

JERSEY / JUDGMENT

L -v- M (Matrimonial) [2017] JRC 062A (18 April 2017)

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[2017] JRC 62A,

[2017] JRC 062A [New search] [Help] Matrimonial -reasons relating to further hearing regarding
ancillary matters and property. [2017]JRC062A Royal Court (Family) 18 April 2017 Before :
Carol Elizabeth Canavan, Registrar, Family Division. Between L Petitioner And M
Respondent IN THE MATTER OF L-V-M (MATRIMONIAL) AND IN THE MATTER OF
MATRIMONIAL CAUSES (JERSEY) LAW 1949 Advocate F. C. Binet with the assistance of
Advocate H. J. Heath for the Petitioner. Advocate B. J. Corbett for the Respondent.

reasons

the registrar:

Background

1. The petitioner was born and raised in the United Kingdom. In 1998 she came to Jersey to visit her cousin, and during that visit she met the respondent. At that time the petitioner owned the Property A in the United Kingdom jointly with her ex-husband. The respondent owned Property B in Jersey. It was not disputed that Property B had been jointly owned with the respondent's first wife who had predeceased him. 2. It was the petitioner's evidence (not disputed on behalf of the respondent) that upon her return to the United Kingdom after her visit, the respondent began telephoning her regularly and they developed a friendship. The respondent invited the petitioner to his 65th birthday party in 1999. She had stayed in the spare room at Property B. 3. The parties continued with their relationship after the petitioner's return to the United Kingdom and in August 1999 they became engaged. The petitioner made what she called "a very big decision" and "a risk", to sell Property A and move to Jersey. She moved in with the respondent in April 2000. Arrangements were made for the wedding to take place in November 2000. 4. In November 2000 the petitioner and the

respondent signed a document entitled "Pre-Nuptial Agreement". 5. In March 2016 the respondent was taken into hospital and he has not returned to Property B since his discharge from hospital. 6. The petitioner issued her divorce petition and application for ancillary relief in April 2016. The decree nisi was pronounced in June 2016 and the decree was made absolute in July 2016. 7. On the 22 nd August, 2016, an order was made, inter alia" in the following terms:- "given that the respondent no longer has capacity to give instructions, his daughter Miss C be appointed his guardian ad litem". For ease of reference I shall refer to the respondent's daughter as "the guardian". 8. A hearing took place on 11 th October, 2016, ("the October hearing") to determine the discreet issue of what weight, if any, should be attached to the pre-nuptial agreement. These reasons should be read in conjunction with the reasons for the order made at the October hearing. 9. The final hearing of the application took place on the 18 th April, 2017. The present position 10. The guardian gave evidence at the October hearing that the respondent had been taken into hospital on the 7 th March, 2016, but she had not known exactly what was wrong with him. The respondent had been given a lumbar puncture and he had seemed to improve after that. It had been intended that the respondent would return home to Property B after his discharge from hospital but after a visit to Property B with an occupational therapist, he had decided that he did not want to go back if the petitioner remained in Property B. When he left the hospital in April 2016 he went to stay temporarily with one of his daughters. The petitioner gave evidence that she had been shocked that the respondent did not want to return home. 11. The respondent had subsequently been sent to Southampton Hospital to have a shunt fitted in order to drain the liquid from his brain. Unfortunately there were complications and he became seriously ill. He no longer has capacity and cannot live independently. He is in a care home receiving level 4 care. The guardian has been looking after the respondent's affairs and has been appointed as his curator. 12. The petitioner remains living at property B. The guardian's view is that she has refused to leave. The petitioner, on the other hand, states that she could not move out because she has no money and nowhere to go. The respondent, through the guardian, has remained responsible for all household expenses. The assets, liabilities and income positions 13. The parties agreed the following schedule of assets, liabilities and income positions for the purposes of the final hearing:- Petitioner Respondent Property B Approximate value minus costs of sale £734,020 Bank accounts Approximately £23,282 Approximately £8,118 Investments Aviva £32,698 Personal items Jewellery £5,400 Total assets £28,682 £774,836 Estimated legal costs to end of trial £32,621.43 £37,937.25 Net annual income UK pension £6,504 Pension Aviva £3,809 Prudential £6,104 States Pension £,9,599 Total = £19,512 Open position of the petitioner 14. The petitioner's starting point is that she should receive 50% of the assets. As she no longer wants to remain in Property B her capital needs are:- Capital to purchase a one bedroom home (inclusive of costs) £334,000 Car £7,000 Dental work required £4,000 Legal fees £32,000 Total requirement (less money in her bank account) £353,718 15. The petitioner estimates that her monthly outgoings will be £1,657 calculated as follows: Management fees (estimate) £150 Electricity £115 Telephone £50 Water £30 Rates £25 TV Licence £12 Food and household £400 Insurance (house and contents) £35 Clothing £100 Car insurance £25 Petrol £43 Car parking (assuming

