

JERSEY / JUDGMENT

Q -v- R (Matrimonial) [2017]

JRC 123 (01 August 2017)

[2017] JRC 123

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judgment

the bailiff: 1. This judgment is concerned with two directions requested by the Petitioner in the ongoing proceedings between her and the Respondent. The Petitioner brought a summons seeking further financial disclosure, and proposed a list of fourteen draft directions. The matter came before me as a single judge on 17 th July and judgment was given that day in relation to twelve of those draft directions. This judgment concerns the remaining two directions where judgment was reserved. 2. The parties were married and had three children. In or about 2009, difficulties arose in the marriage and divorce proceedings were commenced. The marriage has now been dissolved. On 27 th January, 2011, the then acting Family Registrar made an order by consent dealing with the various financial matters in issue between them. The consent order opens with this language:- "Upon the Petitioner and the Respondent agreeing that the terms of this order are accepted in full and final satisfaction of all claims for income, capital (including pension rights), property and of any other financial application or ancillary application whatsoever (save in relation to child and spousal maintenance) which either may be entitled to bring against the other, or the estate of the other arising in relation to their marriage now or at any time in the future, in any jurisdiction howsoever arising ..." 3. What followed then were a series of provisions which set out a clean break in relation to the various capital claims, and provisions for spousal and child maintenance. As to spousal maintenance, the review provisions were as follows:- "8. The spousal maintenance payments detailed in paragraph 7 above shall be paid on a joint lives basis and shall cease to be payable upon the happening of whichever shall be the sooner of the following trigger events:

- (a) The Petitioner's remarriage; or
 - (b) The Petitioner's co-habitation with a man for a period in excess of six months;
9. The spousal maintenance payments detailed in paragraph 7 above shall be subject to a review upon either:
- (a) The retirement of either party; or

- (b) In the event of a material change in circumstances of either party. For the avoidance of doubt, there shall not be a review in the event that the Petitioner obtains employment of any nature;" 4. I note that in so far as the capital settlement was concerned, the former joint matrimonial home had been sold and the net proceeds of sale held on escrow. I note also that the parties seem to have had a joint interest of some kind in a property described as "Property A" and that the Petitioner transferred her interest, whatever that might be, in the Property A to the Respondent. I note also that a substantial capital sum was paid by the Respondent to the Petitioner in settlement of her capital claims. Finally I note that the consent order gave effect to the whole of the agreement on ancillary matters, which therefore covered not only capital and maintenance matters, but also insurance, pension, the Respondent's business and costs. 5. As the consent order provided, the spousal maintenance has been increased since 2011 in accordance with increases in the retail prices index and has been paid up to date, albeit the Respondent apparently did not set up a standing order for spousal maintenance which the consent order had required. Since the date of the consent order, it appears that the three children of the parties have completed their university studies, the cost of which the Respondent asserts has been largely or wholly met by him, although the Petitioner does not fully accept that. The present debate does not however concern who has paid the children's university fees. That is a relevant factor only because the fact that they have completed their studies seems to suggest that the financial position of both parties will have been improved. On 18 th May, 2016, the Respondent filed an application for a review of spousal maintenance. His application was later supported by an affidavit sworn by him on 30 th June, 2016. Although it is not entirely clear, the application for a review of spousal maintenance appears to be based upon the Respondent's retirement; or perhaps upon the basis of a material change in circumstances which includes early retirement. At present it is not entirely clear from the written material which is before the Court. 6. The Court's jurisdiction to make a variation order arises under Article 33 of the Matrimonial Causes (Jersey) Law 1949 ("the Law") which is in these terms:- "Power to vary orders (1) The court may from time to time discharge or vary any order made under Article .., 27 ... or suspend any of the provisions thereof temporarily or revive the operation of any of the provisions so suspended. (2) In exercising the powers conferred by this Article, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage." 7. It would seem therefore that once the application for a review of spousal maintenance comes before the Court, regard is to be had to "all the circumstance of the case". 8. Those circumstances include the deal which has been done as is reflected in the consent order as well as the circumstances which apply at the date the Court is considering its review. 9. That then is the background to the Respondent's application brought in May 2016 for a review of spousal maintenance. In accordance with standard practice on 3 rd June, 2016, the Family Registrar ordered the parties to file affidavits setting out their current and future income and expenditure, capital position and the effect of the proposed retirement and remarriage, in the case of the Respondent, on his financial position. It was then ordered that questionnaires be exchanged and filed. This has duly happened, and it is because the Petitioner is dissatisfied with the

