

JERSEY / JUDGMENT

# H v G [2002] JRC 179 (01 October 2002)

**[2002] JRC 179**

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## judgment

the Commissioner: 1. This is an appeal by the Petitioner in matrimonial proceedings from an order of the Greffier Substitute, in his role of Family Registrar, made by him after a hearing, on 12 th March, 2002, the order reading:- "Upon hearing the oral evidence of the petitioner, the respondent, the witnesses called on behalf of the respondent and the submissions of the parties' solicitors, for reasons which the Court has reserved, IT IS ORDERED:- 1. that on or before 30 th April, 2002, the petitioner shall pay to the respondent a lump sum of £100,000; 2. that the respondent's application for maintenance for herself be dismissed; 3. that any application for costs be adjourned sine die." 2. This was followed by a further Acte, dated 2 nd April, 2002 in which the Greffier Substitute gave his reasons, in a finding which ran to over 10 pages. 3. The Petitioner, the husband, promptly appealed on the grounds that in the circumstances of the case the decision was unreasonable. 4. The contentions in support of the appeal may be summarised as follows: (i) No account was taken of the Petitioner's assets which were available to pay an immediate lump sum. (ii) That part of the sum should be payable only when the Petitioner's pension became available. (iii) That insufficient regard was paid to the requirements of the daughter's future needs in full time (university) education. (iv) That the Respondent had no "immediate housing needs" being housed in States accommodation. 5. The order was thereupon stayed pending the appeal. 6. These contentions were then followed by a letter from the Petitioner's solicitor on 9 th July, 2002, the relevant part of which, for this appeal, reads as follows: "I wish to reiterate in an open letter the offer made on 11 th June 2002, i.e. that my client will make an initial payment of £32,000.00 together with monthly payments in the sum of £500.00 until such time as he retires and the commuted lump sum is received by him at which time he will pay any balance owing. This will enable him to have some funds available in order to finance N's further education during the next few years, a matter which I am sure that your client is also concerned with." 7. In response, the Respondent's contentions dated 11 th July 2002, claimed that the only issue now between the parties was how the sum of £100,000 should be paid. The Respondent wanted it paid now, whilst the Petitioner (v.supra) wanted deferred payments. 8. These contentions, at paragraph 18, claimed that there was no difficulty in the Petitioner raising the £100,000 now as he had immediate capital assets of £66,472 and could borrow, either unsecured or against his capital, the balance of £33,528; or alternatively he might borrow up to £50,000. 9. The Respondent would not, were she not to receive the money now, be able to purchase a house; and put shortly, the Registrar having heard the evidence had decided on a

"clean break". 10. The appeal first came before the Court, as presently constituted, on 20 th August, 2002, when it was deferred for evidence to be called including, but not restricted to, the amount which the Petitioner could borrow. 11. Meanwhile the parties had continued to correspond at what one may perhaps describe as a frenetic rate, culminating, on th August, 2002, with an offer, not so very different from the earlier offer, the relevant part of which reads: "1. that Mr H pay to Mrs H a lump sum of £32,000. This sum will be made available to her as soon as the money can be taken off deposit with Lloyds/TSB and the insurance policy redeemed; 2. that Mrs. H is then paid periodical payments of £500 per month until Mr H's retirement; 3. the remainder of the lump sum of £100,000 is paid on Mr H's retirement; 4. that Mr. H takes full responsibility for N's further education costs; 5. that each party bears their own costs in respect of both sets of proceedings. The above offer is virtually identical to the existing open offer and is made both in response to your offer and in order to clarify a number of issues. The reasons for this offer are as follows:-

- The lump sum of £32,000 was always intended to include the surrender of the joint insurance policy.
- Mr H retains capital of approximately £37k in total. From this he is offering to pay your client in the region of £17,500. The rest of this capital is required to pay income tax of it is believed in the region of £6,000, immediate costs for N in order to allow her to relocate to university (Kingston) and to pay legal costs (this firm's costs alone exceed £11,000). Mr H will need to borrow in order to meet these commitments (and will certainly need to do so if costs increase).
- Mr H is willing to pay periodical payments to your client. This would increase her income stream and is entirely consistent with matrimonial case-law.
- Mr H's pension is both an illiquid and contingent sum. It consists of a purely notional figure. It has been established that he cannot borrow against it.

