

JERSEY / JUDGMENT

H -v- McL [2009] JRC 210B (12 November 2009)

[2009] JRC 210B

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

Reasons.

the deputy registrar: 1. The parties were married on the 14th June, 1999. A decree nisi was pronounced on the 14th May, 2006, on the basis of one year's separation with consent and made absolute on the 24th August, 2009. The parties had lived at a jointly owned property, and it was sold in August 2007, with each receiving £63,000. I will refer to them as husband and wife. The wife is aged 58 and a cleaner at the hospital; the husband will be 52 in two weeks time and he is a partner in an electrical firm. 2. The wife issued an application for ancillary relief on the 11th September, 2009, and the final hearing took place on the 12th November, 2009. There was no argument about assets and liabilities. The issue was as to the income and expenditure. 3. After the separation the husband paid the wife maintenance of £200 per month but this ceased on the decree absolute. The wife's situation 4. As a result of back problems she was off work from 29th August, 2007, to 29th May, 2008. From August to October 2007 she received full pay, and her payroll department indicated she was on half pay from 19th October, 2007, to 19th February, 2008, and then no pay. She returned to work receiving a wage slip on the 3rd June, 2008. The payslips which were produced were difficult to read but the evidence of the wife was that when she received no pay she was entitled to sickness benefit. She was unable to get sick pay if she had been off sick up to a year. Her evidence which I accept was that during these periods she has had to use her capital. She now only has capital of £42,000 as she has just paid for a holiday for 2010. With interest rates so low, she only earns a small amount of income from her savings. 5. Medical reports were produced from her general practitioner and the hospital consultant. Her general practitioner Dr Ince, in his latest letter dated 6th October, 2009, stated that the manual nature of her work "exacerbates her back problem and my view is that her condition would improve were she to give up work" and he added that she is highly likely to require further time off work from time to time as a result of her back problem before she reaches a retirement age of 60. Indeed she was off work in October 2008 and in January 2009 with a further flare up of back pain. The letter from the hospital says she shows post surgical change, and that whilst there is no evidence of a recurrent disc there are degenerate discs. I accept her evidence that she needs to work until 60 but will retire then. Sadly the wife also is suffering from depression but she tries to exercise her

back to alleviate her back problems. The wife has monthly outgoings of £1,639.83. 6. Her outgoings were analysed. She lives in a one bedroom unfurnished flat having moved from accommodation of £800 per month to the present rent of £564. She has no car, and does not pay income tax as she does not earn enough. She does not have an extravagant lifestyle and has no allowances in her income needs for contingencies and does not have Sky TV. Her expenditure is £1,639.38 per month and her income is £1,179.62 per month, thus there is a shortfall of £460.21 per month. She is not co-habiting. 7. She will get a state pension of about £628.33 per month at retirement. She produced figures showing what she would have got had she retired on 1st January, 2008, of £4,861 per annum deferred pension. A pension at 65 would give her £6,486 per annum (£540 per month) or with a commutable lump sum £3,248 per annum (£405.33 per month). It is likely that her shortfall in income over expenditure will be about £470. If she has to rely on her capital to meet her monthly shortfall in income, her capital will be spent in about 7 years time. The Husband's Situation 8. He is almost 52 and gave evidence that he would hope to work until 65. The husband is an electrician in a partnership. He is not arguing that his earnings have been reduced by the recession; they have been consistent at about £39,433 per annum or £3,256 per month. He pays himself a wage of £600 per week but gets other payments from the company. He lives in an unfurnished flat. He does not lead a lavish lifestyle either. He has a girlfriend but is not co-habiting and does not intend to re-marry. The husband's most recent schedule (dated 10th November, 2009) gives his monthly outgoings as £3,862.56 and in the future reduced to £2,529.56. 9. He provided an updated schedule of evidence - he put down £1,500 per month for legal fees. Having heard his evidence, I accept the wife's contention that this should not be taken out of his monthly expenditure as he has capital to discharge the fees. This reduces his expenditure from £3,862.56 to £2,362. The other contentious matter was a deduction of £400 per month for social security payments. Advocate Benest took him through his business bank statements which did show a pattern of him being reimbursed for social security payments (as well as other payment such as tax) and I accept that these are reimbursed by the company "as and when". If the £400 is also deducted his monthly needs are £1,962.56. On this basis his monthly surplus of income is about £1,323. If he then were to pay the wife £460 per month he would have £863 surplus per month. The Wife's Case 10. She is not looking for a re-distribution of capital. She says he can pay £460 per month and this will still enable him to save some money towards retirement as he only has a small pension fund which has been frozen. Her position is that she may even have to give up work prior to 60 as the work exacerbates her back condition. Whilst she accepts her husband does not have a profligate lifestyle the £460 is only 14% of his net monthly income. She wants him to take out an insurance policy to cover the maintenance in the event of his death. However, this was not raised by her Advocate in the cross-examination of the husband. The wife is asking for a contribution to her costs because of the now disparity in their liquid capital assets. The Husband's case 11. The husband agrees that there should not be a clean break. However, the Court cannot know what the position of the wife will be on her retirement, and there should be a review of the parties' finances then, but in the meantime there should only be a nominal maintenance order. His obligation to pay some maintenance has not been reached. This is because she has a capital resource which the Court should pay regard to and it cannot be ring-fenced. In addition it is a seven year plus marriage and she should not get a "meal ticket" for

