

JERSEY / JUDGMENT

Marshall -v- Downes [2010]

JRC 115B (23 June 2010)

[2010] JRC 115B

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judgment

the commissioner:

Introduction

1. This is an appeal by Richard Nicholas Downes ("the husband") against an order of the Deputy Family Registrar ("the Registrar") of 11 th August, 2009, dividing the assets of the husband and Julie Pauline Marshall ("the wife"). The parties were married on 18 th June, 2000, when the husband was 48 and the wife 39. For both of them, it was a third marriage. Each has children from a previous relationship, but all the children are now adults. There was no period of co-habitation before the marriage. 2. Shortly after the marriage, the parties moved to Jersey where the husband took up an appointment as a consultant eye surgeon at the General Hospital. In 2001, they purchased jointly a house called "Champ Vert". The deposit was provided by the husband and the mortgage was serviced by his earnings. In the same year, they set up a business which later became known as The Jersey Eye Centre. The business allowed the husband to practise privately, while maintaining his consultant's post at the Hospital. The wife was employed by the business as a medical secretary and later, as practice manager. The business was owned as to 75% by the husband and 25% by the wife. 3. In August 2003, the parties purchased jointly a property in England called 18, Wakeling Close. The husband paid the deposit of £65,000 and the mortgage was serviced initially by the business and later, on the advice of the accountants, by the wife's earnings. This property is now occupied by the wife's parents, who pay no rent, but meet the costs of maintenance and upkeep. 4. On 24 th December, 2004, the parties purchased jointly a property called "The Croft" for £625,000. The deposit was paid from the proceeds of sale of Champ Vert and the mortgage was serviced by the husband. This acquisition was in the nature of a property development scheme. The property was never occupied by the parties, who lived in rented accommodation. 5. In the summer of 2006, the parties purchased jointly a building plot in Switzerland, upon which they constructed a chalet called "Le Petit Nid". The husband paid the deposit and services the mortgage from his income. At the time of the hearing before the Registrar there was an equity of about £215,297 although whether that equity is realisable at the present time is open to some doubt. 6. In 2007, the parties

separated; according to the husband, it was in April, but according to the wife, it was in December. Nothing really turns upon that disagreement. A decree nisi of divorce was pronounced on 12 th March, 2008. At the time of separation, it was agreed that the business of The Jersey Eye Centre should be valued at £60,000. 7. In April 2008, The Croft was sold for £2.9M, leaving net proceeds of £1,725,000. The parties have each taken an interim distribution of £400,000 and the balance has been placed on deposit in a high interest account ("the Scarborough account"). At the 1 st January, 2009, the balance on the Scarborough account was £982,043. 8. The husband used part of his interim distribution to purchase a property in Grouville in which he now resides and two plots of land in the Bahamas, for which he has paid a deposit of £8,000 with a balance of £12,000 outstanding. The wife has used part of her interim distribution to pay off the balance of the mortgage (£116,673) in respect of 18 Wakeling Close. She is living in rented accommodation for which she pays £1,750 per month rent. She does not currently have residential qualifications under the Housing (Jersey) Law 1949 , but will acquire them in 2011. 9. The husband has an RAF pension of £14,402 per annum in payment. His Public Employees Contributory Retirement Scheme (PECRS) pension has an agreed capital value of £490,981, from which however the sum of £105,343 representing his NHS pension contributions made before the marriage must be deducted. He has a further pension entitled "The Zurich pension" with a capital value of £73,829. Again, this was acquired before the marriage and the wife has agreed that it should not be taken into account. 10. At the time of the hearing before the Registrar, the wife was not in employment, having resigned her position at The Jersey Eye Centre on 1 st April, 2009. She also did not have employment at the time of the appeal, but it was accepted that she had an earning capacity of between £25,000 and £30,000 per annum. The husband's earnings from his consultant's post at the General Hospital were £137,496 and his earnings from his private practice at The Jersey Eye Centre were £60,000 per annum. Decision of the Deputy Family Registrar 11. The hearing before the Registrar lasted four days. On 11 th August, 2009, she gave her decision and divided the assets of the parties as follows. The husband was to receive:- (i) The Zurich pension £73,829 (ii) Swiss chalet £215,297 (iii) Contents of chalet £15,000 (iv) Balance standing to the credit of a UBS bank account in Switzerland £2,788 (v) Standard Life Insurance policy £37,551 (vi) The PECRS pension £490,981 (vii) The Scarborough account £218,643 together with accrued interest. The wife was to receive:- (i) 18 Wakeling Close £285,000 (ii) The Scarborough account £763,400, together with accrued interest 12. The Registrar's decision complied in nearly all respects with the open positions of the parties, save as to the division of the Scarborough account. The husband had claimed a net £382,043. The difference between the sum claimed and the award is therefore £163,400. 13. According to her reasons, the Registrar's award gave 53% of the assets to the husband and 47% to the wife. We have assumed, although it is not perhaps as clear as it might be, that the Registrar adopted the schedule of assets and liabilities provided by the wife's lawyers, to which reference is made at page 4 of the reasons. That schedule showed gross total assets of £2,795,980. Unfortunately, the schedule does not show the total value awarded to each party, but we calculate that 53% of that total amounts to £1,481,870 and that 47% amounts to £1,314,110. The test on appeal 14. In Murphy-v-Collins

