

JERSEY / JUDGMENT

L v S [2009] JRC 048A (16 March 2009)

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judgment

the REGISTRAR: 1. L and S have a son L who was born on 10 th October, 2007 and is therefore only 1 year old. 2. L, the mother, lives with L in a house in St. Helier. L has shared ownership of the property with her cousin and they pay equal mortgage contributions. L has a small part time job and has a very low income, but she does have some capital. 3. S, the father, lives in rented accommodation and is an accounts manager for a local company. He declares his usual take home pay to be £3,242 net per month. He already pays £600 per month child maintenance in respect of the two children of his former marriage. 4. The mother first applied for child maintenance for L on 3 rd July, 2008. At the preliminary directions hearing on rd July, 2008 the Court made an order by consent that the father should commence payment of maintenance at the rate of £250 per month. Directions were made for financial disclosure. 5. Further directions were made on 17 th September, 2008 and maintenance at £250 was ordered to continue. 6. Yet further directions were made on 29 th October, 2008. This was the date when a final hearing should have taken place, but because the father had not complied with the directions for disclosure, he was ordered to contribute £500 towards the mother's legal costs and further directions were made for a trial on 10 th February, 2009. Maintenance was increased to £400 per month until the new date. 7. At the new date, I was asked by the mother's lawyer to increase the maintenance further to £550 per month, to be backdated to the month of July 2008. The case, put simply, is that the father's net earnings for the year 2008 were, according to his December payslip as follows:- Gross taxable pay £100,761.23 Less pension £3,155.30 Less Social Security £2,443.68 Less tax at 15% £15,882.53 Total £79,279.72 8. An equivalent net weekly wage would be £1524.61. According to the Child Support Agency table, an income of a net weekly amount of £1,524.61 gives rise to a weekly child maintenance figure of just over £381. L, being one of three children, was entitled to one third of that figure, namely, £127.05 or £550.55 per month. 9. However, I was asked by the father's advocate to exercise caution in making such order. The father's income was made up of various components, basic pay, sales commission and bonus. 10. Inserted in the bundle was an e-mail from the father's manager stating that his basic salary was under review, which possibly implies that a greater proportion of his salary could depend on sales commission and bonus, if he receives one. 11. Furthermore, the father's net salary for a seven month period, from July 2008 to January 2009, (including his commission for January and February 2008) comes to an average over seven months of £4,248.56 per month or £980.44 per week. According to the CSA table, this gives rise to a maintenance figure of under £250 per week for three children, or,

divided by three, £83.33 per week for L (£361 per month). 12. In this case I have concluded that the father's salary is subject to such great variation from month to month that the best way of deciding the level of child maintenance is to determine a base figure and see how that compares to the father's income over a period of months in the future. 13. If due to the recession or any other factors affecting the father's employment, he is unable to keep up with the payments, he should be at liberty to apply to reduce the maintenance. Equally, if his income including commission and bonus is maintained at the 2008 total, the mother must be informed and be entitled to apply for more child maintenance. 14. What should the base figure be? I do not think I should go too far in creating a precedent by saying what percentage of the maximum figure this should be or what percentage of the minimum. Whatever the Court chooses, it is going to be a best estimate, based on the history of the case known to it, the present economic climate and the knowledge that it is better to make an order, which can be relied on by both parties, than to be too speculative and assume that an annual figure achieved in one year will automatically be achieved in another. An interim figure which has been paid up to the hearing may look attractive, because it means, in effect, no change for the time being to either party. Courts like to try to be consistent, and this may provide an opportunity for making no different order to that which has been in effect for a little time and being successfully paid by the payer to the payee, which has the advantage that both parties can budget accordingly. 15. In this case the interim figure (£400 per month) has been paid successfully for only three months, so that figure is still tentative. However, it is more than the maintenance based on the last seven month's income proposed by the father's lawyer. The truth is that I have no idea what this father's income will be for the next six, seven or twelve months, but it is reasonable to suppose that it will be slightly more than the last seven months when compared with the whole of last years' figures, but not as high as in the last twelve months. I have, therefore, decided that a reasonable base figure will be £400 per month and that child maintenance should remain at that figure for at least 6 months. Review should be annual on the basis of the Jersey cost of living until the child leaves full-time education. However, if either party feels that there is a change of circumstances which requires the attention of the Court, he or she can re-apply any time after th September, 2009. 16. Working the CSA tables backwards, the appropriate net income for a payer who pays maintenance at the "base figure" of £400 per month, = £1200 for 3 children, = £275 per week, is about £1100 per week. What constitutes a "change in circumstances" may be different in each case, but here it will certainly include any marked difference in the father's income above or below a net income from all sources (including basic pay commission and bonus, if any) of about £1100 per week. 17. I did not think it necessary to backdate the maintenance. The payer has always paid what he was asked. The payee was not in debt, even if she did have to eat into her capital. If the payer did not have the cash available to pay maintenance retrospectively, it seemed to me an unfair burden on him, especially since he already had been ordered to contribute to the mother's costs at the last hearing. It did not seem appropriate for me to make an order for the costs of this hearing. No

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