

JERSEY / JUDGMENT

In the matter of II

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[2010]JRC233A royal court (Samedi Division) 21st December 2010 Before : J. A. Clyde-Smith, Esq., Commissioner and Jurats de Veulle and Marett-Crosby. Between A Petitioner B Respondent IN THE MATTER OF II The Petitioner represented herself. Advocate A. D. Hoy for the Respondent. Advocate M. Haines appeared as an amicus curiae.

judgment

the commissioner: 1. Following its judgment handed down on 18th November 2010, the Court sat on 29th November to hear further submissions from the parties as it had requested in paragraph 77 of that judgment. This judgment should be read as a continuation of the Court's judgment of 18th November 2010. 2. The respondent has commissioned further advice from Belgarum, a firm of estate agents in Winchester, as to the value of the Winchester property. They provided a "drive by" valuation of £650,000 based on the location of the property and recent market activity for the area but with information as to the interior of the property provided by the respondent. If that valuation were accepted by the Court, then that would increase the equity in the two properties in the hands of the petitioner to £142,643. 3. There is a difference between the two revised valuations produced by Penyards and Belgarum for the Winchester property of £100,000. Mr Hoy, for the respondent, submitted that the Court was not in a position to decide between these two valuations without further inquiry and without giving the parties an opportunity to cross-examine the valuers. Neither of the parties could afford that exercise and therefore the only true proper and accurate means of ascertaining the value of the Winchester property was for the Court to order its sale. The quantum of the lump sum, if any, would be determined following that sale. 4. The petitioner filed a written skeleton argument in which she reiterated many of the submissions she had made at the earlier hearing but suffice it to say that she resisted the making of any lump sum payment in favour of the respondent. 5. As requested by the Court, the petitioner's brother gave evidence as to the assistance he had given and would in the future give the petitioner and we found his evidence helpful. He produced a schedule of her assets and liabilities which, whilst showing slightly different figures to those set out in paragraphs 31 – 33 of the Court's judgment of 18th November 2010, demonstrated the same unsustainable position. In his view, however, whilst the petitioner's position was financially precarious, it would be viable in the long term if both properties were retained and let. 6. It was proposed that the petitioner would move into her mother's three bedroom property in Jersey, which would have to become the home for the two children during school holidays. He estimated that the Winchester property would need some £25,000 expended upon it to bring it into lettable condition. He had not estimated the cost of bringing the Jersey property into a lettable condition, but clearly a similar

budget might be expected. If both properties were let, they would produce enough income to manage the total debt servicing costs of the petitioner. He would assist her by continuing to help meet her and the children's living expenses, helping to put the two properties into a lettable condition and covering any shortfall provided both properties were let. It was clear that he was also minded to assist in meeting the claims of any of her creditors. 7. Over the longer term, he felt there was a strong possibility, indeed it would be essential, for the petitioner to be able to refinance and use this refinancing, to repay the Acorn liabilities and any other debts outstanding at that time. He was very clear that both properties should be retained for the ultimate benefit of the petitioner and the two children. Retaining both properties would leave her with no funds to make a lump sum payment to the respondent. 8. Mr Haines, noting that there had been no change in the parties' insistence upon the children being privately educated, suggested that the Court, if it was so minded, could engineer their return, or at least the return of the younger child, to be educated in Jersey, by imposing a maintenance order upon the respondent in favour of both the petitioner and the children from say 1st May 2011. In order to meet that obligation, the respondent would have no option other than to give notice to the school of their withdrawal. 9. Mr Hoy submitted that it would be unjust to impose an order upon the respondent which on the basis of his current outgoings he could not meet, presenting him with a Hobsons' choice. Whilst we were grateful to Mr Haines as amicus pointing out the options available to us, we did not think it appropriate to use the Court's powers in a manner which neither party sought, and which was aimed at achieving indirectly what the Court had no power to achieve directly.

10. Mr Haines reminded us that this was a needs based case in which the welfare of the children should be our first consideration. The provision of a home for the primary carer and the children should be our priority and we might consider the very little available equity should remain with the petitioner to meet her reasonable needs and those of the children. He provided us with a helpful checklist in relation to the usual type of orders made on child maintenance applications which we have taken into account in the orders that we will make.
Decision
11. We appreciate the logic of Mr Hoy's submission that the best way of ascertaining the precise value of the Winchester property is through its sale. However, such a sale would have to be conducted in England against the will of the petitioner. On going through Mr Hoy's suggested draft order, it was clear that the making and policing of such an order created the potential for further costly and time consuming litigation. There would be issues as to what repairs were necessary and who would pay, which agent should be appointed and what offers received should be accepted. Ultimately, the conveyance of the Winchester property could only be affected against the will of the petitioner through the English courts. The financial position of the parties militates against us setting in train a bout of further potentially costly litigation.
12. Our position remains as set out in paragraph 56 of the Court's judgment of 18th November 2010. The proposal that the petitioner will live in her mother's house means that the children, whose welfare is our first priority, do have a home in the island to which to return

during the school holidays. The petitioner, with the assistance of her family, wishes to retain both matrimonial properties in which the respondent has an interest, not as homes but as long term investments, investments which have sufficient value to discharge all of the debts of the parties. Fairness dictates that if she elects to do so then she must make a reasonable contribution to the debts of the respondent.

13. The difference in the two valuations of the Winchester property leads us however to conclude that we should reduce the lump sum payment we had in mind making from £55,000 to £37,073, so as to enable the respondent to discharge his obligation under the judgment taken for Jersey Income Tax. We will not order the sale of the Winchester property to secure that payment, but will give the petitioner adequate time to arrange for its payment.
14. The petitioner can meet this obligation either with the assistance of her family or through the sale of one of the properties. The sale of the Winchester property would realise equity of £129,500 before sale costs according to the Penyards' valuation and £229,500 before sale costs according to the Belgarum valuation.
15. Subject to the observations of counsel on the form of our final order, we would propose to order as follows:- (i) The petitioner will make a lump sum payment of £37,073 to the respondent, such payment to be effected within three months of our order coming into force. (ii) The petitioner will continue to pay the interest on the mortgage on the Winchester property and will procure the release of the respondent from that mortgage, such release to be effected within three months of our order coming into force. (iii) For so long as the parties maintain their decision that the children remain at their current school, the respondent shall not pay any maintenance for the children but shall discharge the school fees and any incidental charges rendered by the school. In addition, the respondent will pay one half of the cost of the children travelling to and from the school for the beginning and end of each term and for each half term. (iv) As and when each child leaves their current school, the respondent shall pay such sum for his maintenance and for his further education as may be agreed between the parties or in the absence of agreement as may be determined by the Court.
- (v) The respondent shall pay the petitioner the annual sum of £1. (vi) In accordance with the principles laid down by the Court of Appeal in *Ahmed v The Attorney General* [2005] JCA 121 at paragraphs 48-54, the costs of Mr Haines as amicus shall be paid out of public funds. Authorities *Ahmed v The Attorney General* [2005] JCA 121.

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