

JERSEY / JUDGMENT

J v H [2004] JRC 081 (05 May 2004)

[2004] JRC 081

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

judgment

the bailiff: 1. This is an appeal by H to whom we shall refer as 'the husband' against an order of the Family Registrar of 9 th February 2004, attaching conditions precedent to the grant of a Decree Absolute of divorce. Those conditions are, (1) that the parties' jointly owned property in Grouville, be transferred into the sole name of the Petitioner, J, to whom we shall refer as 'the wife', and (2) that the property be transferred free of any charges. The Registrar also ordered that within fourteen days of the transfer of the property, the wife should pay the husband a sum representing ten percent of the net value of the property. 2. In order to make sense of the matter, it is necessary to refer back to an Act of the Court of 13 th March 2000. The 2000 Order was in effect a Consent Order arrived at after last minute negotiations and agreements between the parties and their legal advisers. The relevant paragraphs of that Order are: "7. That, as expeditiously as possible, the jointly owned Property [the Property] shall be transferred into the sole name of the petitioner, the respondent paying the nominal stamp duty in respect of the said transfer; 8. that upon the following "trigger" events, namely; (a) all the said children completing their full time education or reaching the age of eighteen years; or (b) the remarriage of the petitioner; the Property shall, subject always to paragraph 9 of this Order, be sold for the best possible price obtainable within a reasonable time; that ten days after the sale of [the Property] in accordance with paragraph 7, the petitioner shall pay to the respondent 10% of the net proceeds of sale; that notwithstanding the provisions of paragraph 7 and 8, the petitioner and respondent may, by further agreement, agree that sale of the Property should not proceed, in which case the petitioner shall retain the Property in her sole name and pay to the respondent a sum representing 10% of the net value of [the Property], which net value, if not agreed, shall be determined:- (a) by an independent surveyor to be agreed between the parties; or (b) failing agreement by an independent surveyor to be chosen by the President at the time of the Jersey Branch of the Institute of Chartered Surveyors; 11. that, in any event, without the consent of the respondent, which consent shall not be withheld unreasonably, paragraphs 7 to 9 shall not take effect unless or until the mortgage secured on the Property has been redeemed." 3. Unfortunately the obligations entered into by the parties pursuant to the terms of these clauses, perhaps because the agreement was made in haste, are capable of being interpreted in different ways. Miss Benest, for the wife, told us that when her client left the Court she was under the impression that she was effectively the owner of the property and that the conveyance would follow in short order. She understood paragraph 11 to mean that the property would be transferred free of

charges after redemption of the mortgage. That was the necessary implication, in her view, of the provision in paragraph 7, that the property would be transferred, and I quote, "as expeditiously as possible". 4. On the other hand Mr Kelleher for the husband submitted that paragraph 11 meant that the provisions regarding transfer of the property were not to take effect, "unless or until the mortgage secured on the Property has been redeemed". The husband has no intention, it appears, of redeeming the mortgage until the maturity of the related endowment policy, which is in 2014. 5. In 2002, the wife applied to the Family Registrar for a variation of the 2000 Order in a number of ways, which are not material to this appeal. They have all been dealt with by the Registrar except an application to fix a date for the transfer of the property; that application remains outstanding. 6. On 7th January 2004, the husband's application for a Decree Absolute came before the Family Registrar and various orders were made for the disclosure of financial information and a letter to be sent to the husband's bankers seeking information, which might be relevant to the transfer of the property into the name of the wife. 7. The application for a Decree Absolute was further adjourned on 19th January, 26th January, and 2nd February. On 9th February, the Registrar made the Order against which the husband now appeals. The Registrar expressed his reasons for the Order in the following way: He correctly directed himself to the provisions of Article 20(3) of the Matrimonial Causes (Jersey) Law, 1949 as amended, which empowers the Court on an application for a Decree Absolute to:- "...make the decree absolute, reverse the decree nisi, require further enquiry or otherwise deal with the case as the court thinks fit." 8. He reminded himself that the husband wished to remarry and that the wife's objections to the Decree Absolute were founded upon the contention that ancillary matters remained unresolved. He recited the paragraphs from the 2000 Order, mentioned above, and he continued: "5. that in addition to the maintenance in respect of the children set out in paragraph 2, the respondent shall pay:- a) school fees incurred in respect of the children; b) extra-curricular activities, including extra tuition and Blacks Academy; c) reasonable visits to the UK in connection with arrangements for further education; d) private medical and opticians fees if reasonably incurred and subject to prior notice and consultation; 6. that the petitioner's application for maintenance for herself be dismissed; 7. that, as expeditiously as possible, the jointly owned property shall be transferred into the sole name of the petitioner, the respondent paying the nominal stamp duty in respect of the said transfer; 8. that upon the following "trigger" events, namely, a) all the said children completing their full-time education or reaching the age of 18 years; or b) the re-marriage of the petitioner; the property shall, subject always to paragraph 9 of this order, be sold for the best possible price obtainable within a reasonable time; 9. that 10 days after the sale of the property in accordance with paragraph 7, the petitioner shall pay to the respondent 10% of the net proceeds of sale; 10. that notwithstanding the provisions of paragraph 7 and 8, the petitioner and respondent may, by further agreement, agree that the sale of the property should not proceed, in which case the petitioner shall retain the property in her sole name and pay to the respondent a sum representing 10% of the net value of the property, which net value, if not agreed, shall be determined:- a) by an independent surveyor to be agreed between the parties; or b) failing agreement, by an independent surveyor to be chosen by the President at the time of the Jersey Branch of the Institute of Chartered Surveyors." 9. We note, en passant, that the Family Registrar's Order varied the 2000 Order against the interests of the wife

by requiring her to pay 10% of the net proceeds to the husband within ten days of the transfer, whereas the Agreement made different and more favourable provisions. The wife does not appeal against that aspect of the Order. 10. Counsel for the husband, in a very full and helpful skeleton argument, has made a number of submissions in support of the appeal.

