

JERSEY / JUDGMENT

P -v- O (27 February 2017)

[2016] JRC 166

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Court of Appeal 27 February 2017 Before : James McNeill, Q. C., President; John V. Martin, Q. C., and Sir David Calvert-Smith. Between P Appellant And O Respondent The Appellant appeared in person. Advocate M. R. Godden for the Respondent. judgment of the court president: 1. The appeal in this matter is presented against a decision of the Royal Court (Family Division) (Le Cocq, Deputy Bailiff, with Jurats Fisher and Ramsden) dated 15th September 2016 (O-v-P (Matrimonial)

[2016] JRC 166) in which it sat in an appellate capacity on an appeal by the present appellant from an order of the Family Registrar dated 15th December 2015 ("the Order"). The Order was pronounced as part of a series of ongoing matrimonial and family disputes between the present parties. 2. The Order had dealt with the need to market and sell the former matrimonial home together with other financial matters, some of which were related to that prospective sale. The appellant ("Mr P") did not appeal that part of the Order requiring marketing and sale of the former matrimonial home but did seek to appeal all of the other

orders.

In proceeding to deal with the appeal to the Royal Court the learned Deputy Bailiff bore in mind the test to be applied on an appeal to the Royal Court from the Family Registrar, as set out in the decision of the Royal Court in *Downes v Marshall*

[2010] JLR 265 at paragraph 12 where Bailhache, Commissioner, expressed matters in this way: "12 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." 3. Mr P did not suggest that this expression of the test should be reviewed by this court. We therefore proceed upon the basis that the Royal

Court, in considering the appeal made to it, proceeded to ask itself the correct questions and to apply the appropriate test as to the circumstances in which it was open to it to intervene. 4. The judgment of the Royal Court set out what the court considered to be the background relevant to the issues before it and noted that the larger part of the Order had been made as a result of the Registrar's finding that Mr P had failed to cooperate in, and blocked, a sale of the former matrimonial home, which was in joint names, as a result of which further additional expenditure had been incurred for which Mr P should be responsible. The Royal Court noted what it understood to be Mr P's case and argument, observed that the Registrar had heard evidence including cross examination at some length by Mr P, and then set out the reasoning of the Registrar. The Royal Court then set out its own reasoning at paragraphs 14 to 18 and, in the result, dismissed the appeal. 5. Mr P informed us that, on 6th September 2016, the learned Deputy Bailiff had circulated copies of the draft judgment and that, in response, he had raised concerns that the Inferior Number had not justified its decision by reference to any provisions of the Matrimonial Causes (Jersey) Law 1949 or any other provision of the general law. We can therefore proceed upon the basis that the various rehearsals set out by the Royal Court in the judgment below accurately reflect the matters put before it and the arguments presented to it. 6. Given that the available procedure in a matter of this nature allows for an appeal to an experienced appellate body, that very significant weight is to be attached to the findings of fact by the Registrar and to his or her exercise of discretion (both matters upon which appellate courts ordinarily allow considerable weight to the fact finding court), it is clear that this court should only intervene where the Royal Court has clearly gone wrong in understanding the situation which the Registrar faced or in identifying the law to be applied. We would also note that in matrimonial causes within this jurisdiction the courts have very wide powers in respect of financial matters and, in addition, very wide powers, from time to time, to discharge or vary any such order having regard to all the circumstances of the case including any increase or decrease in the means of either of the parties to the marriage: see the Matrimonial Causes (Jersey) Law 1949 (as amended), Articles 25 to 33. 7. As presented to us, both in Mr P's amended Notice of Appeal and in his oral submissions, many of the points raised were either ones which should have been presented to the Registrar and were not, or which might at some stage have more properly provided the basis for an application for variation of the Order. We therefore restrict ourselves to dealing with points which are of the nature which might allow us to intervene. 8. Mr P's principal contention to us appeared to have been in almost identical terms to that presented to the Royal Court. It was that the Registrar had been wrong in fact and law to pronounce the financial orders which proceeded upon a determination that Mr P had been responsible for the failure to sell the former matrimonial home in late 2015. In Mr P's submission, sale of the property had been prevented not by any act or omission on his part but, rather, because of a caveat which had been placed upon the property by Messrs Benest & Syvret in respect for a claim for unpaid fees which it had advanced against Mr P. That caveat had not been lifted until late on 11th December 2015 whereas at about 12:30 on that day the prospective buyers of the

former matrimonial home had given notice that they no longer intended to proceed with the purchase. It was, accordingly, to Messrs Benest & Syvret that the respondent should have looked for recourse. 9. This issue was considered by the Registrar and also by the Royal Court. At paragraph 58(ii) of her reasons, (O-v-P (Matrimonial)

[2015] JRC 258A) the Registrar had set out the basis upon which she had made the salient parts of the Order. Among other matters she said: "... there is no doubting the fact that the caveat prevented the sale from going through in November 2015. However by the end of November discussions between B & S and LeG & L had resulted in B & S taking action to replace the caveat with the injunction. As set out in paragraph 14 above, the husband wrote to Thompsons on 26th November 2015 withdrawing his agreement to sell at £765,000. That letter contained his assertions that he held property for the benefit of his creditors. He, in effect, blamed the fact that the property had to go back on the market at a higher price and B & S as the firm would not agree to the compromise he had offered, namely a pound for pound payment for B & S and for his parents. The offer from the potential purchasers was not withdrawn until 11th December 2015, some two weeks after the husband changed his mind. I do not believe that the husband would have cooperated in a sale at £765,000 after 26th November. ...". 10. As the Royal Court stated at paragraph 15 of its judgment, the Registrar was, in the view of the Inferior Number, entitled to find that Mr P would no longer cooperate in a sale at £765,000 and that such a stance was unreasonable on Mr P's part. 11. Clearly there was evidence before the Registrar, both documentary and oral, to entitle her to reach that

conclusion.