- [2000] JLR 276 , the Court decided that it had an unfettered discretion to hear an appeal from the Registrar of the Family Division as it thought the circumstances and justice of the case required. The appeal was not a re-hearing de novo but the Court was entitled to look at the matter afresh, subject to certain principles. Those principles were:- (i) that the judge should exercise his own discretion but might give such weight as he thought fit to the manner in which the discretion had been exercised below; (ii) no party had an unfettered right to begin again entirely de novo , but was subject to the discretion of the judge as to the admission of further evidence and the re-opening of matters already determined below, and (iii) in exercising that discretion, the judge would consider whether such evidence was credible and relevant. The Court in *Murphy-v-Collins* developed a hybrid which was somewhere between a re-trial and an appeal. Crill, Commissioner, in laying down this test, was applying the approach adopted by the English court in *Marsh-v-Marsh*
- [1993] 1 WLR 744. The learned Commissioner approved the following dictum of Brown, P:- "It follows that (1) the judge should exercise his own discretion but may give such weight as he thinks fit to the manner in which the district judge exercised his discretion. (2) No party shall be entitled as of right to adduce further evidence or oral evidence but the judge may in his discretion admit such further or oral evidence as he thinks relevant and just upon such terms as he thinks fit." 15. Mrs Colley for the wife submitted that this approach was no longer followed in England, and that it was time for this Court to re-visit the decision in *Murphy-v-Collins* . In *Cortle-v-Cortle*
- [2002] 1 FLR 207 , Thorpe LJ stated:- "[28] Almost 9 years ago this court in *Marsh-v-Marsh*
- [1993] 1 WLR 744, [1993] 1 FLR 467 held that where an appeal lies from the adjudication of the district judge to the circuit judge the circuit judge should exercise his own discretion, giving such weight as he thought fit to the manner in which the district judge had decided the case. The decision also acknowledged the discretionary right of the circuit judge to admit further evidence and indeed, if necessary, to consider the case de novo. That practice does not have the ordinary characteristics of an appeal. It is a hybrid somewhere between a retrial and an appeal. It undoubtedly gave rise to difficulties, given the fact that vast majority of trials in the county court are conducted by the district judges who accordingly develop the professional expertise to the exclusion of the circuit bench. [29] In an endeavour to counter that problem, over a period of years in the mid-1990s a system of ticketing was introduced to try and ensure that, if the right of appeal were exercised, at least there would be an experienced circuit judge to hear the appeal. But the ticketing system certainly did not meet all the perceived problems. When the Lord Chancellor invited his advisory group to consider the wholesale revision of rights of appeal in family proceedings, that group, in its report of July 1998, favoured the reform or the abandonment of the rule in *Marsh-v-Marsh*