parking at home) £7 Entertainment £150 Hobbies

- none at present £0 Doctor £17 Dentist £0 Hairdresser £35 Optician £13 Travel/holidays (budget of £1,500 per annum) £125 Christmas and birthday presents £75 Contingencies/property maintenance £150 Expenses for pets (food, insurance, vet) £100 Total £1,657 The petitioner's pension from the UK is £542 per month, therefore she says that she will have a shortfall of £1,115 per month. She therefore seeks an additional lump sum of £200,000 which would be invested to generate additional income for her. 16. In order to provide this lump sum for her, the petitioner seeks an order that Property B should be sold and that she should receive the sum of £550,000 from the sale proceeds which, together with the £23,282 in the bank, but less her legal fees, would leave her with £541,282. Because this figure exceeded 50% of the value of the assets, she proposed that the respondent should have a promissory note of £150,000 secured over her new property which would be payable to the respondent or his family on her death. Open position of the respondent 17. Two alternative proposals were put forward on behalf of the respondent. Either:- (i) the petitioner should have life enjoyment of Property B with the respondent remaining responsible for the maintenance of the fabric of the building and any major works in the garden. The petitioner would be responsible for the maintenance of the interior of the property. The garage at the property would continue to be used by the respondent's son-in-law to run his business; or (ii) the respondent would pay a lump sum of £60,000 to the petitioner to enable her to obtain suitable rental accommodation, pay a deposit on the accommodation, pay 3 - 6 month's rental in advance, allow her to furnish her home and possibly buy a small second hand car leaving a small reserve or buffer. Maintenance would be paid at the rate of £850 per month once the petitioner vacated Property B to enable the property to be refurbished and prepared for letting. The guardian clarified at the hearing that the proposal was that the maintenance would be paid to the petitioner for her lifetime and would not cease should something happen to the respondent. 18. Both parties filed detailed affidavits of evidence in chief and in addition, evidence was given at the hearing with regard to the prenuptial agreement, the background of the relationship between the petitioner and the respondent and the difficulties in the relationship between the petitioner and the respondent and his family. At the outset of the hearing it was agreed that no matters of conduct would be raised as an issue so although I have taken all of the evidence into account in reaching my decision, I will limit my comments to the evidence relevant to the financial issues to be decided. The petitioner's evidence 19. With regard to the proposals made on behalf of the respondent, the petitioner did not think that the sum of £60,000 would last very long if she had to rent a property and would certainly not last during her life expectancy period of 21 to 22 years. The maintenance offered of £850 together with her pension of £542 would be insufficient for her to live on. 20. The proposal that the petitioner should have life enjoyment of Property B was not acceptable to her as she did not want to remain living in Property B for various reasons. The property was too far out in the country, too isolated, it was too big for her to look after, she found the situation with the business being run from the garage and the animosity between her and the respondent's family very stressful. 21. The petitioner did not want to

