

JERSEY / JUDGMENT

H v H [2008] JRC 097A (18 June 2008)

[2008] JRC 097A

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judgment

the registrar: 1. This is an application for an interim lump sum in accordance with the provisions of Article 29(2)(a) of the Matrimonial Causes Jersey Law 1949, as amended . 2. In order to understand the technicalities it is necessary to quote parts of Article 29:- "Financial provision for party to a marriage in cases of divorce etc:- "(1) Where a decree of divorce, nullity of marriage or judicial separation has been made, the court may, having regard to all the circumstances of the case including the conduct of the parties to the marriage insofar as it may be inequitable to disregard it and to their actual and potential financial circumstances, order - a) ...

- 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." 3. In this case the wife is asking the husband for an interim lump sum:- (a) towards her living expenses till she secures permanent employment; (b) to pay her present debts of about £7,000 and her rent; (c) towards her legal fees; (d) on account of a final lump sum to be awarded. 4. With regard to possibility of the award of a final lump sum, it is appropriate to mention that the husband is a farmer and that the former matrimonial home is a farm house which the husband owns jointly with his brother. There is a little adjoining land but a greater part of the land farmed by the husband is owned by his mother. 5. The farming venture does not appear to be very successful. The wife complains that the husband's potato crop, presently only half dug, has been sold, at an undervalue, to his father. Nevertheless it was indicated to me that the wife may be considering proceeding with a claim for lump sum based on her share in the home and the farming business. 6. With regard to her more immediate needs, the wife used to run her dog kennels from the farm. When the marriage broke down she not only left home herself, but was politely asked to remove the dogs. This has not been possible to do immediately, so she has arranged for a friend to go there on a daily basis to run the kennels

for her. This has resulted in her no longer having an income from the business. 7. She has registered as unemployed, but hopes to complete her ECDL Course soon and to obtain permanent employment within a few weeks as a secretary. 8. In the meantime she has spent her savings and incurred debts which amount to £7,000. 9. On the other hand, the husband points out that she has some money owed to her and, in all likelihood she will soon be earning more than he could ever achieve as a farmer. 10. The payment to her of an interim lump sum under paragraphs (a)-(c) of her application would appear to be entirely appropriate in the circumstances. She does not require on-going spousal maintenance because the prospects for a trained secretary on the job market are good. She just needs a sum of money to keep her going in the short term. 11. The money to pay such a sum is available in cash in a bank account in the husband's name. I take into account the fact that the husband too requires this money to feed and clothe himself, because the likelihood of much profit from his potatoes is doubtful. The area is quite large, some 100 verges, but 50% of this area still remains to be dug in mid June, which is getting late. 12. In my judgment a fair sum is £10,000. This will cover payment of her debts and provide a modest sum to set her on her feet, such as accommodation, arrangement of business cover, and food. 13. These items are all covered by Article 29(2). I do not however think the Article covers any sum on account of a capital lump sum (paragraph (d) of her application). That will have to wait until a decree nisi has been pronounced in accordance with Article 29(1). 14. The word "before" in Article 29(2) is crucial. I think it means "before the conditions are fulfilled to make an order under 29(1)." Its provisions are limited to the immediate and urgent provision of funds to a party, not a part payment of a final award. 15. It occurs to me that there is no reason why parties, who leave the matrimonial home after issuing divorce proceedings, should not use this Article more commonly. Expenses incurred by litigants prior to the issue of a decree nisi can be considerable. Asking for an interim lump sum can contain not only a claim for money paid out or a debt incurred, but can include items of future expenditure, such as rent, or a deposit on rental. 16. It is, however, more common for parties to divorce proceedings who find themselves short of cash in the short term to apply for interim maintenance under Article 31 of the Law. Authorities Matrimonial Causes Jersey Law 1949, as amended. Page Last Updated: 15 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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