

JERSEY / JUDGMENT

# S -v- T (Matrimonial) [2016] JRC 223B (05 December 2016)

**[2016] JRC 223B**

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[2016] JRC 223B [ New search ] [ Help ] Matrimonial - application for interim maintenance sought by the husband. [2016]JRC223B Royal Court (Family) 5 December 2016 Before : Judy Marie O'Sullivan, Registrar, Family Division. Between S (the wife) Petitioner And T (the husband) Respondent IN THE MATTER OF S-v-T (MATRIMONIAL) AND IN THE MATTER OF MATRIMONIAL CAUSES RULES 2005 Advocate S. C. Thomas for the Petitioner. Advocate B. J. Corbett for the Respondent.

## reasons

the registrar: 1. This is an application by the respondent husband for interim maintenance. He seeks £4,500 per month until the conclusion of financial proceedings. The petitioner wife maintains that the husband has failed to demonstrate his need for interim maintenance and therefore requests that the application be dismissed.

## Background

2. The parties married in 1995 and separated in 2016. The husband is 54 years old and wife 56 years old. There is one child of the parties, A, who is 19. The husband moved out of the former matrimonial home in May 2016 - there is a dispute about the reasons for this- and the husband moved to England, taking a tenancy of a property in England in July 2016. The wife commenced divorce proceedings in June 2016 on the basis of the husband's unreasonable behaviour. The husband chose not to defend the divorce but denied the particulars of unreasonable behaviour and in August 2016 filed behaviour particulars he chose to accept. It is understood that having been viewed as defended and the matter going before the Deputy Bailiff to then be adjourned, the divorce proceedings will now proceed on an undefended basis. As no application for a Greffier's certificate on an undefended basis has yet been applied for, it is unclear when a Decree Nisi will be pronounced. 3. Affidavits of means and documents in support are due to be exchanged by the 16 th December, 2016, and there is due

to be a Case Review Hearing on the 27 th March, 2017. The husband's financial circumstances 4. The husband received £250,000 from the wife after 19 th December, 2014. The husband maintains that he received this sum for assisting the wife in her business but this is denied by the wife who says it was a gift. After the wife sold her company, Company B, to Company C, the husband was engaged by the purchaser, Company C, on a six month consultancy contract at a rate of £7,500 gross per month for six months. He therefore received an additional £45,000 gross, which nets down to £36,000 after tax. In addition the husband received £21,448.72 from J Lawyers Client Account on 19 th December, 2014, from Company D understood to be as "back payment of salary." The husband therefore received a total of around £307,448.72 from December 2014. It was submitted by the wife that he had assets prior to this as well. As no documentation has been provided it is not possible to verify what the husband's financial position actually is. However Advocate Thomas said he has no immediate need for income; Advocate Corbett submits his need for income is immediate. 5. It appears to be the husband's case that £250,000 has been spent save that he currently has £91,000 in a Jersey account and £3,000 in a UK account. He has paid rent in advance until June 2017 amounting to £28,661.92 on a property ("Property E") in England, he has paid some Legal fees (May - August 2016) of £23,150.62 and he enrolled on a course paying fees of £15,240. However he now says he is paying the latter on a monthly basis. He has paid debts of £15,000, bought a motor bike for an unstated amount, bought furniture for an unstated amount, purchased a second hand car for an unstated amount, paid removal costs from Jersey for an unstated amount and paid for general living expenses for an unstated amount. No documentation has been provided. According to the wife he already owned a number of cars and motorbikes. He is in a relationship but I was not told he is cohabiting. The wife contends he has funds previously held in investments with Company F, and Company G and at March 2015 in bank accounts and may still have a variety of ISAs, bank accounts, bonds, post office funds, premium bonds and shareholdings. As disclosure has not been provided I am unable to say whether this is indeed the case but, the husband's advocate did not specifically dispute this aside from saying that as he had sworn an affidavit the Court could rely on the matters in his sworn document. 6. I am told the husband has no income and is on a course. The wife's advocate submitted that he has chosen to embark on this course rather than seeking employment, even though he puts himself forward as commercially astute. He said the husband has chosen not to earn money. He is due an army pension but this will not become payable for six years. Advocate Thomas questioned why he had not produced any evidence of his expenditure. Advocate Thomas submitted that he had enrolled on the course in the autumn knowing what his resources were and with a timetable already having been set for ancillary relief, so the presumption was he could cope financially. Advocate Corbett stated that his Form 16 was filed in August 2016 and did indicate he was seeking interim maintenance. It was submitted on behalf of the wife that he was offered the chance to live in a property in England close to his family. The wife is sceptical that he has paid his rent of nearly £29,000 rent in advance for Property E in England, the rental of which was £2,150 per month. Her contention is that it is not how the rental market operates; he has provided no evidence beyond his bare assertion that he was