Respondent's responses to the schedule of deficiencies that the present summons has been issued. 10. Perhaps unhelpfully, the Respondent's affidavit sworn in support on 30 th June covers a wide range of material. He asserts that the Petitioner received a lump sum payment in order to purchase a property in Jersey in which she could live, possibly with the children, but although she has purchased such a property, she does not live in it. Instead she leases the property to a third party which the Respondent considers must provide her with a significant income each month not anticipated at the time of the consent order. He asserts that the Petitioner is living in a property in the United Kingdom, the detail of which was undisclosed at the time of the divorce proceedings. The affidavit then deals with the Respondent's current and future income and expenditure position, the capital position and the effect of his proposed retirement and re-marriage on his financial position, all in accordance with the Act of the Registrar of the Family Division dated 3 rd June, 2016. 11. Insofar as the Respondent's retirement is concerned, his affidavit discloses that although at that time working five days a week for his pharmacy business, in respect of which he was and is a 50% shareholder (with his brother holding the other 50%), he was expecting by the end of 2016 to reduce his working hours from five to two days a week initially and to retire completely within a year or so. As a result, it is said that his salary will fall from approximately £100,000 per annum to approximately £55,000 per annum. He will retain his shares in the pharmacy business, and expects as a result to derive approximately £85,000 per annum by way of dividends. 12. In her submissions on behalf of the Respondent, Advocate Heath confirmed that her client was not seeking to have the consent order set aside for non-disclosure in relation to the English property in which the Petitioner lives, and which is apparently registered in her name. For the avoidance of doubt, the Petitioner's case in respect of that property appears to be that it is actually held by her in trust for her mother, to whom she pays rent. I do not need to resolve that question for present purposes. I say that because Advocate Heath has confirmed that her client does not seek to have the consent order set aside for non-disclosure. There may be a question as to whether it is even relevant at the final hearing, because the order for spousal maintenance payments does not seem to me to turn upon the income needs of the Petitioner. Paragraph 8 of the consent order provides for spousal maintenance to cease to be payable in the event of the Petitioner's remarriage or co-habitation with a man for a period in excess of six months, and by paragraph 9, it is made plain that the obtaining by the Petitioner of employment of any kind (which no doubt could include a very high paying job) will not amount to a material change of circumstances. Those two features are confirmed in paragraph 10 which provides that Petitioner and Respondent shall retain all other assets then held in their names or jointly with a third party, save as set out in the terms of the consent order. It seems to me to follow that under the consent order whether the English property is held on trust for the Petitioner's mother or whether it belongs to the Petitioner, and the consequent effect on the ownership of the Jersey property by the Petitioner and the rental income presently obtained from it, were immaterial to the spousal maintenance award and indeed may not be relevant features of the present application. 13. The general thrust of the Respondent's objections to the Petitioner's schedule of deficiencies was that the enquiries which the Petitioner was

making were disproportionate and irrelevant. So in respect of one of the responses, the Respondent contended that "the issue was not how much the Respondent can afford to pay but how much the Petitioner reasonable [sic] needs in all the circumstances". For the reasons I have given above, I am not presently convinced that that is necessarily the issue at all, but that is for the final hearing. Clearly today arguments around proportionality and relevance should be considered, and it is these particular points to which I now turn. 14. The two directions in question are as follows:- "2. Details of the Respondent's new wife's income (from every source), including, but not limited to, income from any paid employment, child and/or spousal maintenance and any dividend received (or likely to be received) from her shares in her ex-husband's business (or any other business).

11. A response to question 42 of the Petitioner's schedule of deficiencies." 15. The reference to question 42 of the schedule of deficiencies is to a question from the Petitioner requesting an explanation of a number of entries in the Respondent's bank statements in respect of his account at HSBC during the period 28 th April, 2016, to 12 th August, 2016. In summary, there were total cash movements of approximately £149,000, some £85,000 coming in and some £64,000 going out. It was the detail of these credits and debits to the account that the Petitioner sought, and which were contended by the Respondent to be disproportionate and unreasonable. 16. In his submissions as to draft direction 2, Advocate Orchard relied upon the case of R v V