- [1993] 1 WLR 744 [1993] 1 FLR 467, to ensure that if an appeal were brought in the county court it would be determined in accordance with ordinary appellate principles. There was a minority view that urged the continuation of the rule in *Marsh-v-Marsh*
- [1993] 1 WLR 744, [1993] 1 FLR 467, but when the report was put out to public consultation the responses very clearly favoured the majority view. [30] In the intervening 3 years there has been no progress in the reform of rights of appeal in family proceedings, and in this court recurrent difficulties have been encountered with decisions of circuit judges which have varied orders made by district judges in a way that seemed to disimprove rather than improve outcome. But the ability of this court to intervene has been circumscribed by wholesale reforms in the field of civil justice, resulting in the Civil Procedure Rules 1998 and the Access to Justice Act 1999 . Section 55 of that statute provides that where there has been an appeal in the court of trial, this court may not grant permission to appeal unless it considers that the appeal would raise an important point of principle or practice or that there is some other compelling reason for the court to hear it. [31] That is, of course, an unexceptional limitation for civil justice where the routes of appeal have been reformed. However, it has been an uncomfortable provision in the field of ancillary relief, where the second-tier appeal has not truly been an appeal but rather something of a rehearing. There have been many instances in which one party has achieved result A in front of the district judge, the other has then achieved result B in front of the circuit judge, and the loser before the circuit judge has wanted to come here to argue for result A. It is very difficult to fit such a case within the terms of s 55. [32] So, for all those reasons, it seems to me that it is now necessary to reform the practice to harmonise with the advent of s 55. That reform must be to say that any appeal from a decision of a district judge in ancillary relief shall only be allowed by the circuit judge if it is determined that there has been some procedural irregularity or that in conducting the necessary balancing exercise the district judge has taken into account matters which were irrelevant, or ignored matters which were relevant, or has otherwise arrived at a conclusion that is plainly wrong. Equally, it seems to me that a circuit judge hearing an appeal from a district judge should not admit fresh evidence, unless there is a need to do so on the application of the more liberal rules for the admission of fresh evidence that are recognised as necessary in family proceedings. It is to be hoped that this reform will both discourage appeals to the circuit judge and reduce the number of applications to this court for permission to appeal in county court ancillary relief cases." 16. Miss Benest submitted that the English statutory framework was different, and that there was no reason to change the approach set out in *Murphy-v-Collins* . She submitted, by way of analogy with planning appeals, that the Court could not escape the responsibility of forming its own judgement as to the exercise of discretion by the Family Registrar and his Deputy. 17. What is the statutory framework in Jersey? Article 3 of the Matrimonial Causes (Jersey) Law 1949 confers jurisdiction on the Matrimonial Causes Division of the Royal Court in all matrimonial causes, suits, and matters, and paragraph (5) of that article provides that:- "Any order made or direction given by the Judicial Greffier in pursuance of rules of court made under paragraph (3)

shall be subject to appeal in the first instance to the court." Rule 62 of the Matrimonial Causes Rules provides at paragraph (1) that:- "An appeal shall lie [sic] to the Inferior Number from any order or decision of the Greffier". Neither the Law nor the Rules made thereunder provides any guidance as to the approach to be taken by the Royal Court on appeal from the Greffier (now known for these purposes as the Family Registrar). The nomenclature does, however, provide some insight into the rationale underlying the decision of the Court in *Murphy-v-Collins*. Up to the 1990s, the jurisdiction of the Royal Court was occasionally exercised by a Judicial Greffier or Greffier Substitute who was not a qualified lawyer. One can understand, therefore, how the learned judge in *Murphy-v-Collins* can have had reservations in treating an appeal from the Judicial Greffier/Registrar in the same way as an appeal from this Court would be approached by the Court of Appeal. Furthermore, it was only after the decision of the Royal Court in *Richomme-v-Le Gros*