rent a property as had been suggested on behalf of the respondent. She did not believe that renting would be secure enough for her as she might be evicted at any time. She would find that stressful and scary. 22. The respondent had two dogs who had remained in Property B with the petitioner. She explained that the dogs are very important to her and she would like to buy a flat or cottage with a garden so that she can keep the dogs. She would also need a parking space as it was very important for her to have a car. She needs a new car but accepted in her evidence that a second hand car would be sufficient for her needs. Her present car is 15 years old and has an oil leak. She would also need some money to buy new furniture as the furniture at Property B would not be suitable for a smaller place. 23. After her move to Jersey she became financially dependent on the respondent and remains so. She will have to depend on her share of the matrimonial assets to meet her future needs for the remainder of her life. She requires dental work on her front teeth and whilst she had been fitted with a temporary bridge, she could not afford to go back to have the final bridge fitted. 24. The petitioner did not include a figure for rent in her itemised expected monthly outgoings of £1,657 as she hopes to buy a property. As her pension was £542 per month she would be left with a shortfall of £1,115 per month. For that reason she was asking for a lump sum of £200,000 which would be invested to provide her with additional income. She said that she would "pay back" £150,000 of this upon her death. She could not see any other way of sorting this out and so felt that she had to agree to consent to the promissory note. 25. The petitioner produced details of apartments from an estate agent ranging from £285,000 to £339,000. Ideally she said that she would like to purchase a two bedroom apartment so that her family could come to stay with her but she accepted that she might have to purchase a one bedroom apartment. 26. Advocate Corbett asked the petitioner questions about the agreement she had reached with her ex-husband at the time of her divorce. The petitioner gave evidence that Property A had been sold for £80,000 and she had therefore received £40,000. She had not considered reinvesting that money but retained the money in her bank account. The petitioner and the respondent had never had a joint account. 27. The petitioner said that she had been advised by her advocate to commence divorce proceedings very soon after the respondent decided he was not going to return to Property B. She had not felt that she had a choice as she had been advised that her entitlement as a widow, should she remain married to the respondent at the time of his death, could not be favourably compared with what she might obtain in ancillary relief proceedings. 28. If the court were to order the sale of Property B the petitioner's view was that she would have to remain in Property B until it was sold because she would not have money to go anywhere else. She confirmed that there was quite a lot of work which needed to be carried out at Property B before it could be placed on the market but she thought that she could make arrangements for the work to be carried out. She accepted that it might take a long time to sell Property B. 29. The petitioner accepted that the purpose of the pre-nuptial agreement was to preserve Property B for the respondent's children upon his death. The agreement had not mentioned separation or divorce and she and the respondent had never discussed separation or divorce. The guardian's evidence 30. The guardian explained that an offer to pay the petitioner the sum of £5,000 had been made in a letter dated the 21 st April, 2016, as an

interim payment to enable the petitioner to rent somewhere to live. The respondent could then move home to Property B when he left hospital. The doctors had advised the family that this would be the best option for him to make a full and proper recovery. 31. The rationale behind the proposal that the petitioner should have the life enjoyment of Property B was based on the fact that if the respondent had passed away, rather than being moved into a home, the petitioner would have had the life enjoyment of Property B. Renting out Property B would provide some income for the petitioner and also a contribution towards the respondent's health care fees. The alternative offer of paying a lump sum of £60,000 and maintenance would enable the petitioner to find somewhere to rent, to furnish it and buy a car. These proposals had been made because the respondent had told the guardian that he did not want Property B to be sold. He wanted it to be retained for the benefit of his children. 32. The family's intention had never been to make the petitioner homeless and penniless. The lump sum of £60,000 would be raised by a loan from the guardian to the respondent. The guardian had calculated her figures on the basis that the respondent's income would meet the outgoing care fees and also provide some maintenance for the petitioner. 33. The guardian was referred to the monthly shortfall which the petitioner would have and asked how she thought the petitioner's needs could be met. The guardian referred in her affidavit of evidence and her oral evidence to the fact that she considered the petitioner's claimed expenses to be too high. In addition, she believed that the petitioner would be entitled to some income support. 34. Advocate Heath put it to the guardian that as the respondent's curator she had to do the best thing for the respondent financially and that preserving Property B would not be right if it was not the best thing to do financially. It was the guardian's view that the retention of Property B would be the best financial solution because the rent would cover the respondent's long term care fees and would provide an income for the petitioner. 35. Advocate Heath put it to the guardian that the issue of the decree absolute was of benefit to the respondent as he no longer had a spouse or a partner whose assets should be taken into account in calculating his entitlement to benefits under the Long Term Care scheme ("LTC"). She further submitted that if the division of the matrimonial assets resulted in the respondent's assets being reduced below £419,000 (the figure set out in general guidelines to LTC) the respondent would receive more favourable consideration under the LTC. The guardian did not agree. As she understood the situation, if the respondent's assets were £419,000 or below it would only make a difference as to when he could start claiming. He would still have to meet the cap of £54,480 which has to be contributed to the care fees and he would have to pay his care costs until August 2017 when the cap will be reached. After that, if he still owned Property B he would be eligible to apply for a LTC property loan. 36. The guardian had elected not to have the respondent means tested because she was advised that as he had assets over £419,000 it would make no difference - he would still have to pay what he is now paying. 37. The guardian confirmed to Advocate Heath that she had looked at possible rental properties in the JEP but she had not provided any details in the court documentation. 38. Advocate Heath put it to the guardian that because of the differences between the petitioner and the respondent and his family the proposal that the petitioner should remain at Property B would not be practical or pleasant