required to enter into what would appear to be an uncommercial arrangement. In addition it was submitted on her behalf that the cost of the property would appear to be inconsistent with similar properties on the same street and this does appear to be the case. If he has so paid, and his affidavit says he has done so, then clearly any rental payments do not need to be taken into account as part of his overall expenditure. Advocate Corbett said that the property is a "reasonable" size compared with the 7 bedroom property in which the wife is living. The husband says he has not maintained his standard of living but at the same time has not got a student lifestyle. The husband contends that in any case he was "required" to leave the former matrimonial home.

7. With regard to the course, it was only when questioned that Advocate Corbett said that the husband has been offered a training contract with a Jersey firm commencing in the summer/early autumn of 2017 in Jersey, but no documentation was provided about this. He had already done a professional course so when asked why he needed to do the further course as well Advocate Corbett said that the course was of more use for a Jersey firm as it gives back office skills. The husband has experience of commercial life. He has a firm offer but is receiving no financial assistance from the firm concerned. The wife's advocate submitted that a degree of scepticism was needed not only about why he embarked on a course, but whether he actually had an offer of a training contract - the name of the firm was not provided - and as to the amount of capital he says he has left.

8. The husband is not claiming interim maintenance to cover his legal costs. It is submitted that his legal fees are high due to the conduct of the wife as she refused to accept his Form 4 statement that he was not defending the proceedings. Advocate Corbett asked for an order of £3,690.50 in respect of legal costs regarding the defended proceedings. However the matter before me is interim maintenance. Various other matters were raised by Advocate Corbett such as the wife hiring a private detective, a large amount of correspondence, issues regarding Hildebrand rules and the wife, the husband says, threatening to "destroy" him. These are not issues for the interim maintenance hearing but the husband is apparently concerned that his capital will be depleted by rising legal costs, and the matter in respect of sorting out ancillary relief will be delayed by the wife. Whether this is or is not the case, I am sure I do not need to remind the parties of Rule 47 of the Matrimonial Causes Rules 2005.

9. I was told by Advocate Corbett that the husband is due £54,500 held by J Lawyers and was referred to a lengthy e-mail dated the 12 th October, 2016, from J to the lawyers for the husband and wife. Advocate Thomas submitted that the wife is beneficially entitled to the money. In the e-mail it states however, "that the true destination of the funds would need to be resolved as one of the assets in connection with the divorce." I do not propose to deal with this as the hearing before me is for interim maintenance.

10. The husband has provided a schedule showing expenditure of £12,503 per month but is claiming £4,500 for interim maintenance. The wife, in her affidavit sworn on the 21 st September, 2016, analyses at paragraphs 42 to 47 his schedule of expenditure and considers he only requires £2,428 per month on an interim basis excluding legal fees. The wife's financial circumstances

