

JERSEY / JUDGMENT

S v G [2003] JRC 091A (11 June 2003)

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JUDGMENT

THE REGISTRAR: 1. The parties in this case were married in 1991. They are now divorced, the decree nisi having been pronounced on the 13 th November, 2002, but the decree is not yet absolute. There remain some substantial issues to resolve. 2. The parties have, in fact, been living separately since December 2000 although, for some time, it has been a marriage with its ups and downs. For example, in 1995, the wife left the matrimonial home for 6 weeks with R, the son of her first marriage. Since 1995, the parties have maintained separate bank accounts. There have been various court proceedings to do with the marriage. 3. There are 2 children of the marriage, E was born in 1991 and is 11; T was born in 1993 and is 10. They are at school in Jersey. They live with their mother. Maintenance for them has not been agreed. T has a problem with his eyes, which means that he needs special attention as he grows up, and which may permanently affect him in years to come. 4. The former matrimonial home is a substantial property with 3 bedrooms. It is variously valued at £475,000 or £440,000 by different valuers. 5. The petitioner (to whom I shall refer as "the husband" despite the divorce) has purchased another property. It has 2 bedrooms. It is semi-detached and is valued at £288,000. 6. Both parties are successful bankers, and as such, receive substantial salaries. At the moment, the husband is on the point of commencing a secondment posting to a Department of the States of Jersey, which will affect his terms of employment with the bank. The wife (the respondent), at one time, was a bank director in another bank. Having resigned from that position, she has now been re-employed (by the same bank) and continues to receive a salary, together with certain benefits. 7. Both parties will benefit from a number of pensions upon their retirement. In this connection, it is important to note that the wife is nearly 50 years old and the husband 44. The present Cash Equivalent Transfer values of the wife's pensions are £161,117, of the husband's £198,048. The values of the pensions for both parties will increase annually until retirement, possibly in different ways and according to the type of scheme, but, nevertheless, extra years of contribution, will make enormous difference to the final value. One of the wife's pensions appears to have increased in value by 12% in one year. 8. As I have said, maintenance for the children has not been agreed, but pending settlement of the matter by the Court, the husband is paying the mortgage on the former matrimonial home. In January 1993, this amounted to £994 per month, of which the husband has considered "£600 has been effectively allocated as maintenance for the children". 9. So, what are the issues for me to decide? 10. First, it seems to me, I have to decide on a rate of maintenance to be paid in respect of the children of the marriage. The rate decided upon will have a bearing on

whether the wife can remain living in the former matrimonial home. However, the rate will not depend on that and will be decided upon; (a) partially on the informal "tariff" which I apply in assessing maintenance and (b) partly using the UK Child Support Agency rates of maintenance as a guide. The husband would like his access visits to the children to be taken into account, together with his financial contributions towards the children. The wife contests the amount of his contribution and the extent of his access. 11. Secondly, I have to decide upon what terms the former matrimonial home should be transferred to the wife. The parties have failed to agree (a) what lump sum(s) should be payable to the wife for the transfer and, if so, when, (b) how much should be paid to her upon its eventual sale (if any) and (c) what obligation (if any) there should be placed upon the wife to sell it, e.g. when the children are grown up. The husband would clearly prefer an early settlement of his financial interest in the home. 12. Thirdly, there are certain peripheral issues e.g. whether the wife should be entitled to claim income tax child relief. Maintenance 13. My "tariff" for child maintenance starts at about £55 - £60 per week per child in an average family dependent on an average wage earner, possibly the wife having a part-time occupation as well, making a total of £400 - £500 per week with average expenses. It is interesting to note that this tariff is roughly in line with the Child Support Agency figures outlined in "At a Glance" tables available from the Family Law Bar Association. Advocate Whittaker (for the wife) calculated the husband's net weekly earnings by taking his weekly salary and deducting tax, and referred me to the band in the tables where the payer earns between £1,200 and £1,300 per week net. The rate suggested is maintenance at the rate of £240 - £260 per week for two children (£120 - £130 each child). Advocate Dorey (for the husband) referred me to the band where the payer earns £1,100 per week. From gross earnings of the husband, she had not only deducted tax, but also deducted pension contributions and social security contributions, making a total weekly net wage of £1,129. There was surprisingly little difference in the arguments of both advocates, save that Advocate Whittaker pointed to the need of the wife to make ends meet and the fact that maintenance was necessary for her to make good her income deficit. Advocate Dorey argued in favour of the further reduction of maintenance, bearing in mind the contributions made by the husband during access and his payment of other expenses e.g. clothing and presents and taking the children on holiday. As I say, the extent of his extra contributions and the extent of his access was contested. Whatever the result of the maintenance argument, it seems to me that school fees and possible extra expenses associated with schooling, e.g. school trips and activities should be considered separately if the need should arise. As far as maintenance is concerned, it seems to me to be beyond reproach if I choose the lower of the bands chosen by Advocate Whittaker, which, at the same time, meets the criteria chosen by Advocate Dorey. The band is the £1,200 per week band, which is, surely appropriate for income between £1,100 and £1,200. Weekly maintenance for the 2 children will, therefore, be £120 per week per child. This is equivalent to £6,240 per annum or £12,480 for both children. I am not prepared to reduce this amount in accordance with the amount of access enjoyed by the husband or other contributions by him. I would like to endorse the following passage from the Solicitor's Family Law Association comment on the new UK CSA formula:- "Unfortunately, the direct relationship between contact and financial support may generate more conflict between parents over contact. Rather than contact arrangements being designed in the interests of the child, there may be a pressure to increase or