life. He accepts she is not extravagant and has had health problems in the past. Legal fees should not be paid as there is no allegation of bad conduct on behalf of the husband. If the wife reduced her capital she would be able to seek income support. As for asking for an undertaking to obtain an insurance policy to protect her maintenance in the event of his death, the Court cannot order him to give this and given his age and that he also is a smoker, the life insurance cover, his Advocate submitted, would be about £80 per month. The Law 12. In considering an order for spousal maintenance, the Court must consider Section 25 of the Matrimonial Causes Act. Both parties agree that there should be no clean break. I was referred to the case of Warn-v-Conetta

[2009] JRC 202, which in turn referred to the case of Flavell-v-Flavell

[1997] 1 FLR 353 , and invited to read this case in its entirety. In the Flavell-v-Flavell

[1997] 1 FLR 353 , the wife had investment capital of £36,000 which provided her with a modest investment but was not sufficient to meet her needs. The judge found that the sale of the matrimonial home would not release much additional capital to augment her income. Her capital could not be described as substantial. She was a woman of 54 with a very limited earning capacity. Her risk of ill-health was such that no term order was appropriate. Such orders terminating periodical payments would only be made where the wife had substantial capital or significant earning capacity. In the Warn case the observation made in the Flavell case that it was not usually appropriate to provide for the termination of periodical payments in the case of a woman in her mid-fifties was endorsed. In this present case the wife is 58, she has limited capital, limited earnings, and the risk of further ill-health. Whilst she has a pension, it will only provide her with a limited income when she retires even if she does not commute part of her pension. It is not appropriate to make a term order, and indeed neither party is seeking this. Nor is it fair to make a nominal order and review later as she has a need for income now. Quantum of spousal maintenance 13. Having considered the respective financial positions of the parties, I accept the wife's claim that she be granted £460.21 per month. This is a figure that will meet her needs and is a figure the husband can afford. Either party may apply for a review in the event of any material change of circumstances. An undertaking from the husband 14. The wife is seeking an undertaking from the husband that he obtains an insurance policy to protect her maintenance in the event of his death but I cannot order him to give this. Costs 15. The wife is seeking costs of £3,425.78, which is the work in progress at the time of her legal aid certificate, because of the disparity of the parties' respective financial positions. I accept that this is not a case where litigation conduct is being raised and I do not accept that the disparity of the parties' capital positions alone would have justified a costs order in favour of the wife. However, the wife has succeeded in her principal application, and I am therefore ordering the husband pays her £3,425.78. Authorities Warn-v-Conetta

[2009] JRC 202. B-v-C and B

[2009] JRC 036A . Flavell-v-Flavell [1999] 1 FLR 353. Page Last Updated: 14 Feb 2017 BAILII:
[Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2009/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/h-v-mcl-2009-jrc-210b-12-november-2009>

Prepared on 26 October 2026 · Esheria