12. It was clear to the Court from the outset that £100,000 payable now had a greater value than a payment of £32,000 now with regular payments over perhaps 10 or 11 years and a final payment on completion. 13. The parties accepted this position and the arguments related to two points of difference, viz:- (i) Should the whole sum be payable now or be deferred in whole, or given the offers, more properly in part; (ii) If the payment were deferred in part, whether the total payment should amount to £100,000 or whether it should be increased, and if so to what extent, and in what manner on account of the deferment. 14. The Registrar, in his careful and detailed reasons went into the affairs of the parties in considerable detail. His findings may be summarised as follows:- (i) The Petitioner is a senior civil servant aged 54 and the Respondent is aged 55. The parties married in January 1983 and we were told that the marriage had lasted for some 15 years. There is one daughter from the marriage, born in November, 1983 who has just secured a place at university. (ii) During the marriage the parties had lived in the same house as the Petitioner's mother to whom the house belonged and where the Petitioner still resides, paying a rental as disclosed in his affidavit of means of £118 per month. (& v.infra ). (iii) The Respondent now resides in a States' flat at a rent of £130 per week, the payment of which is presently 4 weeks in arrears and although we had no immediate evidence as to her health, we note that she had been found, by the Registrar, to have suffered from stress in the past. 15. In his reasons, the Registrar found first, that the Petitioner's behaviour had not been of such importance as to entitle the Respondent as of right to a greater share of the assets but second, that the Petitioner's conduct had to a limited extent affected the Respondent's financial resources. 16. Neither party attacked these conclusions before us and we, therefore, accept them.

17. The Registrar then went on to make his finding as follows: 39. Having accepted these figures, however, it will be seen that the husband's limited available cash to make an immediate payment is a major factor in the equation of "jam today or margarine tomorrow", which, in this case I have to decide upon. It seems to me best from all parties' point of view to create an immediate "clean break" if at all possible - the wife to re-house herself, the husband to re-build his life without future financial ties, apart from his present need to borrow against the future security of the pension. In other words, I have chosen for the wife "jam" now, limited to available resources, in preference to future "margarine". Husband £ Bank deposits 51,972 Pension C. E. T. V. 345,336 Pearl Assurance (one half) 14,500 Car 4,000 415,808 Wife £ Bank deposits 6,498 Britannic Assurance 88,357 Prudential Assurance 36,034 Pearl Assurance (one half) 14,500 Pension 10,199 Car Jewellery 156,858 Total assets 572,666 40. Total assets for distribution are seen to amount to £572,666, but the pensions are not immediately available. Nevertheless, I am faced with the very reasonable need of a wife to spend money on housing herself now. 41. The husband does have available bank deposits of over £50,000. 42. In my judgment, taking all other matters into account, the husband should pay to the wife a lump sum of £100,000. 18. Several points on this, particularly with regard to the assets arose before us. 19. First, as had been pointed out in the Petitioner's final offer of 30 th August, the Petitioner's pension was an "illiquid and contingent sum". As put in a letter from the administrator of the Public Employees Contributory Retirement Scheme to the solicitor of the Petitioner dated 3 rd January, 2002, the figures (as at 19 th November, 2001) are, with spouses' benefits, "simply indicative cash equivalent transfer values". Further, had he left service on 1 st January, 2000, he would either have been entitled to £37,619 (subject to tax) or a deferred pension, payable at 60, of £19,001 per annum or a transfer value of another pension scheme. If, however, he had died in service on 1 st January, 2000, a cash sum of £79,986 would have become payable, together with a spouses/dependants pension of £13,599 per annum. Were he, however, to continue until normal retiring age (the retiring age being shown as 65) he would be entitled to either - (i) A pension of £27,198 per annum; or (ii) A maximum cash sum (if commuting a full 25% of the pension) of £91,796 together with a reduced pension of £20,399 per annum. A further statement makes it clear that the statement is for "illustrative purposes only and is not a legally binding statement of [your] entitlement." It is clear that the scheme envisages increases, but there is no statement guaranteeing that there will be no diminution. 20. Second, that apart from the monies in his bank accounts, the only capital available to the Petitioner was a ½ share in a joint policy with Pearl assurance, the value of which, if it ran to maturity was £29,000, but the present value of which, according to evidence provided by the parties subsequent to the hearing, if cashed in now would be £21,896.00. 21. Third, that, per contra, the Respondent, though short of cash and immediate income - as evidenced, not least, by being four weeks in arrears with her rent - had, in addition to her ½ share of the Pearl Assurance policy ( v.supra ), what were described in the affidavit of means, as policies with Britannic Assurance and Prudential Assurance showing a value at the date of the affidavit of approximately £124,000. These policies resulted from lump sum payments and had been taken out by the Respondent with monies which she had inherited from her parents. The values of these policies vary, the Court was advised, according to the value of the shares held and are lower than when the affidavit was sworn, but, in the view of the Court not significantly so. 22.

