

JERSEY / JUDGMENT

S v T (Matrimonial) [2017] JRC 190A (09 November 2017)

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[2017] JRC 190A [New search] [Help] Matrimonial - application by the respondent for ancillary relief. [2017]JRC190A Royal Court (Family) 9 November 2017 Before : Judy Marie. O'Sullivan, Registrar, Family Division. Between S Petitioner And T Respondent The Petitioner appeared on his own behalf. Advocate J. F. Orchard for the Respondent.

Reasons

THE Registrar: 1. This is an application by the respondent former wife (who I shall refer to as the wife) for ancillary relief. The parties were married on 25 th August, 2007. The husband is aged 48 and the wife is wife 43. On the 26 th February, 2001, their child, Child 1, was born. The Decree Nisi was pronounced on the 12 th April, 2017, on the grounds that they had lived apart for a continuous period of at least one year immediately preceding the presentation of the petition and Decree made absolute on the 30 th day of May, 2017. The husband and Child 1 have no health issues but the wife does have health issues. Child 1 resides with his mother. The history of the relationship 2. The parties commenced a relationship in 1999, having met in the July of that year. Towards the end of 2000 the husband and his son moved into her home in St Clement. Child 1 was then born. They lived together between 2000 to 2007, except for a year apart, and then married in 2007. In November 2010 the husband moved out of the family home although the wife maintains they continued in a relationship and the husband moved back to live with her and Child 1 in 2014. The husband's evidence was that they moved to a house in Trinity which was expensive and with the wife's new business they got into financial difficulties. The parties separated in January 2016 and in February 2016 the husband pleaded guilty to an assault on her. The husband filed a petition on the grounds of the wife's adultery which was defended by the wife, and she cross-petitioned on his unreasonable behaviour, but they eventually agreed to a divorce on one year's separation with consent. Open position of the wife filed at Court dated October 3. The wife seeks an order that the husband pay £430.00 per month by way of child maintenance for Child 1 by standing order, commencing on the 1st of each month, such sum to

be index linked annually with the JRPI, and paid until Child 1 is aged 18 or finishes full time secondary education (which includes college) whichever be the latter, whereupon there shall be a review as to maintenance should Child 1 go on to tertiary education using the CSA 2000 UK guidelines as guidance (15% net income as the starting point). (i) the parties shall share equally any "extra" costs for Child 1 as follows:- (a) Child 1's medical, dental care and optical care (including glasses/contact lenses); and (b) Any future extra-curricular activities (as shall be agreed between the parties) which Child 1 may undertake. (ii) The wife seeks a lump sum payment of £7,800 to cover arrears of child maintenance as she maintains the husband has not been paying. (iii) The wife seeks a lump sum payment of £50,000 in full and final satisfaction of her interest in the husband's pension, or for sums to be paid by instalments. (iv) The wife seeks a nominal maintenance order. (v) A costs order to be made against the husband. However this was not pursued at the hearing. 4. The wife did not ask for a nominal spousal maintenance order in her filed open position. Open position of the husband 5. The husband seeks an order that he pays the sum of £250.00 per month child maintenance for Child 1 payable on the 25 th of each month. Child maintenance will increase to £500 per month from the 25 th February, 2018, until Child 1 finishes full-time education. The amount is also to take into account arrears while the husband can only pay a reduced amount. 6. The husband agrees to fund any "extra" costs for Child 1 in respect of: (i) dental care (ii) future extra-curricular activities. 7. No lump sum is paid by either party. 8. There is no spousal maintenance. 9. He releases the wife from any marital debts and in return any interest he may have in the mobile home and business is awarded to the wife. 10. There is a clean break. 11. Each party bears their own costs. 12. A schedule of assets liabilities and assets was provided by each party. There are assets where the value and/or ownership is in dispute:- (i) the Motor Home; (ii) the husband's pensions; (iii) the wife's business; (iv) the parties' debts. Evidence of the wife's mother 13. The wife's mother, swore an affidavit on the 17 th September, 2017, and then gave evidence at Court. She was forthright in her evidence that she had helped both the husband and the wife, her daughter, in the past financially and she was upset that she was having to attend Court. Her affidavit and evidence dealt with two of the matters in contention between the parties, namely the mobile home and the £20,000 loan she gave to her daughter. 14. With regard to the mobile home, she explained that in 2011 the husband and wife were no longer able to make any payments in respect of the mortgage and site fees for the mobile home, then situated abroad. She was referred to the letter the husband signed on the 21 st January, 2011, stating he was transferring the mobile home to the wife. She was not clear if there was a document to this effect but when she took over the mortgage on the mobile home, she understood that the home solely belonged to her daughter. She was prepared to pay so the grandchildren could use the home for their holidays but thought she would get her money back. So far as she is now concerned, it is just a money pit and a noose around her neck. She and her late husband paid to have the home towed to a site where they already had a mobile home. The owner of the site had demanded outstanding monies of £670 to be paid before the home was moved, and it was paid by her or her late husband. In her affidavit she said she had made monthly payments and the site fees from June 2013 but in her evidence she said she had paid since 2011. I accept her evidence that she paid the outstanding monies to the owner of the first site, paid the towing fees and has since then continued to pay monies to the owner of the current

