

JERSEY / JUDGMENT

P -v- Q (Matrimonial) [2013]

JRC 148D (29 July 2013)

[2013] JRC 148D

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judgment

the registrar: 1. After a relatively short marriage of just under 6 years (from the parties' marriage to their separation), the wife petitioned for divorce on the grounds of the husband's adultery and a decree nisi of divorce was granted on 19th December, 2012. I shall continue to refer to the parties as "husband" and "wife". 2. There are two young children of the marriage, A, aged 5 and B, aged 3. 3. Until the separation, both parties and the children lived in a jointly owned property valued at £400,000 purchased in 2007 with the assistance of a mortgage from E. Two further equity release loans were taken out and secured on the property. The agreed summary of assets shows a net equity, i.e. gross value, less all three loans, and having deducted the expenses of sale, of £51,873.95. 4. The property had been purchased with the assistance of the proceeds of sale of the wife's former property, a flat, in the sum of £31,500. It is agreed that both parties contributed to their living expenses when they were together. 5. Unfortunately, the husband was made redundant from D at the end of May, 2012, and since then, the greater burden of providing for the family has been placed on the shoulders of the wife. 6. The wife has set her heart on keeping the house as a home for herself and the children. The husband would like it to be sold and the proceeds divided between them. 7. Indeed the wife has demonstrated huge determination in her efforts to find sufficient cash to keep the youngest child in nursery, so that she can go back to work as a staff nurse at F, and find sufficient funds at least to pay the mortgage interest single handed. 8. The former matrimonial home is undoubtedly the most important asset in the minds of the parties. However, they each have a car to drive and they each have a pension. Taking into account a small overdraft on his private account and a small credit on her account (in part due to a £4,000 payment to her from a charity), the totals of each parties' individual net assets are roughly similar. This takes into account bank overdrafts, but not the loans mentioned below. His figure is £81,274.63 and hers is £79,507.18. 9. There are, in addition, two loans in the husband's name:- (i) RBS Credit Card £5,661.13 (ii) G Agreement £4,431.25 £11,626.35 10. There is also, in addition, a joint loan from G, presently in the sum of £16,473.04. 11. The wife would like:- (i) That she be permitted to remain living in the former home, even better, that it be transferred into her sole name. (ii) Upon the sale of the home, that she receives the entire proceeds (this goes without saying, if it is transferred altogether into her sole name). (iii) That she is given an indemnity from the husband in respect of the joint G Loan; (iv) That, otherwise each party retain their own assets

and liabilities; (v) That the husband should pay only nominal child maintenance, in exchange for taking over the G Loan, the maintenance to be reviewed in six months; (vi) The wife should receive all income tax child allowances. 12. The husband, however, in his open position, describes it as a virtual certainty that the former home will have to be sold. This is because the G Loan must inevitably be paid. He contends that neither party can presently afford the monthly payments of £396.67. He maintains that the only resource from which it can be paid is the proceeds of sale, resulting from the sale of the home. If a judgment is taken and attachment of earnings orders made, this will lead to insufficient funds available each month to pay the E mortgage. 13. So, is it feasible for the wife and children to remain living in the home, if she alone pays the mortgage? 14. The wife's gross income in 2012, working 28 hours a week, was £28,842.41 = £2,435.53 per month. She gave evidence that she was now worked extra hours. Her net earnings in June this year were £2,525.44. In July she believed that she would have £2,519.03. These are her up to date total monthly expenses as declared very recently on her 'budget plan' submitted to E on 5th July, 2013:- Mortgage £1448.67 Rates £35 Water Rates £20.97 Insurances:- (a) House £27.63 (b) Life £37.21 (c) Car £27.40 Gas/Electricity £130 Telephone £60 TV £12 Housekeeping £450 Travel to work £30 Car running costs £50 Other costs £180 £2,508.88 15. In evidence, she insists that she can afford the mortgage and can afford to pay the bills. I am not so confident. However, I felt that Mr Haines for the husband did not prove the contrary to be true either. Certainly, she has recently received help from a charitable organisation; she has been assisted by Social Security to pay nursery fees. She has received a tax rebate and she received help from her godmother. I am not sure that, going forward, she can afford her present expenditure without further help. Mr Haines demonstrated that she actually overspent during June the sum of £662 having excluded the tax rebate (£981.63) and two one-off payments out of £1,190.13 and £114.88. 16. In her affidavit of means (filed in February

2013) she lists the joint liability for the G loan as one of her monthly expenses in the sum of £396.67. Her budget as set out in the previous paragraph only works if this is not one of her expenses. It is a joint loan, therefore each party is equally liable to repay it, but it is interesting to discover if it was incurred jointly. A letter from G dated 21st August, 2012, explains the following:- "Please find below the breakdown of the advance:- £5,378 paid by cheque to NatWest in settlement of a RBS Credit Card in the name of Mr Q; £6186.96 contra settlement of agreement number [] in the name of Mr Q; £5,435 BACS payment to Mr and Mrs Q." 17. It is only the last of these three parts of the loan which could be said to be jointly incurred. 18. What is the husband's financial position? At the moment he works for C. He did work for D, where he earned a salary of £31,824 per annum doing what he described as somewhat specialised work to do with customs compliance. Presently he earns an average of only £700 per month or £8,400 per annum, not much more than a quarter of his former salary, however, he must be given credit for at least getting remunerative employment in difficult times, and for, perhaps reluctantly, sharing his redundancy package with the wife. There was a time when he had no money at all and he went into overdraft. The wife has allowed him to sleep in the spare room at the former home, or he has slept in his car. 19. There have been occasional payments into his account

