

JERSEY / JUDGMENT

H -v- J (Matrimonial) [2012]

JRC 079B (18 April 2012)

[2012] JRC 079B

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judgment

the registrar: 1. The wife is applying for a capital sum upon her divorce, such sum to be based on the value of her just share in the value of a dairy farming business and for spousal maintenance. 2. In his open position, the husband offers a lump sum of £25,000 on a clean break basis. By contrast, in her amended open position, the wife is applying for a lump sum of £92,441.80 to be paid in separate monthly payments of £950, plus spousal maintenance of £749.66 per month, an on-going total of £1,699.66 per month for some time to come. 3. The husband and wife, who are now aged respectively 52 and 46, lived together initially on the farm, but, subsequently they moved into a four-bedroomed house a few miles away from the farm. The husband continues to operate and to work at the farm. The parties' son A, now aged nearly 18, has joined his father on the farm. Father and A now live in a two-bedroom apartment and commute each day to the farm. The wife shares rented accommodation. The former matrimonial home at the farm is now occupied by farm staff as part of a remuneration package to a herdsman. 4. The extent to which the wife helped the husband in running the farm is disputed. Indeed, although she is still officially a director and secretary of the farm company, she disputes almost everything she possibly can about the farm, including the efficient day to day management of the farm, the efficient use of machinery, the policy on lease and hire of equipment and the farm accounts. In challenging the efficient management of the farm, she attempts to show that the business has been deliberately mismanaged in order to devalue the company and avoid the payment to her of her rightful share. 5. As a direct result of her contention, I have heard evidence from two accountants and two farming experts. Unfortunately neither the accountants, nor the farming experts, had spoken to each other prior to the hearing. However, in order to save time, each witness was allocated a limited time to give evidence. 6. From my point of view, the situation remains complex, because the value of the farm company is not agreed and the efficient management of the farm remains in dispute. Even the value of the cattle is disputed. 7. Neither party would like to force the sale of the farm, so the hearing was about determining the size of a lump sum or transfer of money in stage payments from husband to wife to be large enough to meet the wife's needs and yet not large enough to cripple the company and to make its cash flow problems unmanageable. 8. The sad thing is that legal fees have been generated on both sides, although both legal firms involved have capped their client's exposure to the normal tariff. Were

this not so, each party might have more to worry about in paying legal fees, than in resolving the matter in hand. 9. So against this background, I have to decide what sum would be fair to award the wife in ancillary relief proceedings and, if a sum is to be paid, how it can best be achieved to minimise the effect on the company. 10. First I have to decide if the company is actually worth anything as an asset and secondly, even if it isn't, what kind of value do the cows have. Thirdly, what kind of income stream is generated by the company and how can it be shared between the parties. The Company 11. The company operates the dairy farm on rented land and in rented buildings. It has no assets in the form of land or buildings. The draft farm profit and loss account contained in the balance sheet accounts for the year ending 28th February, 2011, show fixed assets of £181,642 (of which tangible assets make up £174,269 and intangible assets £7,373) plus current assets (including cattle stock of £18,900) of £61,300, making a total asset figure of £242,942. Creditors of the company (both accounts due within 1 year and after 1 year including loans payable and lease and hire purchase commitments) are owed £247,100, leaving a net asset deficit of £4,168. 12. As to putting a value on the company, C, the wife's accountant refers to the tangible asset figure of £174,269 in his report. He comments:- "On a realistic basis, this is likely to be an over estimation and by reference to exhibit no.7 (i.e. page 7 of the notes attached to the 2011 accounts), I consider the sum £40,000 to be a reasonable capital value of the company." 13. On the other hand, D, the husband's accountant, comments as follows:- "In my opinion the company had a negative value in excess of £40,000 as at 28 th February, 2011. This valuation excludes the value of the livestock, excludes the director's loan account and attributes no value to the non-saleable and non-movable fixed assets referred to above. The value of any goodwill is considered negligible. Please refer to the attached schedule names "Calculation of value of Company" as at 28 th February, 2011." This is the schedule to which he refers:- Net asset value per balance sheet -£4,158 Adjustment to exclude directors loan balance £61,489 Adjustment to exclude livestock at standard valuation £18,900 £38,431 Less Adjustment to exclude non-movable and non-saleable fixed -£80,387 Assets -£41,956 So D concludes that the company has a negative value of more than £40,000. 14. Be that as it may, in giving his evidence, C, the accountant for the wife, stated that he thought that the farm may have, in practice, a sale value. "A farmer may be willing to pay up to £50,000" if he took over the lease and equipment. 15. D, the husband's accountant was less confident. My note of what he said is "£50,000 for assets. Out of that, settle the liabilities." 16. E, the husband's farming witness, made it clear to me that a possible farm sale of equipment and a lease "lock stock and barrel" as E, the husband's farming witness put it, was not easy to predict with any accuracy. It could be viable in its present form, but it relies on all the constituent parts of the business together being up and running, including the machinery, the cows, the milk quota and the buildings. "Take one away and it's worth a fraction without the whole". In relation to the buildings, I was told that the original lease has expired and the tenancy depends on an especially good relationship which the husband enjoys with his landlord. 17. My conclusion about the value of the company, if it ever became available for purchase, is that it could possibly attract a modest purchase price, given the right parameters at the time of purchase and the right purchaser coming forward at the right time. However, the circumstances are so difficult to predict, that, for the purposes of this hearing, I propose to place a nil value on the company. 18. Advocate Haines tried very hard to convince me otherwise and to convince me