Given the terms of the letter of 26th November, and having had the opportunity to go over matters with Mr P during the hearing, the Registrar was entitled to reach the view that he would not have cooperated in a sale at £765,000 after 26th November. She was also entitled to reach the view that the caveat placed on the property by Messrs Benest & Syvret did not constitute an absolute bar on a sale. 12. For these reasons we cannot sustain the principal line of attack presented to us by Mr P. 13. We therefore turn to alternative arguments presented to us by Mr P. At the outset, however, we emphasise that, given the limited ambit of our power to intervene, as set out above, we cannot entertain some of Mr P's general arguments such as that the awards constituted overcompensation or unjust enrichment or as to whether Mr P might have quantification arguments or set-off arguments in respect of individual heads. 14. The following were the ancillary orders made by the Registrar in the Order: "2(i) 57.45% of the interest which is accrued or will accrue on the two mortgages with Barclays from 26th November 2015 until the date of the sale; (ii) Any financial penalties, bank fees or other costs incurred by the parties in respect of the mortgages since 26th November 2015; (iii) The sum of £474.76 per month being the payments due to Cherry Godfrey from December 2015 until the date of the sale; (iv) The sum of £110 per month in respect of storage costs from December 2015 until the date of sale; (v) The sum of £195.53 in respect of the purchase of oil for the property; (vi) The sum of £92.50 per month in respect of the life insurance policy from December 2015 to the date of the sale; (vii) The sum of

£704 in respect of outstanding childcare costs; 3. The Respondent shall be responsible for the monthly capital payments on both mortgages if Barclays does not extend the mortgage holiday; 4. The Respondent shall pay to the Petitioner the sum of £234.67 per month by standing order in respect of his one half share of holiday club and after-school club costs;" 15. Of these individual orders, paragraphs (i) and (ii) must be dealt with in accordance with the main issue and, as we cannot sustain the appeal on that point, they must stand. 16. As to the Cherry Godfrey loan, this, as the Registrar noted at paragraph 35 of her reasons, had been taken out by the wife because the husband had failed to pay any maintenance until the Registrar's final decision had been received. If the sale had gone through at the appropriate time, the wife would have been better off by each monthly payment. 17. Whilst Mr P suggested that this part of the Order amounted to overcompensation in that the Respondent would have received only a proportion of the sale price, we do not understand the logic of that argument. The loan had been taken out by the Respondent in the circumstances set out by the Registrar. It was perfectly open to the Registrar to determine that, had the sale occurred earlier, the loan could have been discharged. 18. The fourth head of the Order is a sum in respect of storage costs and the argument for Mr P before us was that the Respondent had not provided copy invoices or receipts. Before the Registrar, however, Mr P was not challenging the rationale for an order in respect of storage costs in principle, rather that the costs should be claimed against Benest and Syvret. His challenge to this part of the order accordingly falls away. He will, of course, be entitled to a detailed account that such sums have in fact been incurred when the claim is made against him. 19. Turning to the fifth head, the sum of £197.53 in respect of the purchase of oil for the former matrimonial home, we observe that the Order is for a specified amount. Advocate Godden quite fairly indicated that, before the Registrar, no documentary evidence had been presented. However, the Order has been pronounced and, as with any suggested issue of fact raised on appeal, this court will require much persuasion before interfering with an order below unless there was no material before the lower court to instruct the order complained of. In the present case the Registrar not only had the contentions of responsible counsel but also had a basis of regular and frequent consideration of such issues and the quality of judicial common sense which that dealing brings with it. We do not sustain this point. 20. As to the sixth head in the order, the sum of £92.50 per month in respect of life insurance policy premiums, Mr P's submissions were that, as a result of the divorce, the policy would no longer have provided benefits. This point was not raised before the Registrar and we cannot sustain it. 21. The only other complaint made by Mr P, and which we consider in our Appellate capacity, is that the order that he should pay the sum of £234.67 per month by standing order in respect of his one half share of the holiday club and after school club costs for the children was not an order open to the Registrar as a matter of law. That contention falls to be rejected quite simply. Article 25 of the 1949 Law allows the court to make "such provision as appears just with respect to the maintenance of any children of the family in relation to the parties to the marriage which is the subject of the proceedings." Here, the Registrar had indicated that the problems which the mother had faced in obtaining payment from Mr P led to the view that it would be appropriate to make such an order, albeit it might include payment in advance. In our judgment there was power to make the order and, upon the reasoning set out by the Registrar, there was an adequate basis for the order. 22. For all these reasons the appeal is

dismissed. Authorities O-v-P (Matrimonial)

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