[1994] JLR Notes 10B. In that case, the Court recognised that the remarriage of a husband against whom an order for periodic payments had been made does not of itself entitle him to termination or reduction of the amount of the order, although the Court must recognise that his means might increase or decrease on remarriage. The Court also recognised that whilst the second wife's income could not properly be taken into account as part of the husband's income for providing for his former family, it could be taken into account in determining the net effect, when calculating the residual incomes of the respective households after payment by the husband of a hypothetical order. The Court could assume that a second wife would contribute to the outgoings of the new household for this purpose. It was on the basis of this authority that the Petitioner contended she was entitled to details of the Respondent's new wife's income from every source. 17. By contrast, Advocate Heath submitted on behalf of the Respondent that his income needs will not be relevant to the Court's consideration of his application. She submitted that the Petitioner did not need answers to whether the Respondent would be able to meet his needs in the future, and the request was simply inflammatory, much of the detail being sought relating to expense incurred by the Respondent on his remarriage - a honeymoon, wedding presents and so on. At the heart of Advocate Heath's submissions lay the proposition that paragraph 9 of the consent order enabled a review of spousal maintenance upon the retirement of either party. If there was to be a review, the Court was then entitled to take into account the fact of remarriage and the obligations which the Respondent had to his second wife - and indeed the Respondent had said in his affidavit that:- "I will be supporting B [his second wife] and her two children financially as B has no

earned income. This means that I will be meeting all family expenses of the marriage, which are set out below, including general household expenses, mortgages and personal expenses." 18. Later in his affidavit he said: "I plan to retire fully by the year end and this would take my salary down to nil, thus further impacting upon my income". 19. I have to confess that I am not entirely clear that I understand the arguments which will be advanced by the Respondent at the final hearing of his application. His affidavit seems to raise a number of points which put in issue the extent of his income and the effective reduction of it on his retirement. It appears that the Respondent will be submitting to the Court that although his income needs are not relevant, the Court should have regard to the reduced income not by way of taking into account his needs but instead on the grounds of fairness in the allocation of the available income. 20. Given that Article 33 of the Law provides that in exercising its powers to vary an order made under Article 27 (spousal maintenance) the Court shall have regard to all the circumstances of the case, it seems strange that Advocate Heath should make the submission that one circumstance - the needs of the Respondent - are not to be taken into account. That submission is also inconsistent as has been indicated with the content of the Respondent's affidavit, which describes his outgoings and the support which he is providing to his second wife and her two children. It is therefore essential that Advocate Heath clarifies on the part of the Respondent precisely what his case is. This should be done in open correspondence with the Petitioner's advocate. On considering the application for a review of maintenance, either the Court is to take into account, as one of the circumstances of the case, the income needs of the Respondent, or it is not to do so. The Law allows this to be taken into account. If it is to be taken into account, then it would seem to me to follow that full enquiry would have to be made into the income needs of the Respondent as well as of the Petitioner and that one is in effect re-arguing all those parts of the consent order which go to the question of spousal maintenance. On the other hand, if the Court is to be restricted as to the circumstances it takes into account, then it will not take into account the income needs of the Respondent, his second wife or his new family and, whatever needs those are, they will be assumed not to exist. 21. In the light of Advocate Heath's submissions, it seems to me that details of the Respondent's new wife's income are not relevant to the issues which the Court will be considering. Similarly, the payments into and out of the Respondent's bank account which are the subject of the draft direction 11 and question 42 of the Petitioner's schedule of deficiencies are also not relevant. The Court at the hearing will be determining a relatively narrow issue as to whether it is fair to reduce the spousal maintenance payments because the Respondent has retired, notwithstanding that retirement has taken place at the relatively early age of 54 having regard to his income but not his income needs. That question will therefore turn on the extent to which the Court should take the view that the Petitioner has a legitimate interest in spousal maintenance continuing at the rate originally agreed, subject to increase in accordance with the Retail Prices Index, until such time as the Respondent could reasonably have been expected to retire. 22. The submission of Advocate Heath which leads to this conclusion, namely that the Respondent's income needs will not be relevant, was made at the end of the hearing

after the Court had made other draft directions requiring the production of financial information. If, however, I am wrong in my understanding of the arguments which the Respondent wishes to put before the Court, then the overall income available to him for his own household may be relevant and the question of draft directions 2 and 11 will need to be revisited. For the time being, the application for those directions is refused, but the Respondent should be aware that the application may be renewed if the nature of his submissions before the Royal Court changes. This is a matter for him, but the sooner there is clarification of his position the better - else there may be an adverse costs order and/or further delay. 23. By agreement of the parties, the costs of this application are left over for determination at the hearing of the Respondent's substantive application for a review of spousal maintenance. Authorities Matrimonial Causes (Jersey) Law 1949. R v V

[1994] JLR Notes 10B. Page Last Updated: 07 Aug 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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