

JERSEY / JUDGMENT

K v P [2009] JRC 170A (25 August 2009)

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judgment

the REGISTRAR: 1. On 16 th June, 2009, the Court gave directions in respect to the wife's application for ancillary relief. A hearing date was also fixed to hear the wife's application for interim maintenance. 2. The date fixed was 28 th July, 2009. By then both parties had filed full affidavits of means, the wife on 17 th June, 2009 and the husband on 24 th June, 2009, although it appears that hers was actually sworn on 1 st June, and his on 11 th June, 2009. This was even before the directions were given. 3. It is common for interim maintenance hearings to take place when there is an urgent and immediate need for a party to divorce proceedings to have money to seek alternative accommodation, to buy food, or to maintain children. This case is not one of these. The parties are already at an advanced stage of disclosing their assets, liabilities and income. Indeed, the Case Review Hearing for all other ancillary matters was held immediately after the interim maintenance hearing. It is not a complicated case except perhaps insofar as it will be necessary to determine the exact nature and value of the husband's share in a St Helier retail business. 4. What is the nature of the maintenance application? The wife's claim is set out in an open letter to the husband's advocate dated 22 nd July, 2009. 5. On the basis that the wife's monthly income is exceeded by her monthly outgoings, in particular, rent (£550), legal fees (£1,000), and other smaller, but significant items of food, clothing, personal expenses, medical expenses and holiday provision, (all of which come to a total of £2977 per month) she is asking for £1,000 per month. The separation process was said to have been especially traumatic for her. 6. The open letter sent in return, from the husband's lawyers, contends that many of the expenses are "excessive". If the budget were to be trimmed, it is said that the total could reasonably be reduced to £1,244 per month, less than petitioner's net earnings of £1,382.50 per month. 7. In particular, the letter from the husband's lawyers contains the following paragraph:- "The item in the budget about which I am most concerned is the £300 per month legal fees. My client has just learned that your client is paying privately, notwithstanding the fact that she is without question eligible for legal aid. Is your client aware of her eligibility for legal aid and has Viberts considered making an application on her behalf? It simply cannot be right that my client is being asked to meet an interim spousal maintenance claim to fund your client's legal costs." 8. The hearing took place on the basis of submissions from each of the lawyers present in Court, but the parties did not give oral evidence. The husband's lawyers provided the Court with a skeleton argument before the hearing but did not rely on it at the hearing. The wife's advocate was apparently unaware of its existence. In the event I had no reason to refer to it, so, although it remains on the

file, it is not referred to in these reasons. 9. The substance of the wife's advocate's address was that the husband enjoyed a reasonably good lifestyle as a business man in St. Helier, whereas the wife had to struggle, as a woman on her own without residential qualifications and without professional qualifications (although she is working towards obtaining these). In short her income does not cover her reasonable expenditure. On the other hand the husband, it was said, could afford to pay off credit card debts and afford to budget for repairs which he could not afford during the marriage. 10. The husband's advocate described the wife's application as an abuse of process and an application for private legal costs "by the back door". Detail was given as to why the wife's expenses were said to be excessive. Her salary had been increased since 25 th June, 2009 to £1,452.50. Bearing this in mind, even if her expenditure remained the same, and bearing in mind previously undisclosed savings, it was argued she could afford to live from savings for a further three months without asking for interim maintenance. 11. I am indeed concerned that the wife, who, I am sure, would qualify for legal aid, is in the process of divorce proceedings and is paying legal fees on a private basis. Although this appears to be a decision of hers, it is difficult to understand her reasons or how she can benefit from paying privately. I was told she wanted a woman lawyer to represent her. Most of family lawyers in Jersey are in fact women anyway. I can understand the husband's disgust at being asked to fund a share of this cost. It might even be possible to choose her present lawyers under the legal aid scheme, the only difference being she would not have to pay for their services. In these circumstances, if the case is to be allocated to Viberts under the scheme, but the client fails to apply for legal aid, the only beneficiary will be the legal firm. 12. If this case had revolved purely around each party's income and expenditure over the period it takes to bring the case to trial, I would have refused the wife's application, because she is not in urgent need of financial support. Quoting from Butterworth's Family Law Service Section 4A [1366]:- "The primary aim of the court will be to make such an order, if possible, which will give a spouse at least sufficient money to discharge the day to day outgoings and to feed, clothe and keep a roof over the head of that spouse until the final adjustments and orders are made in relation to the matrimonial assets and finances after decree nisi." In my judgement, the wife, in purely mathematical terms had sufficient to last her until the final hearing. In making the application, it was surprising that her wage increase and extra savings were not disclosed, leaving it for the husband's lawyers to seek out the information. The fact that the wife has been paying legal fees on a private basis can be taken as an indication that she has funds available in order to make this choice. I can see no reason whatsoever for the Court to order the husband to contribute towards the legal costs incurred his wife, if she is entitled to legal aid for free. Situations may arise in family cases, where one party will need to contribute to the other party's legal expenses to ensure "equality of arms", but no such argument has arisen here. 13. However, there is more to take into account in deciding what is reasonable. As Nicholas Mostyn QC said in TL -v- ML

[2005] EWHC 2860 (Fam) :- "The sole criterion to be applied in determining the application is "reasonableness" as per the Matrimonial Causes Act 1973, Section 22, which could be synonymous with fairness." The wife, who comes from Eastern Europe and speaks English as a second language, has left the security of the former matrimonial home, with no

capital of her own, to set up home on her own in unqualified accommodation. She has not specifically claimed for additional expenses relating to the move, but she pays a high rental for shared accommodation in a lodging house. At the point of leaving the former matrimonial home in Jersey she was undoubtedly at a financial disadvantage, although it is impossible to quantify "lifestyle" or "standard of living" in any detail, so the disadvantage is not possible to quantify. However, taking the overall circumstances of each party as a whole, I think it fair to order that the husband should pay to his wife a total interim sum of £1,000, split into 4 equal payments of £250 payable over four months until this matter comes to trial. The money to be paid will be taken into account in the final settlement of the ancillary matters, which means that, if the husband is ordered to pay to the wife a lump sum in settlement of ancillary matters, he will be given credit for having already paid the wife £1000 in advance. Even if it is not immediately spent, it will provide the wife with a modest cushion against unforeseen expenditure. 14. The money is not intended as a short term measure to encourage her to continue to pay her legal fees privately and she is directed to find out more about the legal aid scheme by contacting the Acting Bâtonnier's office. Authorities Butterworth's Family Law Service Section 4A [1366]. TL -v- ML

[2005] EWHC 2860 (Fam) . Page Last Updated: 14 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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