and it would not be in anyone's best interests. The guardian's opinion was that the best way forward for everyone would be for property B to be retained and rented out with the possibility of obtaining a LTC property loan secured on Property B. 39. The guardian was asked how the figure of £60,000 had been calculated. She explained that if the petitioner still had her interest in Property A and if that property was sold now, the petitioner's share would be worth approximately £100,000. The petitioner had had the benefit of the £40,000 since the sale of Property A, so the offer of £60,000 would put her in no worse a position than if she had retained her interest in Property A. 40. The guardian accepted that the petitioner had been and remains totally financially dependent on the respondent and accepted that the petitioner needs to be financially independent for the remainder of her life. She was questioned at length by Advocate Heath as to whether or not she thought that the needs expressed by the petitioner for a new car, the dental expenses and "buffer" money in the bank to deal with unexpected expenses were reasonable needs. The guardian thought that £7,000 for a car was too much bearing in mind the cars that the petitioner was used to driving. She could not comment on the dental expenses but accepted that it was reasonable that the petitioner should have some money in the bank to deal with unexpected expenses. 41. The guardian believed that it would be better for the petitioner to rent a property as the responsibility for maintenance of it would remain with the landlord. Advocate Heath put it to the guardian that her position was based entirely on her desire to preserve Property B for the respondent and the family at any cost and at any cost to the petitioner. The guardian said that she was only trying to follow her father's wishes. He had been adamant before he lost capacity that he did not want to lose Property B. The rental from Property B would provide for the respondent's care costs and provide maintenance for the petitioner. 42. The guardian repeated that she did not accept that the petitioner's income needs amounted to £1,657 and rent in addition. The figures provided by the petitioner were too high. 43. The guardian was questioned at length by Advocate Heath about the availability of rental properties suitable for the petitioner and the dogs and her financial needs. The guardian maintained her opinion that the petitioner would be better off renting a property and that her expenses would not be as high as she thought. 44. The guardian explained that care home fees will reduce to approximately £500 to £600 per week from August 2017 but until then the fees are £2,800 per week. By August there will be no money left in the bank and the Aviva investment funds will have been used up on care home fees and legal fees. Advocate Heath put it to the guardian that the respondent would receive approximately £180,000 cash if the petitioner's proposal was made into an order. With the reduced care home fees of approximately £2,800 per month and pension income of £20,000, the shortfall of approximately £8,000 could be made up out of the £180,000. The guardian did not agree with Advocate Heath and pointed out that the petitioner's proposal would give her 80% of the assets which would, upon her death and according to her evidence, be passed on to her children. 45. I only propose to summarise the submissions made in the skeleton arguments and at the hearing on behalf of both parties but, when determining my decision I have taken all matters raised and all the evidence into account. Submissions on behalf of the petitioner 46. Advocate Heath's submissions on behalf of the petitioner can be summarised as follows:- (i) Although the pre-

nuptial agreement was made before the marriage it only refers to what would happen on the death of either or both parties. It was not made in contemplation of divorce or separation.