[1994] JLR Note 6 that the practice of recording the evidence heard before the Judicial Greffier became established. 18. Although the statutory framework in Jersey has not changed since *Murphy-v-Collins* was decided, the practice of the courts has changed considerably. There are now two Greffier Substitutes (known as the Family Registrar and Deputy Family Registrar respectively) who are experienced judges in family law exercising jurisdiction only in that field. Most matrimonial causes are heard by the Registrars and only occasionally does this Court exercise an original jurisdiction. In most disputed cases, as in this one, evidence is heard by the Registrar and conclusions formed on the basis of that evidence. The advantage of the judicial officer who heard and saw the parties and their witnesses, and the manner in which their evidence was given, should not be underestimated. It is not just a question of credibility. It is also a question of evaluating the evidence and the findings of fact which he or she has made upon the evidence. Justice is never perfect. It depends upon judges, who are human beings. The evaluation of judges in the Royal Court, who have not seen the witnesses, may be different from the evaluation of the Registrar, but may also be no better. As Lord Hoffman expressed it in *Pigłowska-v-Pigłowska*

[1999] 2 FLR 763 at 785:- "These are value judgments on which reasonable people may differ. Since judges are also people, this means that some degree of diversity in their application of values is inevitable and, within limits, an acceptable price to pay for the flexibility of the discretion conferred by the 1973 Act". 19. There is a further important factor, and that is the principle of proportionality. This matrimonial dispute consumed 4 days of expensive legal time before the Registrar and 1½ days before this Court. The parties are very far from being impoverished litigants, but the cost of pursuing their battle on appeal is likely at the end of the day to benefit no one but their legal advisers. It does not seem to us that a system which effectively encourages litigants to try for a better solution on appeal is sensible. In this case both counsel agreed that the factual conclusions of the Registrar were not to be challenged. However, a system which does not preclude the factual matters from being re-opened other than in the case of manifest error is one which in our judgment is disproportionate. We do not consider that it is any longer appropriate that an

appellant should have a fresh bite at the cherry in this Court. The notion that this Court should have "an unfettered discretion to conduct an appeal from the Judicial Greffier (or the Registrar of the Family Division) as it thinks the circumstances and justice of the case require" is no longer sustainable or consistent with the general approach of this Court to civil litigation. This is, however, a Court of coordinate jurisdiction with the Court that decided *Murphy-v-Collins* and we should not depart from the law laid down in that case unless convinced that the decision is now plainly wrong. For the reasons given above, we think that that threshold has been passed. In our judgment, *Murphy-v-Collins* should no longer be regarded as good law. 20. What then should be the test on appeal to this Court? We wish to underline the fact that we confine ourselves to appeals from the Family Registrar and his deputy pursuant to article 3 of the Matrimonial Causes (Jersey) Law 1949 where evidence has been heard before them and a discretion has been exercised. We are not concerned with appeals from the Master of the Royal Court (notwithstanding that they are all Greffier Substitutes), where different considerations may apply. An appeal from the Family Registrar should only be allowed if there has been a procedural irregularity or if, in exercising his discretion, he has taken into account irrelevant matters, or ignored relevant matters, or otherwise arrived at a conclusion which the Court believes to be wrong. This test is not precisely the test applied on appeal from this Court to the Court of Appeal. It reserves a wider discretion for this Court to intervene, but it places nonetheless greater weight on the registrar's exercise of discretion. This test will, we think, establish the right balance. Sufficient weight is to be attributed to the registrar's findings of fact and exercise of discretion to discourage litigants from seeking a fresh bite at the cherry. On the other hand, this Court will have the power to intervene if it thinks that the registrar has gone wrong to the extent that intervention is required in the interests of justice and fairness. Contentions of the parties 21. Having reached that conclusion as to the proper approach of this Court on an appeal from the decision of the Registrar, we can deal with the contentions of the parties with relative brevity. Counsel for the husband did not suggest that the Registrar had made any error of law. We agree. The Registrar drew attention to the material authorities and approached her decision in a proper and careful manner. The essence of the husband's argument was that the Registrar had applied the wrong weight to a number of the 25(2) factors to which the registrars habitually have regard. These factors are not embodied in our statute, but they represent a convenient checklist of matters to which the courts have regard. This Court was in effect being asked to re-visit the Registrar's exercise of discretion as to what was a fair distribution of capital between the parties in all the circumstances of the case. Miss Benest contended that the Registrar had gone wrong in a number of ways. 22. First, she contended that insufficient regard had been paid to the ages of the parties. The husband was now aged 58 and had only 7 years to go until the retirement age of 65. The wife was aged 48 and had 17 years left of working life. Counsel conceded that the Registrar had accepted that there was this disparity of age. It is clear, however, from the reasons given by the Registrar that she had very much in mind the ages of the parties and their different earning capacities. She stated that the husband was likely to retire from his consultancy at the General Hospital at the age of 65

