

JERSEY / JUDGMENT

PS v C [2002] JRC 141 (22 July 2002)

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judgment

the COMMISSIONER: 1. This is an application for interim maintenance by a petitioner wife for herself and the four children of the marriage pending a full hearing in October. The amount claimed might well be a source of astonishment to the housewife on the bus to Gorey Village, but this was no ordinary marriage in financial terms. The parties were married in Jersey in 1973. There are four children of the marriage, R is 25, M is 21, H is 15 and J is 13. R is a trainee chartered accountant, living in a rented flat in London. He is financially supported by his parents. M is in his last year at university and is taking a gap year after graduation in September before going on to Law School. He is fully financially supported by his parents. H is at Canford School (on the mainland) until July 2005 when she hopes to go to university. J is at St. Michael's School, but has a place at Canford School. 2. The husband is by any standards a successful accountant. At one stage we were told he was earning in the region of one million pounds a year. He is a partner in the firm of C and the family home is a substantial property, 'W'. C has offices in Geneva and London as well as in Jersey. There is a family holding company WH Limited. It was customary for the parties to charge expenses to the business. These charges were often high. The ethos seemed to be that the wife ran the home and attended to domestic finances while the husband worked very successfully as an accountant. Both clearly contributed to the family's well being. There were numerous family holidays, skiing at Meribel, to the Caribbean, and to Portugal. Something in the region of £20,000 per month. During 2001 the husband paid the wife (up to October) the total sum of £315,510. She also ran an overdraft each month of as much as £30,000. 3. The situation would no doubt have continued but that the husband committed adultery and on 16th January 2002, the wife obtained a decree nisi. The wife has care and control of the minor children and the parties have joint custody. The husband has reasonable access to H and J but J, being at a most vulnerable age, is too upset by the breakdown of the marriage and is not prepared to see her father. 4. The wife seeks interim maintenance for herself and the four children of the marriage at the rate of £25,000 per month. 5. Before we proceed further to consider the amount that should be paid (the wife is seeking to have that sum backdated by way of reimbursement for any shortfall from the date of petition) we should say that she is not at this stage pressing for an interim lump sum award. 6. The parties during the course of the short hearing before us (and we are deeply indebted to Advocate Fitz and Advocate Robinson for the clarity and succinctness of their addresses to us) agreed that the husband would meet reasonable repairs to 'W' when he received estimates. We feel that will take some of the heat and passion out

of what is overall an emotional and deeply contested matter. 7. Let us examine the law. As is said in Rayden & Jackson's Law and Practice in Divorce and Family Matters (17th ed'n) there is really no hard and fast rule. At 21.3 the authors say this:- "21.3 Maintenance pending suit: jurisdiction. On a petition for divorce, nullity of marriage or judicial separation (the 'suit') the Court may make an order for maintenance pending suit and the statute in terms provides that this means an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit as the Court thinks reasonable. This means that during the pendency of a suit for judicial separation, that is, before the suit is heard, and, in the case of divorce or nullity, before it is heard or after a decree nisi has been granted but before it has been made absolute, the Court may order one spouse to pay to the other maintenance pending suit. This is the only form of financial provision which can be ordered until a decree nisi of divorce or nullity or a decree of judicial separation is pronounced". 8. Of course Article 30(a) of the Matrimonial Causes (Jersey) Law 1949 is not in the same terms. It reads - ".. on any petition for divorce The Court may, if it thinks fit, by interim order direct one party to the marriage to pay to the other party of the marriage such sums for maintenance and support of that other party as the Court thinks just, and any such interim order shall remain in force until it is rescinded by the Court or until the court makes a definitive order in respect thereof or until the relief sought in the petition is refused". We find that although the basic intention may be the same there is a wider ambit within article 30A although applications, we were told, ordinarily concern payments in the sense of periodic payments. We can see no reason why we should not place a liberal construction to the words "maintenance and support". 9. There is, however, a further problem facing the wife. There is a passage in Butterworth's Family Law Service (2000) at 718 which says - "Experience has also shown that the courts can be sympathetic to the argument that, where the respondent has sufficient income to fund a maintenance pending suit order, it may be appropriate to make such an order in order to avoid the applicant's having to service her day to day needs by resorting to matrimonial capital assets which ought to be preserved pending the making of the final ancillary relief orders". 10. The further problem is, of course, that the wife has no access to capital assets. These are all under the control of the husband. The affidavit evidence gives support to the argument that the wife is having financial difficulty at this time. 11. When the wife discovered that she was the principal shareholder of WH there was what can best be described as some attempt by the wife to seize control of the company. She eventually removed the husband as a director but found that the bank account had been reduced to a nominal amount and the share portfolio is deadlocked because any share dealing requires the consent of both the parties. 12. During the course of the hearing before us Miss Fitz candidly (and helpfully) agreed that at times there had been a breakdown of communication. It is clear to us that as this matter has progressed there has been a hardening of attitudes by each party. 13. The husband does not think it necessary to increase the maintenance from £12,850 per month to £25,000 per month. It is not surprising that there have been upsets and bitter recrimination. The husband says that when J goes to Canford in September the petitioner will be alone in a house which has six bedrooms, two reception rooms, three bathrooms an entrance hall, two dining rooms, a kitchen, a cloakroom, a games room, a

treble garage, a tennis court, a landscaped garden, a store-room and a large barn. She will have at her disposal a cleaner and a gardener whose salaries amount to £33,161. This is not the husband's assessment of £28,147 per annum. The wife is living in that house because, until the finalisation of the ancillary matters she has no other choice. Some concession has been made to meet extraordinary outgoings on the property, there will still be general maintenance. We must ensure that she has sufficient money to discharge day to day outgoings commensurate with such a large property and generally to keep a roof over her head until the final adjustments are made. It is no doubt true that this application is made in uncertain financial times. The husband argues that because of the September 11th knock-on effects and with the uncertainty of Jersey as a finance centre, the profits of the business have decreased. The partnership has taken in two new equity partners and has opened offices in Geneva and London. However we look at it, he still has a sizeable income. The wife may have to be more economical than hitherto. We still have to look at the wife's needs, the needs of the children and the ability of the husband to provide for those needs. It may be that unless the answer to the questionnaire satisfies the wife's retained accountants - Deloitte Touche - there will be no possibility of meeting the October dates. That would be a tragic result and will only exacerbate the animosity between the parties. 14. The affidavit evidence before us indicates that the wife is in financial difficulty at the present time. She is entirely reliant on the funding of the husband. We have little doubt that until matters are finally resolved the wife should not have to go cap in hand to the husband, particularly to pay the cost of running repairs and renewals to the former matrimonial home. She is entitled to visit the children and to go on holiday with the children should the need arise. 15. In due course of time the potential earning capacity of the wife may well be a matter for consideration. This consideration does not arise in the present short-term situation. 16. The wife says that the husband has only paid £10,000 on account of legal costs. She feels financially embarrassed. 17. We agree with the wife that the house does not cost less to maintain because he has moved out. 18. We have given considerable thought to the matter. We will award £20,000 per month to the wife. This should enable her to cope with the overall expenditure for herself and the children but it may be that a tightening of the purse strings may have to govern holiday destinations during this interim period. We make the award from the date of the issue of the summons. Authorities. Rayden & Jackson's Law and Practice in Divorce and Family Matters (17th ed'n): 21.3. Matrimonial Causes (Jersey) Law 1949: Article 30(a). Butterworth's Family Law Service (2000): p.718. Page Last Updated: 28 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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