11. The wife accepts that she received £22,885,915 when she sold Company B to Company C. 50% of the net proceeds in shares were held in restricted stock that do not vest until the 19 th December, 2016, and she does not have access to them until

the end of January 2017. The capital has funded family outgoings and £2.245 million was used to clear debts including on the former matrimonial home. However the majority of the money has been invested and she has capital available of £3.2 million. She accepts her income needs may seem high but the commitments are used to fund her stud farm, properties and care needs for their 19 year old son and her mother. In the court bundle was an Income statement dated September 2016 provided by Smith & Williamson which states that they calculate that going forward:- "her monthly outgoings will be £51,193.26. If you incorporate capital expenditure (i.e. improvements to properties, purchases of property, purchases of horses, etc) her current average spend is between £100,000 to £150,000 a month. We have not calculated S's spending on living costs (Food/Clothing/Transport) as this is currently being funded through capital. Furthermore, S's main source of income will cease in January when she leaves H Limited." The wife has an income of £17,752 per month but her outgoings are £69,511 so there is a deficit of £51,758 per month. The figures do not include her own personal needs and her capital is needed to meet the difference. Her employment with Company C ends in January 2017 and she will then receive a salary of £15,461 per month. However, in February 2017 her income will, she says, reduce to nil. She does not know until 2017 whether she will receive a further dividend from Company C. She has provided a list of her personal expenditure amounting to £18,497 which includes for A and her mother, both of whom live with her. 12. Advocate Corbett submitted that one should take an overall view of the wife's circumstances as she has significant capital of about £20 million compared with the husband's £100,000. She says the wife's living expenses are met. Advocate Thomas accepted that the wife does have more resources but he submitted that she has properties and interests that require investments, such as the stud farm that cannot generate income from a standing start, her income generation does not cover her running costs and her living costs are funded through capital. He stated that the test is not who has more but whether there is an immediate and urgent need for maintenance. The Law 13. Article 31 of the Matrimonial Causes (Jersey) Law 1949 states as follows:- "Contributions for support; interim orders[57] On any petition for divorce, judicial separation or nullity of marriage, the court may, if it thinks fit, by interim order direct one party to the marriage to pay to the other party to the marriage such sums for the 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." 14. In In The Matter of XX

[2010] JRC 115C the Registrar referred to the following passage from Rayden and Jackson 18th edition , paragraphs 16.17 and 16.18:- "The court has an unfettered discretion to award such sum as it thinks reasonable. There is no hard and fast rule, and no fixed proportion: each case depends on its own facts. It has been said that the approach to maintenance pending suit should be empirical, and that in the ordinary sort of case the district judges who deal with these applications will have to take a broad view of means on the one hand and income on the other and come to a "rough and ready" conclusion, or take a "broad brush" approach. The overriding consideration is the actual needs of the parties pending

suit. Although the provisions of s 25 of the MCA 1973 are expressed to arise only when the court is deciding whether to exercise its powers under s 23, 24 or 24A, the court may nonetheless have regard to the criteria listed in s 25 on an application for maintenance pending suit. In practice, as oral evidence is rarely given, it will be unusual for the court on an application for maintenance pending suit to be in a position to make findings of fact on issues in dispute sufficient, for example, to deal with conduct or allegations of non-disclosure. However if it is demonstrated that the paying party has not performed his duty to make full and frank disclosure of his financial resources, then the court can take a broad and robust view of his means, and it does not have to accept and proceed on the basis of the assertions of the paying party as to his means and an inability to pay. The court can look at the reality of the situation and take into account voluntary funding from third parties. Any under provision or over provision in the order for maintenance pending suit can always be corrected when the account comes to be taken at the substantive hearing when there every opportunity to do fairness by set-off. The court has the power to vary, discharge, suspend and revive an order for maintenance pending suit." The Registrar specifically emphasised the statement that:- "The overriding consideration is the actual needs of the parties pending suit" and went on to say that:- "in considering 'the actual needs' it seems to me that I should look at all the circumstances of the case. So, I have briefly considered the capital resources available to each party, not in detail, as I will have to do at a later stage, when I will have to consider the appropriateness (or otherwise) of a capital 'clean break' between the parties." 15. Advocate Corbett emphasised one of the reasons the husband needs interim maintenance is because his capital is being depleted. In the case of *In The Matter of XX*, the Registrar said he had considered the capital resources available, although not in detail and the wife had over £1,000,000 available with the husband a little less than £300,000. The Registrar said he:- "was attentive to the position that capital should be so far as possible preserved pending suit and neither party should be obliged to live off capital if that can be avoided." He made a child maintenance and school fees order. The wife was undertaking a university course. Both the husband and wife were substantially funded by a third party and the Registrar only made nominal order as if he were to have ordered spousal maintenance in addition, the husband would have paid 39% of his net income. 16. Does the wife in this case have sufficient income to fund a maintenance pending suit order, as if so:- "it may be appropriate to make such an order in order to avoid the applicant having to service day to day needs by resorting to matrimonial capital assets which ought to be preserved pending the making of the final ancillary relief orders." 17. In the case of *In The Matter of ZZ*