and continued:- "It is likely that the husband's earnings will decrease. There is therefore a difference in the earning capacity of the parties, in that in the short term he can earn significantly more than the wife, but she has a longer period over which to earn." 23. Secondly, counsel contended that insufficient regard had been paid to the length of the marriage. In Miss Benest's submission, a marriage of 7 or 8 years' duration did not justify an equal division of assets, or anything close to it. It is true that the length of the marriage is a factor to be taken into account. There appears, however, to be no authority on what is a short marriage, although the Registrar was referred to the case of *McCartney-v-Mills McCartney*

[2008] 1 FLR 1508 which was a marriage of only 4 years. It is clear that the Registrar did have regard to the length of the marriage, although she did not characterise it as a short marriage. It does not seem to us that the length of the marriage is a particularly important factor in this case, because the vast bulk of the assets to be divided was acquired after the marriage in 2000. 24. Thirdly, counsel contended that insufficient regard was paid to the husband's poor health. The Registrar certainly had regard to the husband's health problems for she referred to them in some detail. She specifically stated that the husband might have to retire before the age of 65 on the ground of ill health. 25. Fourthly, counsel submitted that insufficient regard was paid to the respective contributions of the parties to building up the marital assets. It is clear that the husband is a talented medical man and that his earnings as a consultant and his skills enabled the business of Jersey Eye Centre Limited to prosper. His earnings also paid the mortgages on the different properties that were acquired during the marriage. The wife attended to domestic matters, worked in the Jersey Eye Centre business, and played a large part in the development of the properties which actually generated the bulk of the family wealth. The Registrar dealt with the matter in this way:- "The husband was working very hard as a surgeon both in his public and private work and indeed so hard that, having heard the evidence, I accept that the wife helped set up the business and ran it, organised the development of the properties, and organised the domestic arrangements as the husband did not have the time to do this." This seems to us to be an adequate summary of the position. 26. Fifthly, counsel submitted that insufficient regard had been paid to the different nature of the family assets, and that the wife had received the bulk of the "copper-bottomed" assets, including the cash in the Scarborough account. In particular, counsel contended that it was the invariable practice of the registrars to discount the capital value of a pension fund. No authority could be provided for this proposition, which was not accepted by counsel for the wife. The Registrar did refer to this matter in the following terms:- "The PECRS pension is a final salary scheme pension. In *T-v-B*

[2008] Unreported judgment, the [Family] Registrar did discount the value of the pension fund. It is an illiquid asset, so must be viewed in this light. However, this is to be looked at considering the overall fairness of the situation". Although the Registrar did not expressly say so, it seems that she rejected the submission that the value of the PECRS pension should be discounted. Was she right to do so? In the absence of any rationale for such a

discount, we think that the Registrar's decision was entirely correct. The PECRS pension, which is generally subject to inflation proofing increases year on year, is an immensely valuable asset. The pensioner may die prematurely, but equally may live on into a very ripe old age. It may be illiquid, but we can see no logical reason for discounting the value of a gold plated asset of that kind. 27. Counsel addressed us on the principles of need, compensation and sharing. Each of these principles, while relevant and valuable in the context of particular factual situations, is but a manifestation of the overarching objective of achieving a fair division of assets, having regard to all the circumstances of the case. In J-v-M

