

JERSEY / JUDGMENT

P -v- F

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[2006]JRC029A royal court (Family Division) 28th February 2006 Before : V. J. Obbard, Esq., Registrar, Family Division. Between P Petitioner And F Respondent Advocate V. Stone for the Petitioner. Ms Z. G. Blomfield (Solicitor) for the Respondent.

Reasons

for the Mesher Order in respect of former Matrimonial Home – proceeds of sale to be divided equally. registrar: 1. I have been asked to give reasons for my decision that there should be a Mesher Order in this case. If that Order is made, it will mean that:- (i) The former matrimonial home will remain for the time being in the joint names of both parties. (ii) Upon the occurrence of the earliest of certain “trigger” events, the house will be sold and the proceeds, after payment of expenses, be divided equally. Each party will pay certain debts from their half share. 2. There are two important factors. The first to take into consideration is the needs of the children who are S (17) who lives with her mother (“the wife”), C (11) and J (5) who live with their father (“the husband”). 3. The second is that, whilst there is very little money to support the family, the house, valued at £290,000, with a States Loan mortgage costing only £304.44 per month represents very good value for money. The husband, who lives there with the two younger children, will have completely redeemed the mortgage on 2nd August, 2013, if he keeps up those payments. 4. Both parties have suffered from depression. The husband, however, earns his living as a part-time carpenter. He is now self-employed because he found it difficult to work a full day with the two children to look after. He also receives family allowance, an allowance from a charity, and until recently, was receiving a disablement allowance for J, who has a mild form of cerebral palsy. His total income is about £1,600 per month. 5. The wife does not work. Her depression led to her using alcohol in order “to cope” as she put it. The wife did work until depression set in, but she now lives on a mixture of welfare, invalidity benefit, family allowance and a charity allowance. 6. Neither party pays any child maintenance to the other. 7. Taking these circumstances into account, it is not a difficult decision to conclude that the former matrimonial needs to be kept as a home for the husband and the two younger children so long as they have the need of it, hence the need for the Mesher Order. However, the exact terms of the order need to be thought out carefully. 8. It will not be possible to create a “clean break” because there are a number of uncertainties which will need to be considered in the future. For example, the wife still hopes that all the children might, one day, live together with her. Her continuing treatment for alcoholism might prove successful and she might, once again be able to contribute financially to the children’s upbringing. 9. The husband’s future life might change beyond the contemplation of anyone involved with the case now. What if, for example, the husband should meet a wealthy

partner and have no further need of the home?

10. The husband's advocate argued that, because he, alone, was contributing to the mortgage until its redemption, he should acquire a greater share in the equity to the exclusion of the wife, because she will have contributed nothing.
11. I disagree, for a number of reasons. The first is that the sum of £304.44 represents a surprisingly low figure for the housing costs for three people. It is a benefit which the husband is privileged to enjoy. When the mortgage will be redeemed in 2013, J, the youngest child will only be just short of her 13th birthday, so thereafter, the husband and two children will occupy the former matrimonial home free of any payment altogether. I suggest in my order that, unless the husband dies or leaves the property, he and the two children can go on living there until J is 16 years of age (another 3 years) or until she's 18 years of age (another 5 years), provided she is still in full-time education. So, if all goes according to plan, the husband will only pay £304.44 per month (£70.25 per week) for seven years, then nothing at all for perhaps another five years.
12. There is also the fact to bear in mind that the wife did contribute to the deposit of £19,748.52 on the house, when it was purchased in 1988 for £42,500 with a mortgage of £22,751.48. The deposit, I accept, came from a joint savings account at a time when the wife had a good job and was contributing to family finances. However, the husband is now enjoying the home which is worth £290,000 on a "rental" of £304.44.
13. The wife now occupies a flat on an estate with the oldest child, S. Although she has various debts, she makes ends meet (paying £144 per month rent plus rates and insurance) from a total income of about £1,000 per month. I have no doubt that she is entitled to receive one half of the capital locked up in the former home once the children have no further need of it.
14. When J reaches 18 years of age in 2018, the parties will respectively be aged 57, (the husband) and 56 (the wife) assuming they are still both alive. Neither has made any provisions for a pension. It would be extraordinary if I were to deprive either party from a half share in the equity when that time comes.
15. However, it seems to me to be appropriate to order that each party is to remain liable for certain debts, which if they remain unpaid when the house is sold, should be paid out of each party's half share.
16. There must be a review if either or both C and J should go to live with their mother. There will remain liberty to apply in relation to:- (i) the trigger events; and (ii) the payment of child maintenance. No Authorities

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