[2010] JRC 134A the Registrar cited the following passage from *TL-v-ML and Ors* (Ancillary Relief: Claim against assets of extended family)

[2006] 1 FLR 1263 . Indeed several Jersey cases concerning the criteria to be applied to Maintenance pending suit cases refer to the decision of *TL-v-ML* : "The sole criterion to be applied in determining an application for maintenance pending suit was 'reasonableness', which was synonymous with 'fairness'. A very important factor in determining fairness

was the marital standard of living, although that standard of living did not need to be replicated. In every maintenance pending suit application there should be a specific maintenance pending suit budget, which excluded capital or long-term expenditure more appropriate for consideration at a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration. Where the affidavit or Form E disclosure by the payer was obviously deficient, the court should not hesitate to make robust assumptions about ability to pay. The court was not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee." 18. Nicholas Mostyn QC as he then was said:- "From these cases I derive the following principles:- (i) The sole criterion to be applied in determining the application is "reasonableness, which to my mind is synonymous with "fairness". (ii) A very important factor in determining fairness is the marital standard of living. This is not to say that the exercise is merely to replicate that standard. (iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long term expenditure more aptly to be considered on a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration. (iv) Where the affidavit in Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The Court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee." 19. Advocate Corbett said the husband is only asking for £4,500 per month although his expenditure as scheduled is for £12,503 per month. I am required to look at the figures in terms of reasonableness, bearing in mind their previous standard of living. In paragraph 80 the approach the Court has to take into account:- "the income, outgoings and needs as they appear at the time, and make an order that will tide the applicant over until the final hearing without causing undue hardship to the parties." 20. In the case of C-v-S

[2003] JRC 104 , an appeal from the Registrar, the then Deputy Bailiff Birt said as follows:- "We accept that orders of this nature should not be made in the ordinary case. They should be reserved for those cases which are of such complexity or where there are circumstances which for other reasons are so unusual that there is a real risk of the wife (and it is usually the wife) being unable to put forward her best case with equality of arms unless the order is made." 21. It should be noted however that that the case of S v C concerned monies sought for ongoing legal costs. It should also be noted that the Registrar had made an order by consent which included monies for the rent of a property, £2,000 interim maintenance for the wife, child maintenance and school fees, the sums totalling £86,192 per annum. The dispute was only as to the legal fees element of the order; the husband in this case is not seeking monies for legal costs. 22. In K v P

[2009] JLR Note 42 it was held that:- "Interim maintenance was normally awarded in cases... in which a party to divorce proceedings had an urgent and immediate need for money to seek alternative accommodation, buy food or maintain children until the final order in ancillary relief proceedings (4(1) Butterworths Family Law Service, para 1366 at

731)" (emphasis added) However Advocate Corbett pointed out that it was also held that:- "Although, in purely mathematical terms, the wife had sufficient funds to manage until the final hearing and was not in urgent need of financial support, she had left the former matrimonial home at an undoubted financial disadvantage and an award of interim maintenance was for in the circumstances." Advocate Corbett submits that he left the former matrimonial home at a financial disadvantage and he has an immediate need for money. 23. In *BD v FD*