(ii) If that position is not accepted then consideration needs to be given to the extent to which it was a consensual agreement, whether or not pressure was applied, the proximity of the wedding, the lack of disclosure, the lack of legal advice. The petitioner had been clear in her evidence that she trusted the respondent and even though she had understood the terms of the agreement, she had total confidence that the respondent would look after her. (iii) Consideration of the above should lead to the conclusion that no weight should be given to the pre-nuptial agreement. (iv) The starting point for the division of assets is that they should be divided equally regardless of where those assets have come from. The matrimonial home should be treated as a family asset. (v) The former matrimonial home is the key asset in this case. This is a needs case, a fact that had been accepted by the guardian. It had been accepted by the guardian that the petitioner has capital and income needs which have to be met. (vi) The guardian had not challenged the petitioner's income needs. In addition, to those needs, rental of between £1,100 and £1,500 would need to be found. The guardian's proposal would not provide for any rental costs to be met

- the petitioner would be left with a shortfall of at least £1,500 per month. (vii) With regard to the offer of a lump sum of £60,000, once the petitioner has paid for a car, her dentistry and all the other matters she would be facing homelessness and dependency upon the state. The only fair option would be to order the sale of Property B so as to allow the petitioner to downsize to a suitable property which would give her the security and safety of her own home. (viii) The capital need of £350,000 is reasonable when considering the property details which have been provided. It had been intimated that the petitioner would struggle to maintain a property of her own but the stress of being subject to the whims of a landlord would be greater than the struggle to find funding to maintain her property. (ix) The petitioner would take financial advice with regard to the investment of the lump sum to provide her with an income. (x) With regard to the LTC, it is clear from the "General Information Leaflet" obtainable from the Social Security Department that because the decree absolute was issued, the respondent will fall to be assessed separately without account being taken of anything the petitioner might have. A court order giving some of the capital to the petitioner could be advantageous under the Long Term Care Scheme. (xi) The respondent's offer of a lump sum of £60,000 amounts to 8% of the parties' assets which is unfair and fails to meet the petitioner's needs. (xii) The petitioner had been criticised for staying in Property B but she had nowhere to go, no financial certainty and she was acting on legal advice. (xiii) The net effect of the petitioner's proposal is a 52:48% split whereas the respondent's first proposal would result in a split of 0.64:99.36%. The respondent's second proposal would result in an 8:92% split. (xiv) No real consideration has been given as to the petitioner's survival. The respondent's position has always been that Property B should be reserved at any cost. Submissions on behalf of the respondent 47. The submissions of Advocate Corbett can be summarised as follows:- (i) With regard to the pre-nuptial agreement evidence had been given at the October hearing that the petitioner did have an