We turn now to the evidence. Mr. E. W. Freeman, the lending manager for personal banking at Lloyds TSB, told the Court that it was not the custom of the Bank to lend on unsecured loans, as they would normally do so by way of a re-mortgage of a dwelling. There would be a negative connotation in this case inasmuch as there was no tangible asset (e.g. a motor car) purchased, and although they did lend to enable people to meet their income tax payments, it did give them concern. It would not be for more than 1 year and he would certainly not expect to be asked for £25,000. 23. The States pension could not, in his view, form security for a loan; and indeed there was no underlying security there. 24. As to a letter received from Mr. Jones, his junior at the Bank, he answered that it would be very unusual for £25,000 to be advanced unsecured, and indeed that £15,000 would be unusual. 25. He added that the current information which was on Mr. Jones' file would not be sufficient to support the Petitioner with an advance. 26. To give an example, if he were to loan £25,000 - which, he reiterated, he considered unlikely - there would, at current rates, be repayments of £6,000 per annum for 60 months and he would have to ask himself how the Petitioner could afford it. 27. If they were to make such a loan, they would wish, although they could not insist, on the borrower taking out a life insurance policy which would cost in the region of £114 per month. He insisted, though, that the key issue was the purpose of the loan. 28. To put it at its mildest, he showed no enthusiasm for the proposition of a loan of either £25,000 or £15,000, or indeed at all, to the Petitioner and certainly did not suggest to the Court that the Bank was willing to assist in this way. 29. Mrs. H, the mother of the Petitioner, was then called. Mrs. H is aged 79 and, although she knew of the proceedings, had only just learnt of the order for the payment of £100,000. 30. She was quite definite that she would not help her son, and certainly not to the extent of £50,000 to £70,000. 31. She put it in this way: although she loved her son, at her age she had to think of herself and of the possibility that she might find herself in a home, involving the financial demands of long term care. 32. The Court heard evidence from Mr. H. He confirmed that his current salary was £43,000 per annum. His present Bank accounts were as follows:- Flexible account (Lloyds TSB) £2,501 Current account (HSBC) £7,582 90 day deposit account (Lloyds TSB) £35,291 £45,374 33. The HSBC account included his last payment of salary. He had paid last year's income tax (£5,575) and was anticipating receipt shortly of this year's assessment. 34. The main reason for the change in the levels since he swore the affidavit which was before the Registrar was that he had recently paid fees of some £10,000. In addition he had some payments outstanding for a recent holiday, and a further factor was that the engine of his car had "blown up" costing him £2,500. 35. So far as N was concerned, for whose fees he was now solely responsible (bringing about a very considerable reduction in them), he was now liable to pay the Education Committee £3,717 per annum, a small increase on her previous school fees of £3,600 per annum. 36. The total grant from the Education Committee, which included his contribution, was £11,991, £3,600 of which went for fees for the Halls of Residence. Out of this total there was a balance left of £774 per term for maintenance and travel for N. 37. In addition to that, given the course she was on she would need some further help, not least in buying a computer - some of the course work being given on computer disk - at a cost of £800 - £1,000, plus, in addition, some further allowance to prevent her from being too deeply in debt at the end of her course. 38. There was a further expense which would face him with regard to N who would in about three years time require dental treatment, the present cost of which was estimated at

approximately £2,000. 39. So far as Dunbar Cottage was concerned, he paid his mother rent for the part of the property he occupied (£118 per month -