[2014] EWHC 4443 (Fam) Moylan J stated, at paragraph 28: "I would endorse, indeed emphasise, the word "immediate". The purpose of the section is to give the court the power to address income needs which cannot await the final resolution of the substantive claims either by agreement or court determination." 24. In the *BD v FD* case, the husband had non-trust assets of £49 million. The wife had resources of her own including £1.4 million in cash and investments. The husband had income of about £1.7 million per year but a significant proportion was retained to meet expenditure and re-investment. The husband was offering £202,000 global maintenance but the wife said he should pay £270,000 per annum although she actually wanted £392,000 per annum. The husband had previously agreed he did not expect the wife to use the £1.4 million to fund her legal costs and living expenses. The wife in her budget was looking for monies for holidays and weekend breaks; clothes, shoes and jewellery; and outgoings restaurants and entertaining which was submitted by the husband's counsel to "bear no reflection to expenditure incurred by the family during the marriage." And he further submitted that she was seeking "not a material change from the marital standard of living but a transformation from it." 25. Reference was made to the summary made by Nicholas Mostyn QC as he then was in the *TL v ML* case referred to above. Moylan J ordered that maintenance be paid at the rate of £202,000 per annum as he considered there had been forensic exaggeration by the wife and the sum paid by the husband enabled her to meet reasonable interim income needs. Decision 26. The husband does have some capital and will be utilising at least part of this towards ongoing legal costs. Capital should be preserved if at all possible and neither party should be obliged to live off capital if this can be avoided. I have noted in the *BD v FD* case the wife had capital of £1.4 million, but was awarded global maintenance for herself and her children. Advocate Thomas accepted the wife has more resources than the husband but asked if there was an immediate and urgent need for income. 27. What is the reality of the situation and is it fair that interim maintenance should be awarded? The husband is on a course which it was submitted will provide him with employment at the end of it, but is not earning at present. He does have an immediate need to buy food, pay for utilities, clothing, some travel expenses, and some personal and miscellaneous expenditure. The wife has calculated his immediate needs at £2,428 per month rather than the £4,500 per month for immediate needs sought by the husband. The husband does not provide a figure for paying the course by instalments, having previously stated it was paid up front. Included in the husband's schedule of expenditure on housing is a figure for rent of £2,150 per month although in the body of his affidavit at paragraph 19 he stated he paid one year's

rent up front from June 2016 to secure the property. I have taken his costs listed under 'housing' in his schedule at £604 which is all the items he specifies except rent, a figure with which the wife agrees. For 'housekeeping' I have deleted the replacement items of £1,000 per month as this is not for immediate needs and reduced his overall expenditure to £650 per month to include a reduction in the alcohol bill. The figure of £200 per month for clothing and footwear seems reasonable. The wife says he only needs £360 per month for spending on his cars and motorbikes, claiming that he has not been using his car, whereas he claims £835 to include £75 of taxis. I am reducing this to £745 per month as he does need some money for transport. It is accepted that £50 for insurance is reasonable. With regard to personal expenditure, the husband claims he spends £358 per month but the wife considers an interim figure of £160 is reasonable, and notes he claims for lunches but also for meals out. I am reducing the figure to £290 to partially take this into account. The husband provides a figure of £1,400 on holidays and entertainment. I note that the wife is prepared to accept £500 as being reasonable in respect of holidays and entertainment which I consider is reasonable on an interim basis. As for 'miscellaneous expenditure', the husband specifies a figure of £5,136 to include legal fees of £4,500. The wife considers £154 as appropriate but I am prepared to accept £536, excluding the figure for legal fees and "other". This gives a total of £3,575 per month. 28. Can the wife afford to pay £3,575 per month until finalisation of the ancillary relief claims? I accept that her accountants say that notwithstanding an income of £17,000 per month she has a deficit each month and her spending on living costs is being funded through capital. However her financial situation is significantly better than the husband's, and in all the circumstance I consider it fair and reasonable that the husband should be awarded £3,575 per month by way of interim maintenance until further order. Authorities Matrimonial Causes Rules 2005. Matrimonial Causes (Jersey) Law 1949. In The Matter of XX

[2010] JRC 115C . Rayden and Jackson 18th edition. In The Matter of ZZ

[2010] JRC 134A . TL-v-ML and Ors (Ancillary Relief: Claim against assets of extended family)

[2006] 1 FLR 1263 . C-v-S

[2003] JRC 104 . K v P

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