[2002] JLR 330 at 345, the Court adopted principles laid down in White-v-White

[2001] 1 AC 596 in the following terms:- "28. In the course of his judgment, Lord Nicholls stated that the overriding objective was to make a fair financial arrangement between the parties, giving first consideration to the welfare of the children. He continued ([2001] 1 All ER at 809) :- 'Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss, LJ ... said in Dart's case, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty-stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently, both parents work. Sometimes it is the wife who is the money-earner and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering para. (f) of s. 25(2) of the 1973 Act, relating to the parties' contributions. This is implicit in the very language of para. (f): '...the contribution which each of the parties has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family.' (My emphasis) If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and child-carer. There are cases, of which the Court of Appeal decision in Page-v-Page, [1981] 2 FLR 198 is perhaps an instance, where the court may have lost sight of this principle. A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines', a

judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is a good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination. 29. We respectfully agree with all these sentiments. The touchstone in all cases involving a division of matrimonial assets is fairness. The court must try to achieve fair financial arrangements between the parties, and the welfare of the children is a primary consideration. There is no place for discrimination between husband and wife. Where they have both, by their own efforts, built up the family assets, even if their contributions are different in nature, fairness requires that those contributions be given equal weight. There is no reason why any surplus of assets, once the reasonable needs of the parties have been satisfied, should automatically go to the husband. Nonetheless a ruthless application of the principle of equality will seldom lead to fairness. The court is required to take into account all the circumstances of the case." 28. In this case, it seems to us that the Registrar applied the correct legal principles, weighed the relevant factors in the balance in exercising her judgment, and reached a conclusion which was well within the margins of permissible discretion. She acknowledged that this was a relatively short marriage, that the husband had health problems which might impact upon his earning capacity, and that he was older than the wife. On the other hand, she also took into account the different but equally valuable contributions made by the parties to the creation of the family wealth and the fact that the wife's earning capacity was greatly inferior to that of the husband. Balancing all these factors, she arrived at the conclusion that the appropriate and fair division of capital was 53% to the husband and 47% to the wife. We do not think that this can be faulted. But for a question of arithmetic, there would be little more to be said. 29. We have, however, struggled to reconcile the stated aim of the Registrar to divide the assets in the proportions stated above with the figures in the schedule attached to the reasons delivered by her. The Registrar appears to have adopted a schedule produced by the wife's lawyers on 31 st July, 2009. There are difficulties with that schedule in that, as rightly submitted by Miss Benest, it includes figures under the sub-heading "Illiquid assets" which are inaccurate. First, the value of the PECS pension is given as £490,981. That figure includes the element of NHS pension built up before the marriage which the wife agreed should not be taken into account. Secondly, it includes a value for a Standard Life pension which represents a double counting in that the value is also included under the sub-heading "Insurance policies". Thirdly, it includes a figure of £73,829 for the Zurich Scheme investment which the wife also accepted was built up prior to the marriage and should not be taken into account. We would have found our calculations much easier if the Registrar had compiled her own table, showing precisely which assets were being awarded to each party. As it is, we have no means of knowing from the judgment what the total award in favour of each party was, or how it was calculated to be approximately 53% for the husband and 47% for the wife. 30. Mrs Colley, for the wife, helpfully produced for us an amended schedule as part of her skeleton argument. Subject to one error in relation to the