that the income stream from the company was likely to increase in the long term, despite his contradictory contention that husband was attempting to devalue it in time for this hearing. 19. The allegations that he is trying to "devalue" the company are these:- (i) financial agreements were taken out in a 2 year period coinciding with the hearing; (ii) contrary to present policy, replacement of machinery should be undertaken on a rolling basis, so that where one lease agreement ends, another begins; (iii) personal drawings by the husband are excessive; and (iv) the husband's use of farm equipment (e.g. tractors, forage harvesters etc) has been wasteful. (However, this allegation does not seem to have been pursued in final submissions). 20. My conclusions are:- (i) that the husband did indeed take out the agreements as and when he had to. I accept his evidence that the farm has always had a cash flow problem, that all the things which were subject to the agreements were crucial to the farm at the time they were entered into. He is not an imprudent farmer. (ii) As far as possible, machinery is replaced on a rolling basis. When one machine is broken it is replaced. However, occasional items, like the slurry store, have to be purchased in order for the farm to stay in business. It is not always possible to make long term plans to purchase large items of equipment. (iii) The subject of the husband's drawings was particularly contentious. The company's gross profit or turnover of £250,735 in the year ending th February, 2011, looks healthy but the company's expenses, which include the husband's drawings, whittle this figure down to the small deficit mentioned above of £4,168. The director's loan account, now in the husband's sole name, has been used to pay the husband's personal drawings. Whether or not it should be now in the sole name of the husband and whether or not it represents a cash sum, was debated (in my view inconclusively either way). In the year ending 28 th February, 2011, £8,880 was spent on his personal rent, £11,250 and £7,597.97 on his credit cards. In fact, another £12,000 was spent on personal rent, making a total spent on rent of £20,880 or £401 per week. Total drawings for the year ending 28 th February, 2011, were £59,565. This included £11,400 made up of 12 monthly payments of £950 by the husband to the wife. Whatever the position on amounts drawn to pay the wife, it is maintained by the wife that drawings on the company are excessive. I am not so sure. Any foreign holidays are usually farming orientated and, as such, sponsored. He has meals out, but not all the time. An item for fuel was actually a payment for farm diesel. The wife's witness C describes the cash flow situation as "imprudent" but D preferred to say "uncomfortable and undesirable". D described the company as "struggling". Again, I prefer the evidence from the husband to say that this has always been so. As E, his farming witness said :- "You've got to live." I wonder whether the success or failure of the farm could perhaps depend more on the usual considerations a farmer has to make, rather than on his correct use or otherwise of the director's loan account. He pays an accountant to advise on these matters. A farmer has to give thought all the time to other considerations such as availability of grass, feeding regime and the use of concentrates, silage making, fertilizer application, healthy milking regime, veterinary advice, purchase and sale of suitable cattle (to name but a few to which partial reference was made in the wife's bundle of documents and in the evidence of the parties). I have no doubt that the situation would be eased if the husband did choose to save money on his rental, which is an expensive item, in the light of other very expensive items on the list of expenses, for example his commitment to pay off the slurry store (£68,671) in 4 years with rental payments of £1,136 per month. However it is unlikely to tip the balance and make the farm