understanding and knowledge of disclosure to an extent. She knew that the respondent had a home and £125,000 in the business bank account. There was disclosure but not by way of affidavits of means. (ii) The pre-nuptial agreement was drawn up in 2000 when family law was very different. The intention of the respondent was to safeguard his property, to pass it on to his children. This was specifically set out in the pre-nuptial agreement. The suggestion that the document only relates to death and not the breakdown of a relationship breakdown is not sustainable. If Advocate Messervy had wanted to protect the assets solely in death, he probably would have advised that a "contrat de marriage" should be entered into. (iii) The petitioner had been aware of what she had signed, she knew what it meant and she understood the consequences. She had mentioned the document to Advocate Binet the very first time she saw her. (iv) The petitioner could have invested the proceeds of sale of her interest in Property A. She received this money in 2001 after the marriage. She had kept it separate, it had never formed part of the joint assets and was never intended to be used by the respondent. (v) Neither party has a healthy financial position. The petitioner had remained in property B thereby preventing it from being used to maximise an income for both parties. The petitioner does need accommodation but she said herself that Property B is not suitable for her. She needs something smaller, a modest flat. The suggestion that she will have to live on a knife's edge expecting the landlord to evict her at any time is fanciful. (vi) Her proposal that she should receive £550,000 from the proceeds was predicated on Property B selling for around £750,000. It is unlikely that it will sell at that price without money being spent on it. Realistically the net proceeds of sale are more likely to be around £680,000. Her proposal is not affordable. It is unlikely that she could earn a return of 7% on an investment of £200,000. Her figures do not "stack up". (vii) The initial offer of £5,000 made by the respondent had not been a final offer - it was an offer made to enable her to settle somewhere so that the respondent could return home. It was never intended to be a final offer. (viii) The petitioner had indicated that it would not be acceptable to her to be in receipt of state benefits but she had been in receipt of benefits when living in the UK. The respondent on the other hand is going to be reliant on state benefits. He is reliant on his pension, the petitioner is reliant on her UK state retirement pension. Neither the petitioner nor the respondent can fund themselves from private assets. If the petitioner's income dips below her expenditure then she would be able to apply for income support. (ix) It is not disputed that the petitioner is vulnerable. She would find it very stressful if she remained at Property B in the time leading up to any sale. She would not be able to deal with the paperwork involved. Moving from Property B into another property on the same day as the sale would be very stressful for her. (x) The fairness of the proposal needs to be considered. The petitioner confirmed in her evidence that the vast majority of the proceeds of the sale of Property B would be put into a property for her and capital savings, which she had said on her death would go to her children. It had been suggested that the promissory note of £150,000 would assist in paying the respondent's care fees but that money cannot be used because the promissory note would only kick in on her death. The respondent would be unlikely to see any benefit from a promissory note. (xi) The s. 25 criteria in English law had been brought into Jersey law particularly in the case of *Howarth v McBride*

[1984] JJ 1 and many subsequent cases. These criteria should be taken into account. (xii) The income and earning capacity of the parties and their financial resources . Both parties have pensions, the petitioner will be eligible for income support, the respondent is already reliant on benefits. (xiii) Financial needs . The petitioner's needs are for a modest property, she does not need to have somewhere suitable for the dogs. They are the respondent's dogs and they will be cared for by his family if necessary. (xiv) The standard of living of the parties was good. The petitioner is 66, the respondent is 82, they were married for 15 years. (xv) Both parties suffer physically and medically. The respondent is permanently disabled and lacks capacity. The petitioner is fragile, vulnerable and suffers from depression. (xvi) The respondent made the majority of the financial contribution but the petitioner assisted in running the home. (xvii) The conduct and behaviour of the parties is not an issue. The only element of behaviour to be considered is the pre-nuptial agreement. (xviii) The petitioner has lost the benefit of her Jersey pension by obtaining the decree absolute. The suggestion that if the parties were still married there would be an adjustment to the LTC benefit received by the respondent does not stand up. (xix) The parties' reasonable needs can be met if Property B is retained with the rental income being used to supplement their respective incomes. The Law 48. Article 29(1) of the Matrimonial Causes (Jersey) Law 1949 provides that prior to making financial provision for a party to a marriage in cases of divorce, the court shall have "regard to all the circumstances of the case including the conduct of the parties to the marriage insofar as it may be inequitable to disregard it and to their actual and potential financial circumstances". 49. Howarth v McBride confirmed that when considering all the circumstances of the case, it is legitimate for the Royal Court (and therefore this Court) to have regard to the factors listed in section 25 of the Matrimonial Causes Act 1973 . 50. At the October hearing both Advocate Corbett and Advocate Binet agreed that it is not possible for a pre-nuptial agreement to oust or fetter the jurisdiction of the court. This was confirmed in the Jersey case of Le Geyt v Mallett and Rodrigues

[1993] JLR 103 and in the case of Sharland v Sharland

[2015] 2 FLR 1367 . Also in the case of Radmacher (formerly Granatino) v Granatino

