

JERSEY / JUDGMENT

In the matter of M

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

[2011]JRC057A royal court (Family Division) 16th March 2011 Before : V. J. Obbard, Registrar, Family Division, sitting alone. Between A Petitioner And B Respondent And C Co-Respondent IN THE MATTER OF M REASONS FOR REDUCTION OF CHILD MAINTENANCE The Petitioner appeared on her own behalf. The Respondent appeared on his own behalf. The Co-Respondent was not present and was not represented.

judgment

the Registrar: 1. The parties in this case were divorced on the grounds of the husband's adultery in 2008, the decree nisi being dated 12th March, 2008, and the decree absolute 28th October of that year. 2. A consent order was made with regard to ancillary matters. The case before me is fundamentally a dispute about the level of child maintenance, but I think it is important to examine the broader terms of the consent order made over 2 years ago on 28th October, the same day as the divorce was made absolute. 3. The order provided that the three children of the marriage were to continue to live with the wife, their mother, in the former matrimonial home. The husband/father would pay child maintenance at the rate of £1,400 per month from 1st October, 2008, whilst agreeing to increase the payment to £1,500 if during any tax year, he were to receive a net saving in tax for that year of £2,400. The maintenance was to be index linked. The statement of information declared that the husband had a net income of £3,333 per month (£39,996 per annum) out of which he would be contributing £1,400 per month, so he was, on the face of that document, only going to have £1,933 left per month to live on. 4. I speculate that the reason for the high contribution may have been, not only to pay a fair share towards the children's upbringing, but to contribute to their share of the occupation of the former matrimonial home. The home was to be held by the parties as tenants in common with precise shares in the freehold, namely 60% to the mother and 40% to the father. The property was to remain in the parties' names and not be sold without prior written consent until:- (i) the agreement of both parties; (ii) the death of the mother; (iii) the mother's remarriage or co-habitation on excess of 6 months; (iv) the youngest child leaving full-time education, (to first degree level) tertiary education, whichever is the sooner [sic]. 5. Paragraph 13 provided that until such time as the property is sold, the wife shall continue to be solely liable for the payment of all utilities, services and charges associated with the property. This includes mortgage payments. At the moment she is paying £865 every month towards the mortgage. 6. The husband is a car salesman. The wife works for a bank. 7. The husband's net pay for 2010 (that is, after deduction of tax, social security and pension contributions) was £38,616, a little more than was declared on his statement of information for the consent order. However, not surprisingly he is finding it hard to

make ends meet. He says he is suffering from stress. He has had a recent appointment in the General Hospital Psychiatric Outpatient Department. His highest regular expenditure is for rent at £1,200 per month for an apartment on the Waterfront, St. Helier. He complains that his total gross income has decreased from £61,971 in 2009 to £50,665 in 2010, an £11,000 decrease, whilst his tax contribution has risen to 21%. Meanwhile, he has incurred a debt with Close Finance for £15,000 which incorporates previous debts. He did have a holiday in 2010 in Spain which was paid by his mother, who gave him £4,000. The holiday fare to Spain was £2,002.70. He used some of the rest to pay maintenance. In his recent affidavit, his monthly expenses listed exceed £4,000 including a wage arrest for maintenance at £400, plus on-going future maintenance at £1,300, making a total maintenance commitment of £1,700 per month. Clearly this cannot continue. 8. The husband has been in the motor trade since he left school at 16. He has considered other employment, such as estate agency, but is reluctant to change. He is paid on a commission basis, so that his monthly net income can vary from as much as £5,600 to as little as £1,600. He needs to sell about twelve cars a month before this income can exceed £50,000 a year. Twelve cars a month is his "target". This month to date he has only sold two cars. The recession has, according to him, destroyed the car market as it was previously known. 9. His evidence is compelling, but I wondered if a lawyer acting for the wife would have asked more questions about certain aspects of it. For example, are his expenses wholly or in part shared with another person? The wife referred to his girlfriend with whom he went on holiday. He denied, however, that he had a partner. It would make a large difference, for example if his rent were to be shared with another person. I am not clear who paid for all the Spanish holiday. His mother paid the fare and there are bank withdrawals in Spain, but I do not have a complete picture. If he were really in such a difficult situation, should the £4,000 received from his mother not have been saved for the payment of maintenance? As a witness he impressed me as a man capable of selling himself in the best possible light. His most bitter complaint is that he was advised to retain his share in the former matrimonial home. He would now like to see it sold and the proceeds divided. I explained during the hearing that this is not within my power to deal with. The case before me is strictly an application to reduce child maintenance.

10. The wife's evidence is similarly compelling. Her salary is £23,081.82 net per annum. She does not contribute to a pension, in favour of spending her maximum income on the family. Her gross income for 2010 has also fallen by £1,767 as compared with 2009. The children, aged 15, nearly 12 and nearly 9, all go to private school. Their house is a detached 3 bedroom house worth approximately £450,000. It has a mortgage outstanding of £115,576. Her monthly outgoings amount to £3,025.71. These include £865 towards the mortgage and £1,000 for school fees. If her outgoings are approximately £3,000, then she needs to rely on her salary of about £1,700 plus maintenance at the rate of £1,300. There are additional costs not mentioned in the list for youth clubs, dental visits, eye tests, replacement shoes, clothing, repairs to car etc.