- v. supra) and was liable for internal repairs and decoration. There had, he said, been a severe problem with damp arising from the stream which passes under the house, which had cost a considerable sum of money and which the insurers had confirmed was not covered by the Household Policy. 40. In cross-examination he confirmed that over and above his normal expenses, which were still much as stated, he had presently a monthly disposable income of some £900. 41. In addition, there was of course (v. supra) his half share of the policy with Pearl Assurance, the present value of which, if called in now, would have a surrender value of £21,896.00. 42. So far as his interest in his mother's property is concerned, the position appeared to the Court, who were advised that Mr. H had a brother, to be this: he is in part of his mother's house, where he pays her a very low rent but with no more security of tenure than any other occupant in his position. 43. He has a brother. His 79 year old mother for (as it seemed to the Court) good reasons refused to contemplate guaranteeing a loan against the property. 44. On his mother's death, he may receive the house outright, he may have to buy his brother out (or be left without accommodation), he may, possibly receive even more, or he may, his mother being able to dispose freely of her real property, receive a life interest or indeed nothing at all. If he receives nothing he may or may not be able to claim an interest (v. eg. *Pirouet v Pirouet* [1985-86] JLR 151). 45. The Court, at this stage, simply does not know what his position would be and cannot, and indeed should not, speculate. 46. The first conclusion that the Court has come to, is, that although the Court agrees with the Registrar that a "clean break" is desirable, it is simply not possible in this case. 47. That being the case, the Court is left in the not unusual position of having to make the best choice it can, or put another way, if possible, at any rate the least worst choice. 48. The Court takes the view:- First, that a lump sum payment, above a certain figure, is simply not achievable at present. 49. Second, that neither party have any immediate needs; and that although the Respondent - and the Court can sympathise with her wishes - would like to purchase a property this, at present prices is also not achievable; besides which if she were to seek a mortgage, the Court cannot comprehend how she would meet the interest payments if she is presently four weeks in arrears with her States rental payments. 50. Third, that although the parties support morally, their daughter, there is an ongoing obligation, financially on the Petitioner. 51. Fourth, that in fact, the parties are not so very far apart financially, inasmuch as one is asking for £100,000 now and the other for £100,000, in part deferred. 52. Fifth, that there ought to be in part a capital payment now and there ought to be a final cut off point for payment of any balance outstanding which in the present view of the Court ought to be the date of death or retirement of the Petitioner. 53. Sixth, that the financial position of the Petitioner may change, not least if he receives an inheritance. 54. Seventh, that in the view of the Court, an award containing an element of compound interest is undesirable. Further the Court notes (1) that the present value of the policy with Pearl Assurance is £21,896.00 and

(2) that the Petitioner has agreed to make an immediate payment prior to Judgment to the Respondent of £5,000. Given these various factors, the Court has come to the conclusion that the most equitable way to deal with this unhappy affair is to make the following award:- (i) The Policy with Pearl Assurance now valued at £21,896.00 will be called in forthwith. - The Respondent's half share, £10,948 will be paid to her; the Petitioner's half share to him. (ii) The Petitioner will pay immediately £32,000 to the Respondent. This payment will include the £5,000 which the Petitioner (v. supra) undertook to pay to the Respondent; so that, if it has been paid, the Petitioner will pay over the balance, viz. £27,000. (iii) Subject to cost of living increases (v. infra) the Petitioner will pay a further £68,000 to the Respondent in the following manner:- (a) Until the final cut off point is reached (v. infra) or there is further order of the Court, the Petitioner will pay £600 per month, varied as described, infra, to the Respondent. (b) The balance unpaid of the £68,000 will be revised upwards on 1 st October, annually, commencing on 1 st October, 2003, in accordance with any rise in the Jersey cost of living index, and the monthly payments shall be revised proportionately in the same manner. Should the cost of living fall, however, there will be no diminution in the figures. Further, should the Jersey cost of living index figure be no longer maintained, then in the absence of agreement, the parties may return to the Court for adjudication. (c) Any balance outstanding on the sum of £68,000, adjusted as aforesaid, shall be paid off forthwith on the retirement or earlier death of the Petitioner. (iv) However, upon a significant change in the financial position of either of the parties, either party may apply to the Court for a variation of the present order with, in particular, but without limiting the discretion of the Court to make such order as it thinks fit with a view to accelerating payment of any balance outstanding on the said sum of £68,000 as adjusted. Authorities Matrimonial Causes (Jersey) Law, 1949: Article 29. Boudin -v- Smith (23 rd June 1995) Jersey Unreported. White -v- White (2000) FLR 981 HL. Southern -v- Southern

(1999) JLR 94 . T -v- T (Financial Relief: Pensions) [1998] 1 FLR 1072. Milne -v- Milne (1981) 2 FLR 286 C. A. SRJ -v- DWJ (Financial Provision)

[1999] 2 FLR 176 . CA. W -v- W (Periodical Payments: Pensions) [1996] 2 FLR 480. K -v- K (Financial Relief: Widow's Pension) [1997] 1 FLR 35. Walsh -v- Corcoran (1983) 4 FLR 59 C. A. Pirouet v Pirouet [1985-86] JLR 151). Page Last Updated: 28 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 25 October 2026 · Esheria