- (1) He contends that the Family Registrar should act consistently and, having decided in 2002 that the 2000 Order could be varied only to a limited extent to give just and proper effect to it, should not have brought about a fundamental change by linking it to the grant of the Decree Absolute.
- (2) He contends that the Registrar was wrong to interfere with the 2000 Order in such a significant way. (3) He contends that the Registrar wrongly exercised his discretion. In that respect counsel argues that the Registrar wrongly found the 2000 Order unclear when he had himself ratified it. Counsel submitted that the Order was clear and should be interpreted in the way in which the husband had understood it. Counsel also submitted that the Registrar had wrongly concluded that the husband has sufficient assets to discharge the mortgage. This last submission is an important one. If it be the case that the precondition attached to the grant of the Decree Absolute is impossible to perform, that would clearly be an improper exercise of discretion. 11. Both parties put before the Court figures relating to the husband's assets and there is not too much disagreement between them. In round terms, the amount outstanding on the mortgage is agreed to be £211,000. On the figures of counsel for the husband, his client has assets totalling some £205,000 excluding the value of this share in his medical practice. Counsel for the wife contended that he had assets of £221,000. 12. Both these figures include the value of the husband's interest in a company owning the property from which his medical practice operates. Counsel for the husband contended that this asset should be ignored because it was an unrealisable asset. If one therefore deducts £45,000, being the approximate value of this interest, the value of the husband's assets are, on his counsel's calculations, some £51,000 short of the mortgage debt and on the wife's calculations, some £35,000 short. 13. The husband does however have the capacity to borrow on an unsecured basis. His bankers have said that they would advance a maximum of £25,000. It would however be possible for him to obtain more than one unsecured loan; particularly as such a loan could be guaranteed by reference to the husband's interest in the company owning the property from which the practice operates. The husband has an income of over £100,000 per annum. 14. Our conclusion is that although the redemption of the mortgage by the husband at the present time would be difficult, it could be done. Mr Kelleher argued strongly that it was wrong to link the grant of the Decree Absolute to the ancillary arrangements, which could and should be the subject of a separate argument. Counsel submitted that the Registrar's decision prevented the husband from getting on with his life. It was a form of punishment and was unfair. He submitted that the wife would suffer no prejudice from the grant of the Decree Absolute unconditionally. 15. In response to these submissions, Miss Benest contended that there would be a prejudice to the wife. If the husband did remarry, as was clearly his intention, there would be a second wife on the scene who would also enjoy rights to the limited available assets of the husband. If the

husband died before the mortgage was repaid, there would, on the current estimate, be a shortfall on the endowment policy of some £52,000 for which the wife as joint owner would be liable to the bank. She would have a claim against the estate but the second wife would also have rights. If the husband remarried and subsequently divorced while ancillary matters between him and his first wife remained unresolved there would be added complications. We think that there is some force in these contentions. 16. This is far from being an easy case but the clear intention of the parties in drawing up the Agreement which is now causing difficulties, was to obtain a clean break. The Registrar exercised his discretion in such a way as to encourage, so far as he could, the resolution of outstanding ancillary disputes before granting the Decree Absolute. We cannot find that he exercised his discretion wrongly. Indeed, on balance we would have arrived at the same conclusion. 17. Turning to the question of costs, the Family Registrar ordered that each party should pay his or her own costs in relation to the application to vary the 2000 Order and the husband appeals against that Order too. I have given careful consideration to the matters raised in the skeleton argument. Counsel's essential submission is that the Family Registrar should have awarded part of the husband's costs to him in relation to the Scottish property issue where he succeeded. Other parts of the application to vary were however granted and viewing the matter in the round, my conclusion is that the Registrar correctly exercised his discretion in making the Order that he did. The appeal is accordingly dismissed. [The Court then heard submissions as to the costs of the hearing]. THE BAILIFF: 18. It is true that in applications before the Family Division the ordinary rule that costs follow the event is applied more liberally. The husband has however been unsuccessful in his appeal from the decision of the Family Registrar, and but for two factors, I would have ordered that he should pay the costs of the wife. Those two factors are that the issues before this Court raised on the appeal were closely balanced issues and it is not possible to say that the appeal was without any merit. 19. Secondly the result of the Court's decision is, as the husband's counsel has rightly said, that the husband will now have to consider very carefully liquidating his available assets in order to give effect to the Consent Order made in 2000. I do not think that I should make his task any more difficult in that respect and I accordingly make no order as to costs. [Counsel for the husband applied for leave to appeal]. The Bailiff: 20. The Court takes the view that the judgment which it has just delivered involved essentially the exercise of discretion. That being so, we do not think that it is appropriate to grant leave to appeal. If the husband wishes to pursue the matter to a higher court, application should be made to a single judge of a Court of Appeal. The application is refused. Authorities *Smith -v- Smith* [1990] FLR 438. *Wickler -v- Wickler* [1998] 2 FLR 326. *Re G (Decree Absolute: Prejudice)*

[2003] 1 FLR 870. *Garcia -v- Garcia* [1991] 3 All ER 451. Page Last Updated: 24 Mar 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/2004/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/j-v-h-2004-jrc-081-05-may-2004>

Prepared on 24 October 2026 · Esheria