JERSEY / JUDGMENT

S v L and C [2009] JRC 044A (11 March 2009)

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judgment

the REGISTRAR: 1. The petition in this case shows that the parties were married in May 1986. They last lived at A, the former matrimonial home. The wife is a finance director and the husband is an electrical contractor. They have 2 children, C who is now 13 and R who is 8. 2. This long marriage broke down due to the adultery of the husband. Although this is not part of my decision in making orders on ancillary matters, it is relevant to the background to the case and, perhaps, to the wife's determination to hold on to the matrimonial home if at all possible for the children. 3. A final hearing on ancillary matters took place on 26 th and 27 th January 2009, but unfortunately because of time spent hearing additional evidence from accountants with regard to the value of the husband's electrical contracting business, the matter was further adjourned to another date. The hearing resumed on 23 rd February and eventually concluded on the 24 th after hearing submissions from both sides with regard to the legal costs of the case, which are considerable. I am told his costs exceed £55,000 and hers, just over £41,000. The husband complains that the decision to sell the former home was inevitable from the start, and that the accountancy evidence served only to increase costs on both sides. 4. Unfortunately, this was a case in which little could be agreed in advance of the hearing. 5. The single most valuable asset is the former matrimonial home. The wife insists that it is the family home, that it would be wrong for it to be sold because the children will inevitably suffer, that she has put forward proposals for its retention at maximum possible sacrifice to herself, which will enable the husband to finance a home of his own. If it is not practical for it to be transferred into her own name, it is argued on her behalf that it could be held in joint names until the children have completed their education. 6. Various valuations have been made of the husband's electrical contracting business. This perceived asset was important to the wife's case if she could show that the husband, on the one hand, would be retaining an asset of value, if she, on the other hand, retained the house. It is true to say that the business is still a going concern and was originally valued at £315,000 by Grant Thornton. However a more recent valuation on 27 th November 2008 values it at only £7,003. The co-respondent is owed £86,405 by the company. She lent the cash which she had received from her own divorce settlement to keep the company going. According to the husband's evidence, the business continues to find on-going small work with a reasonable margin of profit and which is sufficient to keep the staff gainfully employed. 7. I heard evidence from both the accountants

who had prepared the 2 valuations. I also heard evidence from Mr K, instructed by the wife at the eleventh hour because of her concerns about the true value of her husband's business. Unfortunately, he could add little. His report dated 23 rd January states in its introduction:- "It is apparent from our review of the latest financial statements that the company's operating performance has significantly deteriorated in the period to 31 st August 2008. There is a steep decline in the company's turnover without a proportionate reduction in direct costs. In particular, is a steep increase in the cost of labour as a proportion of sales compared to 31 st January 2008. Overall the company's gross profit has deteriorated from £226,882 at January 2008 to a loss of £170 in the period to 31 st August 2008 and the reasons for this must be investigated." In giving his evidence he commented:- (i) why was the labour force retained in a deteriorating financial situation? (ii) why value the company as a going concern in a situation where it made a gross loss? (iii) how can the company continue in this situation? (iv) further information is required; 8. Unfortunately no one can answer those questions at the present time. Inevitably, the need to call the accountants has contributed to the high costs of this case. Was this necessary, if all they can contribute is a suggestion for yet further investigation into a privately owned company with apparently little value? 9. Initially, a final hearing was fixed to take place on 3 rd and 4 th November 2008, nearly 3 months earlier than when the hearing actually commenced. In an order dated 1 st July 2008, the husband was to provide copies of his business accounts by 18 th July. It was agreed that he would also provide personal bank statements. Then all of a sudden, the wife brought an application to Court on 29 th July, because she discovered by accident that the husband had sold a development property on 18 th July. An order was made to ensure that the husband continued to disclose all his business affairs to the wife's lawyers. A further application was brought to a hearing on 28 th August when further disclosure was ordered. On 21 st October, the wife brought yet a further application for disclosure. It appears that the accounts were not ready. The wife was given leave to instruct her own accountants provided that their report was forwarded to the respondent's solicitor before the close of business on 12 th December. The wife's case is that she was unable to do this because relevant disclosure did not arrive at her lawyer's office until just before Christmas. So she applied on 21 st January 2009 for the case to be further adjourned and for leave to instruct a "forensic accountant". In the event, I could not hear the adjournment application until 26 th January. By then, Mr K had already been instructed. My attention was drawn to certain high value cheques and other matters for which the wife wanted explanations. 10. I recall a passage in a judgment by Booth J in Evans v Evans