uneconomic to run. It would, however ease the cash flow problems. (iv) Despite his best efforts, Advocate Haines was unable to show any mismanagement in respect of the use of farm machinery. On the contrary, the husband's witness F demonstrated that he assisted the husband to make the best of what they both had in terms of machinery, and use of time and effort. 21. In his report, E reproduces some figures from the Jersey dairy industry costing scheme, which is operated by the Jersey Milk Marketing Board funded jointly by the Board and the Rural Economy Section of the Department of Environment. The idea is to help farmers to compare the figures generated by their own farms with the industry average. The respondent's farm has little to worry about in terms of its profitability and comparative success. Comparative figures to March 2011 show that its "% EBITDA of turnover" (Earnings expressed as a percentage of turnover Before Interest Tax Depreciation and Amortisation) is 11.4% as compared with an industry average of only 7.4%. E describes the company as successfully running "a low cost/low output business where costs are tightly controlled in relation to output. Being a tenant farmer, the business is reliant on profitability derived solely from the farm trading account, the most important element of which is the movement of cash flow within the business." He goes on to demonstrate increased cash flow, an improving trend in milk output and improved asset base. Another extract reads:- "In my opinion, [the company] maximises the resources within which it farms, be it the farm buildings and facilities, the land it occupies and the herd itself. [The husband] has carefully achieved this position following on from the successful management of the farm by his landlord. It should be stated that [the husband] works very closely with his neighbours whether be it in terms of swapping land, sharing machinery and helping each other out and it takes a genuinely honest and dedicated person to achieve this in the ever competitive nature of Jersey's countryside environment. I have observed the development of many dairy farms in the island over the 35 years that I have been farming in the Island. There are now only 10% of the farms in existence since when I first started and [the company] is one of the largest: it takes tremendous hard work dedication and shrewd business acumen to achieve this position. I firmly believe that [the business] is run prudently." Against this well documented background, I find advocate Haines' attack on the respondent's farming credentials and competence surprising. The wife's farming expert G did not refer to the costing scheme and was concerned only with the reasons for acquiring farm equipment since July 2009. She was able to raise appropriate concerns, but was unable to find satisfactory answers. In my opinion, the costing figures demonstrate that the husband has been unfairly criticised. The cows and the value of the company as income 22. Even if the company has no ascertainable value, the cows have been separately valued. I have mentioned the accountancy figure for the cows of £18,900, but that does not reflect their actual value if a sale took place. The cows have been valued by a well-respected expert on Jersey cattle, K. K's valuation of the cows is £157,760. The milk from the cows provides an income stream from which both parties presently benefit. If there comes a day when the husband sells the cows (or the cows he has at that date in the future), he will realise a considerable capital asset. The wife maintains that the asset value is greater, because, she alleges, K did not have a correct list of the cows at the time of the valuation. Using a complicated method of calculation using the official cattle movement survey, Advocate Haines concludes that the value should have been £168,076.64. I'm not sure it really matters who is right. An amount is only realised at some time in the future

when the cows are sold. Their present value is in producing milk. However, the present value of the cows is indicative of that future amount. I propose to treat the sums of £157,760 and £168,076 as indicative of the fund value realisable or available when the husband sells up his farm or, as and when he hands over the value of the cows and the management of the farm to his son. Whatever the precise sum now, it represents the value of a kind of pension fund available in the future. In divorce cases, it is customary to gauge the value of a future pension fund by using a "Cash Equivalent Transfer Value". I intend to use the present cattle valuations in a similar way. The longer the time before the pension fund will come into payment, the greater discount is usually given to the transfer value in any calculation of assets upon divorce. The husband will be 65 in 13 years. I propose to discount the figures to £100,000 because there is no talk of the husband giving up farming as yet and his son is only 17. If this is a large discount, being over one third of the valuation figure, and more than that in respect of the estimated figure, I would say that a pension fund from a Bank or the States of Jersey, for example, should be considered a more solid and reliable investment than 367 or 391 Jersey cows, which are susceptible to all kinds of uncertainties, such as health problems, market fluctuations affecting stock and land price, milk price, political pressure etc. If I am to award the wife one half of the discounted sum, I would therefore say that she is entitled to £50,000. However, she has already received from the husband £26,600 in 28 instalments. This has been partially in the nature of a capital payment. Whether or not there was an agreement that the payments should cease after 24 months I am not sure, but the husband certainly thought there was. So I think it fair to reduce the lump sum of £50,000, by the further sum of £10,000, to take account of the payments received to date. Therefore the sum of £40,000 is still due and payable. It may be that the husband can raise a loan at once for this amount, or he may prefer to have some time to raise the cash. In the meantime, I think it right for the husband to continue to pay £950 per month, and that these further sums at that rate should count towards the £40,000. In any event, the capital must be paid at the latest within 1 year.