11. Taking into account the contents of the consent order and her present needs, she argues that there is an unquestionable need for maintenance to her to continue at £1,300 per month.
12. How was maintenance at the rate of £1,300 per month calculated? A hearing took place on 20th January, 2010, some 15 months after the consent order to determine the husband's application to reduce child maintenance. The consent order provided for maintenance at the rate of £1,400 plus one half of school uniforms, school activities and trips. At that hearing, I had in mind the case of L -v-D and R [2004] JLR 334 in which the then Deputy Bailiff decided, inter alia, as reported in the head note on page 335 in paragraph (2):- "When revising the payments the parties' previously agreed sum ... would be taken as the starting point and varied in light of the change. As that sum had been reasonable, it would be respected regardless of whether or not the court itself would have reached the same figure and it would not therefore be appropriate to consider the amount of maintenance "de novo". Furthermore, as there was a previous agreement, the UK Child Support Agency tables were not relevant to the revision of the payments."
13. So it seemed to me at that hearing in 2010 that I need not reason why the rate of maintenance had been set so high, at £1,400 per month. I had to take it as read. As in the present application, the issue then was the quantum of maintenance, not the reasonableness or otherwise of the terms of the consent order. I had no evidence before me that the agreement had been unfair. Both parties had received legal advice. However, in the light of the father's obvious difficulty in meeting the payments, I reduced the rate to £1,300 per month. Whereas the consent order specified maintenance to continue until each child attained the age of 18 years, I also decided to reduce that period and specified 16 years, which is more normal in orders made in matrimonial cases. This may not be of much consequence if the children continue at school beyond 16, but in individual cases, it may be significant. I note here that Child One is already 15. I don't know what his plans are.
14. The husband has now presented his renewed application to reduce the maintenance without the assistance of a lawyer and similarly, the mother has no lawyer. I am not entirely happy that each of them presented their case in the most appropriate way. If they had both received good advice, this hearing may not have occurred at all. On the face of it, the husband cannot afford to pay maintenance at the level which is essential to the wife. Something has to give. The most obvious expense which could be avoided by the wife is the cost of school fees. All the children are presently doing well in private school, the eldest in his GCSE year. It is unthinkable to the mother that she should remove them and send them to a State school.
15. I referred above to the case of L-v-D & R in which the Court varied child maintenance downwards from an agreed sum without reference to the Child Support Agency figures. The present situation is, I believe, different for these reasons:- (i) It is now two and a half years since the consent order; (ii) I am satisfied that there has been a change in the parties' circumstances in that they have both suffered a decrease in their income through no fault of

their own; (iii) Although the consent order figure can remain a starting point, there needs to be another point of reference in order to re-assess what is fair; (iv) The most convenient point of reference as a comparison is the maintenance figure proposed for the husband's income is the Child Support Agency table published by the Family Law Bar Association 2010 – 20011 page 9;

- (v) The situation has come to a head in that the wife has taken out proceedings in the Petty Debts Court and obtained three orders for enforcement of the maintenance, one each in the months of May 2010, November 2010, and January 2011.
16. Indeed, the Petty Debts Court proceedings have served to complicate the situation. The May judgement has been satisfied in full, but the November judgment is in the process of enforcement by the Viscount. The wife has received the money for November in instalments of £433 only in January, February and later instalments due in March and April. The January order is still waiting to be enforced. This is unsatisfactory because the wife has only received maintenance some months after the due date and the arrears will build up in quick succession.
 17. What I have to do is to reduce the maintenance level soon and, as requested by the wife, make it immediately enforceable. This I can achieve by virtue of Article 2A of the Maintenance Orders (Enforcement) (Jersey) Law 1999 which reads:- “The Royal Court or the Petty debts Court, as the case may be, when making a maintenance order or at any time after that, may on the application of the recipient or of its own motion authorize an arrest to be made on the wages of the payer”. There are various safeguards in the succeeding articles to this provision which I have considered. Arrears which have already built up can be postponed until after the eldest child no longer qualifies for maintenance.
 18. As explained, I turn to the Child Support Agency figures for some guidance. However, I remain conscious that the consent order made in October 2008 was made after the benefit of legal advice and in order to preserve a situation where the mother and children could remain in the former matrimonial home as long as they needed it. It remains a starting point. The Child Support Agency figures can only be useful as a guide. It may be that at times or even permanently until he ceases to be liable for maintenance payments for one of the three children, the husband will have to remain in some debt. That possibility must surely have been considered when he signed the consent order. Scope remains for him to reduce expenditure, for example, by moving to less expensive accommodation. Any remaining debt can be repaid as and when the former home is sold.
 19. The husband's net income for 2010 was £38,616. Applying the guide (2000 Régime) to the net weekly earnings figure (£742.62 per week) one arrives at a child maintenance figure of £188 per week for three children or £814 per month. The Viscount is presently arresting the wages of the husband at the rate of £433 per month, some £381 less than the CSA figure of £814. I think it is reasonable to increase the husband's monthly contribution from £814 (the CSA figure) to £933 to take into account of a reasonable contribution towards housing the

children, and extra expenditure for the children. I very much regret to say that I don't believe this family can afford school fees at £1000 per month.

20. So with a heavy heart, my decision is that maintenance at the new rate of £933 per month should be paid with effect from April 2011. It will be enforced by the Viscount so that the wife receives the amount regularly. The arrears of £4,800 (being the maintenance at £1300 for December, January, February and March, less £400 paid in cash in December) will only be paid after Child One reaches 16 or ceases full-time education. This will give some breathing space for the husband to recover from his present debts. Authorities L -v-D and R [2004] JLR 334. Maintenance Orders (Enforcement) (Jersey) Law 1999.
-

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.jerseylaw.je/judgments/unreported/Pages/%5B2011%5DJRC057A.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/in-the-matter-of-m-2011>

Prepared on 29 October 2026 · Esheria