[2010] UKSC 42 ,

[2010] 2 FLR 1900 it was held:- "A court when considering the grant of ancillary relief is not obliged to give effect to nuptial agreements - whether they are ante-nuptial or post-nuptial. The parties cannot, by agreement, oust the jurisdiction of the court. The court must, however, give appropriate weight to such an agreement." 51. This is a "needs" case. The leading authority on appropriate division in such a case comes from the House of Lords (as it was then) in Miller/McFarlane

[2006] UKHL 24 . Lord Nicholls at [10]-[12] of the judgement summarised the position as follows: "[10] The statute provides that first consideration shall be given to the welfare of the children of the marriage. In the present context nothing further need be said about this

primary consideration. Beyond this several elements, or strands, are readily discernible. The first is financial needs. This is one of the matters listed in s 25(2), in para (b): "the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future." [11] This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter. [12] In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs." The Decision 52. Paragraph 41 of my reasons for the decision made in respect of the October hearing (L-v-M (Matrimonial)

[2016] JRC 184A) is as follows:- "It is open for argument in due course that the lack of safeguards are such as to affect the weight attached to the pre-nuptial agreement. However this is a needs case and although the needs of the parties were briefly referred to, I was not provided with sufficient or detailed information with regard to the needs or all the other circumstances which the parties feel should be taken into account. In due course I will need to consider whether or not this is a case as that referred to in paragraph 81 of Radmacher :- "The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement." Having heard the evidence, the submissions and "all the other circumstances " I have reached the conclusion that it would not be fair to disregard Property B because of the terms of the pre-nuptial agreement as this would, in my opinion, inevitably lead to the petitioner being left in a predicament of real need. If the value of Property B was to be taken out the equation there would be no other assets left to divide. It was the matrimonial home for 16 years and should be taken into account. Having reached this conclusion I do not need to comment further on the background leading up to the signing of the agreement and the other submissions made by both advocates in relation to the prenuptial agreement. 53. I have looked at each of the section 25 criteria in relation to this case. (i) The income, earning capacity, property and other financial resources which each party has to is likely to have. The petitioner has a pension of £542 per month. The respondent has a monthly income from various pensions of £1,626. Neither party has any earning capacity. The petitioner might be entitled to income support if she needs it in future. The respondent will continue to receive his LTC benefit. (ii) The financial needs, obligations and responsibilities which

each party has or is likely to have . Neither party has obligations or responsibilities for any person other than themselves. The financial needs of the respondent are presently being met by a combination of his pensions and his LTC benefit. These will continue. The wife has financial needs to enable her to house and maintain herself. These are presently being provided by the respondent but she will need to provide them for herself in the future. (iii) The standard of living during the marriage. There is no evidence to suggest that parties had other than a comfortable life style prior to the respondent becoming ill in 2016. (iv) The age of each party and the length of the marriage. The petitioner is 66 and the respondent is 82. The parties were married in November 2000, the decree absolute was issued in July 2016, a marriage of almost 16 years. (v) Any physical or mental disability of either party . There was no dispute between the parties in this regard as detailed above. (vi) The contributions made by the parties to the welfare of the family including any contribution made by looking after the home or caring for the family . It was not disputed that the petitioner was, and remains at present, financially dependent on the respondent. She retained the funds she received from the sale of her interest in Property A, all expenses were paid by the respondent. (vii) Conduct . It was agreed at the outset of the hearing that there was no conduct to be taken into account in this case. (viii) Benefits lost by reason of the dissolution of the marriage . The petitioner has lost the right, because the decree absolute has been issued, to a Jersey pension which was estimated at approximately £800 per month and she has also lost her claim on the respondent's personal estate, the value of which would not be substantial. 54. The petitioner estimates her future monthly expenses to be £1,657. I do not accept Advocate Heath's submission that as these expenses were not challenged they should be accepted as correct. There was no documentation produced by the petitioner to support her figures which did seem to me to be rather high for one person living in a one bedroom flat. In any event it is clear that the respondent cannot afford to pay any maintenance for the petitioner unless Property B is rented out. Therefore any decision with regard to the payment of maintenance will depend on the decision in respect of the division of the capital assets. 55. In looking at the division of capital assets I have used the figures which were set out in the agreed schedule of assets (paragraph 13 above) save that I have exercised caution and used £700,000 as the net value of Property B. My calculations are therefore as follows:- Net value of Property B £700,000 Petitioner's assets £29,222 Respondent's assets £32,698 Total assets £761,920 One half of total assets £380,960 Looking at the petitioner's proposal using these figures:- Lump sum for capital needs £350,000 Lump sum to invest £200,000 Contents of her bank account £23,282 Jewellery £5,400 Total share of assets = 76% £578,682 The respondent would be left with: Cash His other assets £150,000 £32,698 Total share of assets =24% £182,698 Looking at the respondent's proposal to pay a lump sum of £60,000:- The petitioner would have: Lump sum Her own assets (not included in the petitioner' £60,000 £29,222 Total share of assets = 11.7% £89,222 The respondent would be left with: Balance of value of Property B His assets £640,000 £32,698 Total share of assets = 88.3% £672,698 The respondent's proposal that the petitioner should retain life enjoyment of Property B would of course, leave her with only her own assets of £29,222. At the hearing it became clear that if the petitioner did have life