value of the PECRS pension, which emerged during argument, it seems to us to be an accurate reflection of the Registrar's award, and we reproduce it below. We have included a figure for the PECRS pension which does not include the NHS element, the value of which accrued prior to the marriage. ITEM HUSBAND WIFE TOTAL Southwell 285,000 Swiss Chalet 215,297 Exuma 228,441 H's bank accounts 112,177 W's bank accounts 232,419 UBS account 2,788 SL Plan 66149A-V 36,682 SL policy 6890 Nil Scarborough high interest account 218,643 763,400 Bahamas deposit 8,000 Critical illness policy 2,000 JECL shares 60,000 Vehicles and personal belongings/chattels 19,750 13,810 PECRS pension 385,638 Total 1,289,416 (49.9%) 1,294,629 (50.1%) 2,584,045 31. It will be seen that the award, in arithmetical terms, gave approximately 50% to each party, rather than the 53/47% split fixed upon by the Registrar. 32. Counsel for the husband asked us to consider three other matters. First, she submitted that the maintenance of £4,300 per month paid to the wife from the date of the award to the date of the appeal should be paid back to the husband by way of deduction from the Scarborough account. The Registrar had sought to achieve a clean break, and the payment of maintenance had been due to stop when the division of capital had been achieved. By agreement between the parties, the order of the Registrar was stayed pending appeal and the husband agreed to continue paying the monthly maintenance. Counsel submitted that the sum of the maintenance should be deducted from the wife's share of the Scarborough account. We do not agree. It was the husband who brought the appeal and who caused the stay to come into existence. We can see no good reason for setting aside the arrangements agreed between the parties. 33. Counsel for the husband also submitted that the wife had failed to apply for sickness benefit at a time when she was unable to work in the Jersey Eye Centre as a result of the stress caused by these proceedings. The cost to the business had been some £4,000. It was said that this point had been put to the Registrar but that there had been no adjudication upon it. Mrs Colley submitted that this was a simple mistake. The breakdown of the marriage had been a difficult time for her client. We do not think that the wife should be penalised for an error of this kind; there was no reckless depletion of family assets and in the context of the division of family assets of more than £2M, it falls within the principle of *de minimis non curat lex*. 34. Finally, counsel for the husband contended that the wife had spent more than she was entitled to spend from the income of Jersey Eye Centre Limited during the period April-November 2008. Evidence had been heard from accountants called by both sides before the Registrar and it had been agreed by the experts that there had been excessive drawing from company funds by the wife to the extent of £23,000. The Registrar had made no provision for this excessive drawing in her award. Counsel for the wife conceded that this overdrawing had taken place. We think that there should be a compensating payment to the husband from the Scarborough account.

Conclusion

35. The Registrar's intention was to award 53% of the family assets to the husband and 47% to the wife. Having regard to all the relevant considerations, we agree that this was a fair result. To achieve that result, some adjustment of the Registrar's apportionment of the Scarborough account is required. The total assets are £2,584,045. 53% of that figure is £1,369,544, and 47% is £1,214,501. In order to achieve those totals, the Scarborough account must be apportioned as to £298,771 to the husband and £683,272 to the wife. £23,000 must be deducted from the wife's share and given to the husband to compensate for the overdrawing from the company account. £660,272 is therefore due to the wife from the Scarborough account, and £321,771 is due to the husband. As ordered by the Registrar, interest accrued on those sums until the date of division is to be paid to each of the parties respectively. 36. Reviewing the income available to the parties following the award, it seems to us that the position in broad terms is as follows:- HUSBAND WIFE RAF pension 14,400 Potential earnings 27,500 Swiss chalet rent 18,250 Notional rent on Southwell at 5% of capital value 14,250 Hospital consultancy 137,496 Interest on Scarborough account at 3% 19,808 Jersey Eye Centre Ltd 60,000 Interest on Scarborough account at 3% 9,653 TOTAL £239,799 TOTAL £61,558 There is a considerable disparity at present, but the husband's income will fall significantly upon retirement in seven years' time. Taken in the round, we think that the Registrar's award, adjusted for arithmetical error, arrives at a fair division of assets. 37. Bearing in mind the income disparity, the Commissioner is minded to order that the husband should pay the costs of the appeal on the standard basis, but is willing to hear submissions from counsel. Authorities Housing (Jersey) Law 1949. Murphy-v-Collins

[2000] JLR 276 . Marsh-v-Marsh [1993] 1 WLR 744. Cortle-v-Cortle

[2002] 1 FLR 207 . Matrimonial Causes (Jersey) Law 1949. Matrimonial Causes Rules 2005. Richomme-v-Le Gros

[1994] JLR Note 6. Piglowska-v-Piglowska

[1999] 2 FLR 763 at 785. McCartney-v-Mills McCartney

[2008] 1 FLR 1508 . J-v-M

[2002] JLR 330 . White-v-White

[2001] 1 AC 596 . Page Last Updated: 09 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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