out in Article 2A of the Maintenance Orders (Enforcement) (Jersey) Law 1999: “2A Order for arrest of wages attaching to maintenance order[6]
- (1) The Royal Court or the Petty Debts Court, as the case may be, when making a maintenance order or at any time after that, may on the application of the recipient or of its own motion authorize an arrest to be made on the wages of the payer.
- (2) The Court shall not authorize an arrest under paragraph (1) –
- (a) on the application of the recipient, unless it has given the payer an opportunity to be heard; or
- (b) of its own motion, unless it has given the parties an opportunity to be heard.
- (3) The Court shall not authorize an arrest under paragraph (1) unless it has had regard to the means of the payer.
- (4) An arrest under paragraph (1) may not exceed one half of the wages of the payer.
- (5) Paragraph
- (4) shall not affect the discretion of the Court under Article 2(5) to make an order for an arrest of wages in such amount as the Court thinks just.”
30. The petitioner has not made an application for a wage arrest and relies on the power of the Court to make the order of its own motion.
31. In support of the petitioner’s application for indemnity costs advocate Orchard refers to C v D [2018] JCA 020. Which says as following: “The court had a broad discretion under art. 16 of the Court of Appeal (Jersey) Law 1961 in relation to the costs of a civil appeal. In many cases, the court would order that costs should follow the event. The general practice in proceedings relating to children was to make no order as to costs because the overriding concern was to protect and promote the interests of the child. The following three considerations were likely to be present in most proceedings relating to children: (i) orders for costs would tend to diminish the funds available to meet the needs of the family; (ii) the parties should not be discouraged from putting forward arguments that they conscientiously believed to be in the child’s interests for fear of being penalized in costs if the court

disagreed; and (iii) since a costs order was almost inevitably made (if at all) in favour of the winning party, making such an order in this context would add insult to injury thereby aggravating the sense of grievance felt by the losing party in circumstances that were already likely to be fraught, and any exacerbation of tensions would not be in the child's interests. The practice of not making costs orders in proceedings relating to children was a practice, not a rule, and the court would exercise its discretion in the particular facts of the case. It could not be said that an adverse costs order in proceedings relating to children should only be made if the penalized party's conduct in the litigation had been unreasonable (Re T (Order for Costs), [2005] 2 FLR 681, not followed). Unreasonable conduct in litigation might open the door to making an adverse costs order but it did not of itself necessitate the making of such an order (In re N (A child), [2010] 1 FLR 454, dicta of Munby, J. approved)."

Analysis

Child Maintenance

32. The petitioner's outgoings exceed £2000 per month of which only a very modest proportion relate exclusively to her own personal expenses. The petitioner seeks £200 per week or £866 per month. I find this to be a reasonable sum calculated by reference to the children's needs.
33. Based upon the oral evidence of the respondent, his net income is £3250 per month and his stated outgoings are £1510 in addition to which he must feed and clothe himself. An order for child maintenance in the sum sought by the petitioner would leave the respondent with £874 per month after his accommodation and vehicle costs are paid. The figures put forward at the hearing by the respondent are entirely unverified and are not accepted by the petitioner on the basis that she says that during the marriage, the respondent earned additional sums by way of overtime and by carrying out private jobs for friends.
34. In the absence of documentation or verified figures as to the respondent's financial position, the most reliable approach in this matter is by reference to the children's needs. I have found £200 per week to be a reasonable sum. It must therefore follow that I should make the order for child maintenance in the sum sought by the petitioner of £200 per week.
35. In the absence of reliable figures from the respondent, I am in difficulty carrying out a cross check using the CSA guidelines. Based on the figures provided by the respondent, he would be required to pay £187.50 per week or £812.50 per month. There is only a modest disparity figures between these figures and the sum sought by the applicant. I therefore make the order for child maintenance in the sum of £50 per week for each child. This shall be paid until each child attains the age of 18 or completes full time secondary education whichever shall be later. There shall be an automatic annual increase as sought by the petitioner. The right of either parent to seek a review is enshrined in law and does not need to be re stated in the order.

36. The petitioner seeks arrears arising under the interim order. From the date of the interim order until the date of hearing, 15 weeks have elapsed, during which the respondent has paid £950. Arrears therefore stand at £2050. The respondent's evidence is that during most of this time he was not working due to lockdown and was receiving £400 per week. Whilst there is not documentary evidence in support, the respondent is a plumber, and it is entirely credible that he was unable to work during lockdown. He restarted work 3 weeks ago. I will discharge all arrears arising under the interim order up to the end of May 2020. The respondent has paid a total of £140 from the beginning of June 2020 until the date of the hearing, arrears for this period are therefore in the sum of £260. I make an order that these arrears should be paid in the sum of £20 per week. Lump sum
37. There is no suggestion from either party that either of them held capital assets during the course of the marriage.
38. The petitioner has not made out a needs based case for a lump sum. Her application is for a sum to reimburse her parents for materials used by the respondent to carry out work upon their property, and also to reimburse her parents for legal fees they paid in proceedings unrelated to the present matter.
39. The petitioner does not claim that these payments made by her parents were by way of a loan. The relevant proceedings are now being pursued by the petitioner solely are for damages and reimbursement of costs. The petitioner argues that the proceedings were brought at the instigation of the respondent and he should therefore take responsibility for reimbursing the petitioner's parents, however she agrees that the discussions between herself and the respondent were that her parents would be repaid if the proceedings successfully yielded payment of costs and or damages. Against this back ground, I do not accept that it would be in any way fair and reasonable to burden the respondent with a liability which would only serve to deplete his income and I therefore dismiss the application for a lump sum payment. Wage Arrest
40. The Court's power to make a wage arrest is set out in full in these reasons. The Court has power to order a wage arrest without an application having been made, provided that the respondent has been given an opportunity to be heard.
41. The request for a wage arrest order is contained in the petitioner's position statement dated 8th June 2020, only 8 days before the final hearing. The respondent is not legally represented in these proceedings, and I am not satisfied that, as a litigant in person, the respondent has been given sufficient notice of the request to enable him to understand the implications of the request, and to seek legal advice if required. I am therefore not satisfied that he has been given sufficient opportunity to be heard. I do not make an order for a wage arrest. Costs

42. In the course of these proceedings, the respondent has failed to engage with the petitioner or the court, has not complied with court orders, and has not disclosed any documentation regarding his financial position. I therefore find that he has behaved unreasonably in relation to these proceedings, and it is therefore appropriate that I should consider making a costs order against the respondent.
43. Whilst the respondent's conduct has undoubtedly made the proceedings more difficult for the petitioner, I take into account that she has failed in her application for a lump sum. The petitioner has the benefit of legal aid in these proceedings and the petitioner does not allege that the respondent has capital assets available to him, nor that his income is substantial. In all the circumstances of this case, I do not agree with the petitioner that an order for costs against the respondent is justified. Authorities Matrimonial Causes (Jersey) Law 1949 Maintenance Orders (Enforcement) (Jersey) Law 1999: E v F [2019] JRC 218 C v D [2018] JCA 020.

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