decrease contact for financial

reasons.

This would not be in the interests of the child and would be a backward step when parents are increasingly willing to negotiate agreements between themselves. While there are, of course, costs to the non-resident parent in having a child stay for periods of time, there is no corresponding reduction in the costs of the parent with care in running the household which is the child's main home and buying their clothes etc. This would result in financial hardship for the household". I am not saying that maintenance for children should be tied rigidly to the UK formula, but it does provide a useful guide, certainly in cases which require a rate of maintenance well above the £55 to £60 per week tariff, to which I have referred. In the lower rates, it is more practical to attribute the maintenance to a share of the family budget. However, when the rate of maintenance approaches or exceeds £100 per week, the assessment is more difficult to achieve in a fair manner. Reference to a table of figures makes sense, at least as a guide. Terms of transfer of matrimonial home to the wife 14. There are 2 letters of some importance from which it is possible to define where the parties are unable to agree these terms. 15. First there is the letter dated 30th May addressed to Advocate Dorey by Advocate Whittaker:- "Dear Advocate Dorey Re: S -v- S I am instructed by Mrs S to put forward an open offer in settlement of ancillary matters as follows:- 1. That the house be transferred to Mrs S at her cost. 2. That in consideration for the sale and in full and final settlement of all matters between the parties that she pay to him the sum of £25,000, payable four days after passing of the contract, together with five per cent of the gross sale price of the property when sold or £50,000, whichever is the lower as at the date of sale. The property should not be sold until both children are out of full-time education or at Mrs S's earlier election. 3. Maintenance be payable in respect of each of the two children at the rate of £8,500 per child per annum until such time as each child shall have completed his or her education, with an annual Retail Price Index rise. 4. Each party should pay or her own costs in connection with ancillary matters. In the alternative Mrs S would be prepared to pay ten per cent of the sale price of the property upon the above terms together with a reduced starting figure for maintenance of £7,900 per annum. The letter will be produced to the Registrar upon making open submissions on Monday. Yours sincerely Advocate Mrs. M. E. Whittaker" 16. Secondly, in response there is the letter dated the same day from Advocate Dorey to Advocate Whittaker:- "Dear Advocate Whittaker Your Client: Mrs S Our Client: Mr S I refer to your fax of 29 th May 2003 and your open letter of 30 th May 2003. The offer as set out in your open letter is not accepted. I have instructions to make the following counter offer, again by way of an open letter. 1. The house be transferred to Mrs S at her cost. 2. That in consideration for the sale and in full and final settlement of all matters between the parties, she pay to Mr S:- (a) The sum of £40,000.00 payable four days after passing of the contract; (b) Upon the sale of the property the percentage of the gross sale proceeds as shall then represent the percentage that £55,000 bears to the average of the two present valuations (namely £457,500) i.e. 12.00%. (c) There is a caveat to the extent that the gross sale price must be at a market value. (d) The property shall be sold when the youngest child reaches the age of 18 or both children have completed their secondary