23. The company has a considerable income stream and there are many factors indicating future good fortune for the company, such as potential increased milk quota. However it is not possible to foretell with any accuracy the difficulties which the future may bring. I accept that there are cash flow problems. The husband described the difficulty of keeping "all the balls in the air." I have considered whether a 'clean break' in this case is desirable. However, the only realisable asset of any real value seems to me to be the cows. If they were sold, there would be no income. There is the added difficulty that the company has the debt in respect of the machinery which it needs in order to operate successfully. If an order is made which restricts the availability of cash too far, the company will not have sufficient cash to operate at all. I have worked out that if £40,000 is borrowed, the payments would be in the region of £800 per month if repayable in 5 years. Maybe, payments could be spread over longer. Be that as it may, I do not wish to cripple the husband's income too far by adding to his financial burden unreasonably. My decision is that he should pay the wife spousal maintenance at the rate of £300 per month. On 2011 figures, if I add £800 to the monthly maintenance of £300 the monthly bill will be £1,100 or £13,200 for a year. This will replace the payments of £950 per month or £11,400 for a year. At this rate, instead of a deficit of £4,168, the deficit in the year ending February 2011 would have been £5,968. Bearing in mind his contribution to professional fees, this is at the highest the husband could afford to

absorb. I leave it to him to consider a reduction of his own personal spending. The borrowing could actually be less than £40,000, (as little as £28,600) if he delays payment of the lump sum for the maximum period of 1 year before payment and continues to pay £950 per month in the meantime, in reduction of the borrowing. 24. The effect of my decision on the wife is that she will have a lump sum of £40,000 at the latest in 1 year's time (from now on, as reduced by the payments each month of £950) and, thereafter, spousal maintenance of £300 per month. Presently she shares rented accommodation at £700 per month and her expenses amount to £1,611 per month, possibly slightly less because her horse's stabling bill of £100 per month is not incurred. She would like to rent her own accommodation at about £1,100 per month. In all, her anticipated expenditure is £2,355. Unfortunately my decision will not realise her dream. I regret that, in my opinion, there are insufficient company resources to pay her more without having a detrimental effect in the company's ability to meet its debts. Unfortunately, she has had an operation to her foot which has not been successful. She is not working at the moment and the effect of this judgment on any calculation for Income Support is uncertain, although she may be unlikely to qualify in view of the lump sum payable. At least she will have the ability to pay her debts (including legal and professional fees) and, hopefully improve her lifestyle temporarily at least. Legal costs 25. I was told at the hearing that the wife's lawyers would cap her fees bill at £10,000. The husband's solicitor was not sure of how much would be charged to him. In emails received from both representatives on 23 rd April, 2012, I am informed that subject to a number of factors, the wife's lawyers' position is correct. The husband will only be charged approximately £7,500. In these circumstances it will not be necessary to make a costs order. If it came to it, however, I would have to say that a lot of the evidence I heard about the farm and how it was run was unnecessary and proved nothing. The legal and professional bills would have been high if it were not for the approach of the lawyers to write off the majority of their fees incurred on a time basis. 26. Authorities with regard to the division of assets in divorce cases concerning farms tend to be in a class of their own and usually concern the division of property and land. In *Billot-v-Perchard* Jersey Judgments

(1977) 7 MC 144 the main issue was how best to share the value of farm buildings and land. The Court decided that the value should be shared equally less an amount allowed for the education of the children. However, what is remarkable is the care taken by the Court to provide an option to the wife to carry on farming by delaying payment of all the capital at once. In the present case, I am sure it would not do justice to the parties to force a sale of the company by insisting on a transfer of half the value of the cows, whichever valuation is taken as the correct one. In the present case there are no buildings or land, which makes the farming operation all the more precarious to maintain. 27. In *P-v-P* (financial provision: lump sum)

[1978] 3 All E R 70, the Court of Appeal dismissed an appeal from a farmer against an award to him of only £15,000 whereas the farm had been valued at £102,000. It was felt that the priority was to allow the wife to continue running the farm to the benefit of the children. The wife would have to provide a home, maintenance and education for the children with little, if any financial assistance from the husband. Her earning capacity was tied to the

farm and to increase the award substantially would necessitate selling the farm. Her contributions were very large in comparison with the husband's contributions. £15,000 would suffice to provide the husband with a home. 28. In the present case, the husband's only source of income is the farm. To sell the cows will mean that he will go out of business. To increase the award to anything like half the present value of the stock and equipment will not do justice between the parties because, without the farm, the husband will have no income and the wife will have caused his ruin. I have set out above my view of the maximum lump sum and on-going maintenance which the husband can reasonably pay whilst continuing to run the farm, which is, ultimately to the benefit of both parties and, hopefully, their son in the future. Authorities *Billot-v-Perchard* Jersey Judgments

(1977) 7 MC 144. P-v-P (financial provision: lump sum)

[1978] 3 All ER 70. Matrimonial Causes (Jersey) Law 1949, as amended. Matrimonial Causes Act 1973. Page Last Updated: 02 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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