enjoyment of property B the guardian would be unable to secure an LTC loan on the property to assist with the care fees and therefore the proposal became less viable for everyone. 56. I do not think that any of the proposals arrive at a satisfactory solution. The petitioner's proposal that she should receive 76% of the assets now is unreasonable and unfair. Her evidence about the promissory note was confusing. It was part of her open position that there would be a promissory note in the sum of £150,000 secured on her property with the secured sum being payable to the respondent or his family upon the petitioner's death. However, in her evidence, she said that she thought that the £200,000 would eventually go to her children on her death. Either way the suggestion is unfair. Why should only £150,000 of the lump sum of £200,000 be paid back? If I was to consider it to be a fair solution (which I do not) then the whole sum should be paid back. The proposal would be tantamount to an interest free loan for an indefinite period and could also be deemed to be a lump sum representing capitalised maintenance. Moreover, as Advocate Heath said on more than one occasion, the petitioner has a life expectancy of 20 - 25 years. It would be totally unreasonable to expect the respondent and/or his family to wait that long for the respondent's share of the assets. Likewise it would be completely unfair for the petitioner to leave the lump sum to her family. 57. I understand that the respondent and his family would like to retain ownership of Property B but it is inevitable that it will have to be sold at some stage in the future. The guardian's loan of £60,000 would have to be paid back at some point and there are no other assets from which this could be repaid. Property B would inevitably be sold when inherited by the respondent's children. 58. I can see no solution other than to make an order that Property B should be sold. Several issues arise with regard to the sale namely:- (i) what work needs to be carried out in order to achieve the best possible sale price and how will the work be paid for; (ii) where the petitioner resides pending the sale. 59. I therefore order that:- (i) advice is sought as soon as possible from an estate agent as to the essential works required to obtain the best possible sale price, the petitioner co-operating in allowing the estate agent to view Property B; (ii) the petitioner shall be paid the sum of £60,000 offered on behalf of the respondent as soon as possible to enable her to move out of Property B so that the necessary work can be carried out and the property marketed for sale; (iii) each party shall retain the assets which they now hold in their own name (apart, of course, from Property B); (iv) the cost of essential works (which will presumably be carried out as far as possible by the respondent's son-in-law) will be paid from the net proceeds of sale; (v) the balance of the proceeds of sale will be divided equally save that the £60,000 paid in advance to the petitioner shall be deducted from her share; (vi) there will be no order for maintenance. 60. This has been a difficult decision to make because of the unusual circumstances of this case but it is, in my opinion, the only fair solution. Authorities *Howarth v McBride*

[1984] JJ 1. Matrimonial Causes (Jersey) Law 1949. Matrimonial Causes Act 1973. *Le Geyt v Mallett and Rodrigues*

[1993] JLR 103 . Sharland v Sharland

[2015] 2 FLR 1367 . Radmacher (formerly Granatino) v Granatino

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