education, whichever is the earlier, or at Mrs S's earlier election. It is the view that your client could raise sufficient monies from her own resources or by borrowing the further £40,000.00 1. As an alternative to points 1 and 2, and in full and final settlement of all matters between the parties the property be sold forthwith, the mortgage be repaid, Mr S be paid £80,000 and the balance to go to your client. 2. Maintenance will be paid in respect of each of the two children at the rate of £4,000.00 per child per annum until such time as each child shall have completed his or her secondary education with an annual Retail Price Index rise. It should be noted that my client has the children to stay with him every other weekend and four weeks a year and in addition purchases various items of clothing for them. 3. Each party shall pay his or her own costs in connection with ancillary matters. Can you please confirm whether or not the above offer is accepted. If it is not then the letter will be produced to the Registrar on Monday. Yours sincerely Advocate C J Dorey" 17. It is a proposal made by both parties that the home be transferred into the sole name of the wife. It is confusing whether an eventual sale of the property is envisaged as being part of the Court order. Certainly, payments to the husband in consideration for the transfer are envisaged. It seems to me that an eventual sale will be for the wife to decide upon in the event that she should have difficulty in paying the second of the 2 payments when the children have grown up, or, for any other reason that she wishes to realise her capital. However, I do not intend to make it part of any order that the house be sold. 18. What is crucial is the value to be placed on the property. 19. Advocate Whittaker would prefer me to base my decision on the lower of the 2 valuations. I am certain that this would be wrong. In the case of S -v- W (9 th June 1999 Jersey Unreported; [1999/103B], I adopted the mid point between 2 valuations on certain property, and I can see no reason not to do so in this case also. Frequently, a valuer is chosen by both parties to value the former matrimonial home, and his valuation is accepted by both parties. In this situation, where we have 2 valuations on the same property by different valuers and I have no reason to doubt the bona fide credentials of both valuers, it would be manifestly unfair to choose one valuation in preference to the other. The mid point between the valuations is £457,500. This is the figure which I will adopt. If there has to be a sale, fees will be incurred and Advocate Dorey very fairly deducted 2½%. If one, thereafter, deducts the mortgage, the net equity figure is £313,366. It remains to decide what payment or payments the wife must make to the husband in order to achieve a fair settlement. 20. The Matrimonial Causes Act, 1973 , Section 55A checklist is well-known. In this case, I must, in particular, take account of:- · The parties' ages · Their income and earning potential · Their pension provisions and the difference between them · Property and other financial resources, including the contributions towards those assets · Their contributions to the marriage generally, financial and otherwise · The respective needs of the parties. 21. (a) The parties' ages: The parties' ages is specially relevant because of the wife's ability to fund her own mortgage. It is contended by the husband that she could continue paying a mortgage until the age of 70, but, curiously his own mortgage is arranged until the age of 60, being "normal" (retirement age. In any event, if she is expected to fund a mortgage of her own, it will be more expensive, in that she will have to repay more and sooner than would the husband. At the same time she has a commitment to the children which might affect her earnings, her basic salary at the moment being less than 75% of his. See also the relevance of the parties' difference in age with regard to their pensions. (b) Income and Earning