(1990) 1 FLR 319 in which he says:- "while it may be necessary to obtain a broad assessment of the value of a shareholding in a private company it is inappropriate to undertake an expensive and meaningless exercise to achieve a precise valuation of a private company which will not be sold: see P v P (financial provision) [1989] 2 FLR 241." 11. However, when presented with this material by a wife's advocate, who, I know has been desperate to retain the former matrimonial home, and, in order to do so, has been keen to show that the husband has been less than transparent in his financial dealings, I relented. I allowed her to call Mr. K. He had already been instructed by her. Should I have prevented her putting this aspect of her case? 12. The truth is that the husband does have a number of

bank accounts, the purpose of which I am unclear, and through which his business funds do pass. This may be partly to do with the fact that the two development properties he has recently done up were purchased in his private name, not, as is more usual, in a company name. The source and application of the funds used for the developments was not analysed in any detail. The purpose was to make a profit on the sale of the properties and to apply the proceeds to supporting the electrical business and maintaining the family. The wife, herself a banker, has been trying to unravel these business dealings, but has, so far not been able to discover anything untoward. I have no doubt that business was, on occasion mixed with pleasure, that funds were used for holidays (with the co-respondent) or meals out, but I have heard no evidence that there was any intent to deceive or conceal funds. The wife, however was determined to leave no stone unturned to show that the husband might have more assets available to him than his business accounts and company valuations would suggest. In conclusion, in all the circumstances, it would have been wrong of me to deny her the chance of proving it. 13. So how much value should I place on the husband's business? I do not think he could sell it now even if he wanted, although the earlier valuation had been obtained, because he had it in mind that it might be possible to sell the business to his own staff. At the time of the hearing, the company still owed £86,000 to the co-respondent, who lent funds in order to keep the company running. I heard evidence from the co-respondent herself who wants to be repaid. The co-respondent took no advice from anyone except the husband before lending the money (initially over £100,000). There were no formal documents recording the loan or its terms or how it was to be repaid. I have no analysis to show me whether or nor the loan was necessary or desirable in the first place. The husband said there would not have been an electrical business without it, but, other than that, there is nothing for me to rely on to judge whether or not the debt should be repaid from matrimonial funds. She has been paid back some of her original loan in dribs and drabs. The company has been valued at only £7,000. Indeed, the business debt to the co-respondent seems to me to be a debt of the company and not a debt of the husband capable of resolution in ancillary relief proceedings. The money was lent to the company (via the husband) and the company has an obligation to repay it. Taking all into consideration, including the fact that the husband intends to continue to operate the company, that it therefore has a value to him, despite the present low professional valuation and despite the debt to the co-respondent, I consider that the company should be given a nil value for the purpose of these proceedings. 14. The most important asset in this case is, without doubt, the former matrimonial home. It had been valued on 18 th June, 2008 at £875,000 by Troys Estate Agency. In an Acte of Court of 1 st July, 2008, I noted that the value had been agreed in this sum. Vibert and Bridle, by their letter of 20 th June, 2008 in response to joint instructions, agreed this valuation. On 2 nd October, 2008, the two valuers agreed that the value had not changed. However, by letter dated 16 th January, 2009, Vibert and Bridle, writing to the wife, suggest that the value may have fallen to £825,000, "and it may even prove necessary to drop as low as £800,000." I do not want to imply that parties should be entitled to have any valuation taken into account after an earlier valuation has been agreed in a joint basis