from the co-respondent of £700. I understand that the relationship is on-going, although the husband described it "on and off" and "difficult at the moment". The husband has housing qualifications and states in his affidavit of means that he hopes to find a suitable accommodation to have the children overnight, "once I find employment". It is to me interesting that he writes this phrase, having already obtained employment at C. It implies to me that he regards his present employment as temporary, until he finds something better. 20. Section 25A of the Matrimonial Causes Act states that the Court must take into account the income of the parties in the distribution of ancillary matters:- "...including in the case of earning capacity, any increase in that capacity which it would in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire." 21. I can see no reason why the husband should not, in due course, return to more remunerative employment. 22. In the meantime, I am first to accept that he is unable to afford all the things which he lists as unaffordable in his affidavit of means. However, he lists as present income needs, which presumably means those things which he would like to pay at present:- Mortgage protection premium £59.60 Mobile telephone £40 Car insurance £21 Travel (petrol) £50 Car park £30 Food/household £200 Toiletries £40 Hairdressers £10 Doctor/prescriptions £80 Loan - Car £173.25 Loan (1/2 share of Joint G) £198.33 Mail order - Next £16 Credit card repayments £119 Child maintenance from 1st March 2013 £134.07 Bank charge £12 £1,183.25 23. Clearly, the husband is unable to afford even this reduced list of expenditure at present, from his present salary of £700 per month. Some of the expenditure, like his doctor and prescriptions (he is diabetic) may be essential. He needs to travel to work from wherever he lives. I am really not sure where that is or if the co-respondent is helping him. He needs obviously to buy food. He does not actually pay child maintenance of £134.07, despite his intention to do so from 1st March. 24. In summary, this family finds itself in a disastrous financial situation. After a relatively short marriage the wife has two young children and insufficient funds. She has tried her utmost to work harder, and to keep the home for the benefit of the children. The house is not excessively large or luxurious but provides a roof over the heads of the wife and children at probable similar cost to private rental property of the same kind. 25. On balance I agree with the wife's advocate that she can just afford to stay there if she keeps up her hours as a nurse and keeps to the budget prepared for E in July. Up to now she has relied on additional support from a charitable fund and from Social Security as well as family. From now on she will have to grasp the nettle and avoid spending more than her budget. It will be hard. 26. At present, the husband has a low paid job, nowhere to live, and, together they have a joint loan neither of them can afford. The loan is unsecured, but if judgement is taken, orders may be made to arrest the wages of both parties. This could mean, in the case of the wife, that, if the interest to G was deducted by the Viscount, she would not have enough to pay the mortgage. She might, after all her worthy efforts to keep it, lose the house. In my opinion, that would be an injustice to her, especially since she only benefited from an insignificant proportion of the loan. 27. There is a way out of this impasse, but it will, to some extent, rely on the forbearance of G and the mercy of the Samedi Division of the Court in not imposing an arrest on the wife's wages, if judgement is taken. 28. For my part

it is only right, as Family Division Registrar, to divide assets and liabilities as I think fair between the parties. In the case of *Alsford-v-Boyd* (incidentally the case number of that case was 086/86, which means that divorce proceedings were filed in 1986, this case being the 86th filed that year), Sir Godfray Le Quesne QC said, in giving the judgement of the Court of Appeal, some 8 years later in March 1994:- "A judgement of the Royal Court should determine all matters at issue between the parties before it: accordingly, where the parties seek a division of their joint assets, the Court must decide the precise sums due to each of them. Thus litigation can be finalised as early as possible and the judgement can be subject to appeal." 29. Indeed, because of the failure of the Court to do precisely that earlier on in the settlement of ancillary matters, it is my recollection that the parties were still arguing about costs some 10 years after the original judgement was given. The difficulty was compounded by the fact that the husband went bankrupt after the judgement, causing the wife still to be responsible for joint debts. This had probably not been the intention of the Court of first instance, but because of its failure to foresee the bankruptcy or to make provision for the wife in that eventuality, the Court of Appeal had to attempt to repair the damage to the wife after the event. 30. In this case, it seems clear to me that the wife should have the house, for herself and the children. She can't afford to do that if she continues to be responsible for the G joint loan. If I allocate the debt to be repaid by the husband, she will still run the risk of G pursuing her for repayment, because it is a joint liability. However, it seems to me just to foresee that eventuality and to say that, as between the parties before me, the responsibility for the repayment of the joint G loan of £16,473 is the husband's. 31. I have faith in his ability to get back on his feet and to obtain better employment in due course. In the meantime, he will pay only nominal child maintenance. I can see no point in specifying a time, as suggested by the wife of 6 months, for a review of child maintenance, because the husband's financial recovery will depend on whether or when he is able to get a better paid job. The wife can retain whatever tax advantages to which she may be entitled. 32. Finally, I should make it clear that the wife can have the house transferred into her sole name, not only have the right to live there until the children have grown up. Not only is this acceptable to E, it is the preferred option of the husband, who may thereby no longer be ultimately responsible for the secured loans, even if his names remain on the mortgage documents as a debtor. This means that she will enjoy the present equity of just under £52,000, but have the responsibility of the mortgage, subject to the risks I have mentioned, not only interest payments but repayment of capital, entirely on her shoulders. In these circumstances, I can see no injustice to the husband, if the wife enjoys any profit, if and when the time comes to sell. *Authorities Matrimonial Causes Act 1973. Alsford-v-Boyd 086/86. Page Last Updated: 03 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII*

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