Capacity Both parties are capable professional people. The wife was a director of her bank until her resignation in 1998, when she applied to the Court to return to Ireland with the children including her son Robert her son, by her first marriage. There was a dispute about whether or not the husband at one time gave his consent to the move to Ireland. In any event the parties reconciled shortly after and both continued to live in Jersey. One wonders whether she could ever have maintained both her high salary and continued to care for the children. The husband's move to a secondment posting to the States of Jersey raises certain issues. It was suggested by Advocate Whittaker that the husband's overall reduction in earnings could have been conveniently arranged at this time when ancillary matters were being sorted out. I think not. His evidence was that promotion was not available to him and this posting was a means of broadening his experience. His future at the bank was not guaranteed and redundancy was always a possibility. In my opinion, neither party's salary nor income potential is any more secure than the other. (c) The Pensions There was a dispute as to whether the "At a Glance" tables calculation of pension loss figures can be appropriately applied in Jersey. Advocate Dorey argues they are inappropriate because the CETV calculation of pension value (as set out in the case of Southern (née Brownbill) -v- Southern

[1999] JLR94 JJ) is now different to the method used in the UK since the introduction of the new section 24B of the Matrimonial Causes Act 1973 , dealing specifically with pension "splitting". I am sympathetic to that argument, but, in Jersey, where family lawyers are continuously looking for guidance from UK state and precedent, it does no harm at least to look at the result of applying the tables. The tables place the figure of £63,086.36 on the wife's last pension and £57,832 on the husband's. However, as Mrs Whittaker said, one has to factor in the parties' life expectancy. The husband's pension will continue to increase in value and at a greater rate than the wife's due to their difference in age. The "loss difference" (the husband's "loss" less the wife's "loss") amounts to some £5,000 only. The greater difference is apparent from the CETV of the pensions. His has a CETV of some £198,000, hers, some £161,000, a difference of £37,000. (d) Property and Other Financial Resources. Having decided to take the mid point value of the former matrimonial home, I must bear in mind that the wife:- (i) contributed £75,000 towards the purchase and "earmarked" a further £25,000 for repairs, which however did not get spent on repairs, just got "swallowed up". (ii) for their first year together, met all the husband's living expenses as well as her own. The husband contends that he sold a flat at a loss in order to join forces with the wife. I find it difficult to make any allowances for this perceived loss. The sale may have caused a financial loss to the husband, but, at the same time, he benefited greatly during the first year of marriage from his financial dependence on the wife. The husband continued to pay the mortgage after they separated their bank accounts in 1995. He now has his own property. Unlike the former matrimonial home, it is described being inadequate for having the children to stay and in need of substantial repair. The former matrimonial home is described as being excessive for the wife's needs. Whatever the truth of these opinions, the husband is having to fund the mortgages on both properties, which he finds is a drain on his resources. The bank has requested him to reduce the mortgage

on the new property. (e) Contributions to the Marriage The wife's contributions are certainly impressive in terms of her ability to pursue a career at the same time as caring for the children, which including a child of her former marriage. I have to ask whether her special ability to do both, without the normal assistance of child carers or cleaners is worthy of special recognition. I do not think so. In *Lambert -v- Lambert*

[2003] 1 FLR 139 Thorpe LJ said:- "For the present, given the infinite variety of fact and circumstances, I propose to mark time on a cautious acknowledgement that special contribution remains a legitimate possibility but only in exceptional circumstances. It would be both futile and dangerous to even attempt to speculate on the boundaries of the exceptional. In the course of argument I suggest that it might more readily be found in the generating force behind the fortune rather than in the mere product itself. A number of hypothetical examples were canvassed ranging from the creative artist via the superstar footballer to the inventive genius who not only creates but also develops some universal aid or prescription. All that seems to me to be more safely left to future case by case exploration." In this connection, the wife could be described as "thrifty", having paid off all her debts and now achieved a healthy bank balance. At the same time, the husband, despite his higher income has no savings and generally pays his tax bill from his annual bonus. (f) The needs of the Parties The wife, when she takes over the mortgage on the former matrimonial home, will need extra funds. However, she also, needs to provide a roof over the children's heads and to ensure that she can do so at least until they have grown up. The husband needs some capital now in order to repay a capital sum to the bank and thereafter fund his own mortgage, the children's maintenance and repairs to his property. In an ideal world, he might like his capital now, but, it seems to me that, hearing in mind his high salary, a capital payment to him in the fullness of time when the children are grown up will suffice his needs. I therefore reject the suggestion of a "clean break" at this stage. I appreciate the argument that the children are not "very young" and that families do not, necessarily suffer in moving home. It is indeed true to say that the wife applied to relocate to Ireland with the children when they were younger. On balance, however, it seems to me that the potential benefit to the husband could not be justified taking into account the relatively small financial benefit to him in relation to the general upheaval it would come to the wife and the children. It was one thing facing a move to Ireland when she believed she had to get away from Jersey. It is quite another when she intends to stay and make a go of her life here both working at the bank and caring for the 2 children of the marriage at the same time.