and noted by the Court. However, I am prepared to say that the value may have been affected by recent events and the slow down in the housing market, so, for the purpose of these proceedings, I will say that it is worth at least £850,000. If the gross value is £850,000, the net value will be at least £550,000. 15. The wife has a pension fund of £305,862 and the husband, a pension fund of £22,140. The difference is £283,722. This is an illiquid asset. For the purpose of these proceedings, I will place an asset value of her pension at not less than £150,000. 16. The husband has some inheritance prospects. The likelihood is obscured by the fact that the property is in Ireland, he has a large family and the estate at most is worth €600,000. He may obtain as much as / or as little as / of that, if the estate is ever sorted out. 17. There are some insurance policies, two with Friends Provident and one with the Prudential Insurance Company. The Prudential policy does not seem to have any surrender value. Together, the two Friends Provident policies have a surrender value of nearly £14,000. 18. If I place the insurance policies and the inheritance prospects together, I think it fair to place a value on both assets of £30,000. 19. There are various other items, but I think it my principal duty to deal with the major assets in dispute. I will comment that the wife has potentially a better car (until recently she had 2 cars) but has greater debts than the husband and these would appear to cancel each other out, especially if one considers her much greater pension value. I think the right order for these things is for the wife and the husband to retain those things they already have and to be responsible for their own debts. The wife did retain a notion that she was entitled to certain company profits. All I can say is that in my view this is unrealistic. 20. So if I add the principal values together, I arrive at a grand net total of the major assets as follows:- Net value of home £550,000 Difference in pension values £150,000 Insurance and Irish Inheritance £ 30,000 Electrical business £0.00 Total £730,000 21. It is plain to see that, by far the largest asset is the home. It would not be fair to deprive the husband of any share of its value until the children leave school, as proposed by the wife's advocate. It would also not be fair to insist that the husband should pay £55,000 of his legal costs now, much of which was incurred by the length of the hearing, at the request of the wife, when he will have no immediate share of the assets. If the wife had not insisted on testing the husband's financial disclosure to the limit, she herself would have saved costs and had a greater chance of retaining the home. Indeed, the only practical source of funds for her to pay her own costs is from the sale proceeds of the former matrimonial home. 22. So this is how the assets should be divided:- Husband Insurance and Irish Inheritance £30,000 Half net value of FMH £275,000 Electrical business £0.00 Total £305,000 Wife Half net value home £275,000 Difference in pension value £150,000 Total £425,000 23. This will give the wife 58% and the husband 42% of the assets. The wife will bear additional housing costs in finding accommodation large enough to house both herself and the children, (whereas the husband will need somewhere large enough for himself and the children to stay on an occasional basis only). I think this is a fair outcome. The husband has slightly more of the liquid assets available now (his share of the house and the insurance policies). Each will have the burden of paying their costs. 24. It seems to me that housing needs should include the housing needs of the children in every case. It would have been best of all if

the wife could have retained the former home for them, but it is not a viable option for her. The sums of money proposed by her for "buying out" the husband were clearly insufficient. 25. I took no heed of the suggestion that the husband was likely to set up home with the co-respondent and thus, through a saving of expenses, perhaps, require a lesser share of the assets. However, it is the needs of the children for a larger property, to be funded entirely by the wife's resources, which do entitle her to a greater share of matrimonial assets. 26. It is my intention that the husband should continue with his present "package" of financial support to the family until the house is sold. After the sale, he should commence child maintenance payments generally in accordance with the guide figures provided by the UK Child Support Agency, or, as stated in the order, 20% of his net income, plus a contribution to other expenses for the children. There may be a problem about assessing the contribution if the Company no longer provides him with an income and so there is liberty to apply. His income may be primarily what he earns from being a lecturer at Highlands, which is presently, according what I was told at the hearing, £2373.19 per month, but I believe it was formerly £3296 per month. However, to this should be added any net income from the Company if it still trades. In his open position he stated that he continued to draw £2314, making a total monthly income of either £4687, or £5610. The wife's income, including refunded pension contributions, amounts to a gross figure of £5953 per month or £4763 net. There may not be much difference in both parties' earnings but both are liable to change due to prevailing circumstances. 27. There must also be liberty to apply if there is a problem about the timing of putting the house on the market. I will pay attention to the needs of the children if any are relevant. 28. Finally, it is relevant to say that I gave both sides the opportunity to address me on the matter of costs before making a decision. It seemed to me an advantage to both parties to include any decision on costs together with the decision on the distribution of assets and not to insist that the parties came back to court at added expenditure especially when cost were already high. So my decision specifically takes account of each party's legal costs. Authorities Evans v Evans (1990) 1 FLR 319. Page Last Updated: 14 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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