Conclusion

22. Crucial to the decision is the value of the former matrimonial home. This I calculate as follows:- Mid point between valuations £457,500 Less 2½% approx in event of sale £11,438 Less mortgage £132,696 £313,366 The wife's total assets, excluding the home, are worth £187,806. The husband's total assets, excluding the home, are worth £271,586. At present day values, the wife proposes that she keep the home, gives the husband: now:- £25,000 and later

£50,000 Total £75,000 At present day values, the husband proposes that she keeps the home (as long as she can afford to do so or until the children are grown up) but that he should receive:- now :- £40,000 and later £55,000 Total £95,000 My proposal is that the wife should pay the lesser amount, namely £25,000 now, but that to reflect a fairer division of capital later, she should pay him 14% of the gross sale proceeds. 14% of the mid point valuation is approximately £64,000. At present day values, the total is £89,000. 23. The following table shows the result:-

Wife	Husband
1. Property £224,336	£13,757.00
2. Personal belongings £4,000.00	£700.00
3. Bank Accounts/Cash £17,739.00	£43,495.00
4. Stocks/Shares £4,950.00	£8,452.00
5. Insurance £600.00	
6. Share Option £6,534.00	
7. Pension £161,117.70	£198,048.00
8. Possible Charge on house £64,000	Total £412,172.70
	55% £335,586.00
	45% Income Wife
	Husband Salary etc £60,393.00
	£87,881.00
	Maintenance 12,480.00
	£72,873.00
	£87,881.00
	Less:-
	Mortgage 19,500.00
	£20,000.00
	Tax £9,595.00
	£12,000.00
	Maintenance £12,480.00
	Total £43,778
	£43,401.00

24. The final result is, therefore, that the parties' income is roughly equal, although the wife has the responsibility of the children. She will have 55% of the assets, having to pay the sum of £64,000 (or its equivalent being 14% of the gross sale value of the property) only if the property is sold, or when the children are grown up, the value to be assessed at that time. If it sells for substantially more than the present day value, both parties, but, in particular, the wife will benefit. It does not seem right to me that she should have to find any more substantial sum than £25,000 in the short term. Apart from the home, the husband has by far the greater part of the assets. To force the wife to sell immediately would not be reasonable, taking account of her responsibilities, including those with regard to the children. " Peripheral

Issues

" 25. It seems to me that each party should have equal right to the Income Tax child relief. The both take an active role in bringing up their children and, as high earners will both rightly benefit from this provision in the tax law. The timing of the wife taking responsibility for the mortgage and the commencement of maintenance payments at the higher rate may need to be brought in line, so I have provided that either party may apply in relation to the execution of the order. However I believe it to be right to bring maintenance into force immediately and for the wife to pay (or reimburse the husband) the mortgage instalment which was due (I believe) at the end of June. 26. I make no order as to costs which should be adjourned sine die. If either party wishes to bring the matter of costs, I would appreciate a letter from both parties, setting out costs incurred on both sides up to this point. However, I will comment that, neither party appears to have achieved very much more than the other as a result of this hearing. My intention has been to impose a fair compromise. Authorities Child Support Agency maintenance calculations published by the FLBA in "At A Glance" tables 2003-2004. S -v- W (9 th June, 1999) Jersey Unreported; [1999/103B]. Southern (née Brownbill) -v- Southern

[1999] JLR 94 . Lambert -v- Lambert

[2003] 1FLR 139 . Matrimonial Causes (Jersey) Law 1949, as amended. Matrimonial Causes Act, 1973: ss. 24B, 55A. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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