site of around £3,000 per annum - she paid in Euros. She stated she has paid the fees for 2016 and confirmed her daughter did not pay the money for 2016. Money is owed for 2017 and although due at the beginning of the year she does not normally pay until the August when she goes abroad. She does not want to pay as she cannot see she will get her money back, and she is not prepared to lose any more money. She has been warned by the site owner that the mobile home will be towed away if the last payment due is not paid. If the mobile home is sold, it should be her who gets any money she said because of the sums she has paid although the mobile home is only worth, she thinks, about £3,000. 15. With regard to the monies lent to her daughter, the sums total £20,000 but rather than paid directly to her daughter, she has paid money to help set up her beauty salon, such as for a surveyor's fees, electrical works, a carpenter, timber, chairs, back basins, floor cleaning and hairdryers for which she has all the receipts. She confirmed that the money was lent for the business and needs to be paid back. 16. The mother became emotional and said she is an old lady who needs the money and was indignant that the husband was trying to take her money, presumably by arguing that it did not need to be repaid to her. The wife's evidence Her finances 17. The wife receives £712 per month from long term incapacity allowance as well as £450 per month from rental income from the flat above her shop. Deducting tax from the rental income of 20% equates to £360 per month means that her income is £1,072 per month. At present the rent is paid in cash but from next month will be paid into Account X. When on Social Security she had to take out a loan for a carpet. Once off Social Security a person can no longer pay a lower repayment figure, so she must pay £200 per month in respect of the Social Security loan. She has eleven more payments to make. 18. She said her parents had helped pick up bills. After the husband assaulted her, the police advised her not to take over the lease of the matrimonial home so she and Child 1 initially moved to the Refuge and then she found a house to rent in Gorey. The husband asked why she and Child 1 did not move to her mother's home and she responded that the last time they had parted "you kicked her door down" and her mother did not need this. The wife and Child 1 moved out from the Gorey flat as she found somewhere cheaper to rent. The reason she is not getting income support is because her rent has reduced to £450 per month. 19. Child 1 is 16 and attending college. Since separation, the husband has failed to make consistent child maintenance payments. In June 2016 she said she asked the husband for help with Child 1 and he agreed but did not do so. To date the husband has only made limited payments, but not for the full amount in respect of Child 1, despite them agreeing that he would pay £430 per month by way of interim child maintenance as ordered by consent on the 19th December, 2016. Last month the husband paid only £250 for Child 1. The wife has had to go to the Petty Debts court several times, the first time the judge ruling in her favour, but the second time the judge, knowing they were coming to the Family Court in August 2017 left matters to the Family Court. The husband argued that when Child 1 went to college, he was not in secondary education despite Child 1 doing a full time IT course which is equivalent to A-levels. The Judge explained to the husband that he should pay for Child 1 and explained about secondary education so the husband agreed to do so but failed to pay. 20. The wife said the husband has refused to make regular child maintenance payments despite his assertions to both the Family Court and the Petty Debts Court that he would pay for Child 1's reasonable needs. 21. With regard to her expenditure, she was referred to her affidavit of means. Fortunately she now has to pay rent of

only £450 per month (as opposed to £1,700), so the total expenditure figure is £3,074.21 plus payments for Child 1 of £500.33, totalling £3,574.21. However, the rent that she currently pays is only available for the next 12 months. After this she will have to find alternate accommodation. The electricity bill has increased to £100, and Sky contract decreased to £44 per month. She no longer pays for car parking. She has no hobbies she pays for and she is unable to put aside money for holidays or any entertainment. Glasses and medical fees have increased and she owes £700 to the dentist and spent just under £200 on new glasses. Child 1 has had dental work done so his teeth are ready for braces. She said she is really struggling to make ends meet, so she is looking for £430 per month child maintenance and the husband pays arrears, totalling £500 per month. She is spending £500 per month just for Child 1 without costing in providing him with a home and food. Items left at the former home 22. The wife said that when she had to vacate the home, there were "loads" left. The husband had not got rid of things when he moved in with her, so there were doubles of sofas, coffee tables, and tables. She had nowhere to store anything when she moved out so he also had his bed and mattress, a single bed and pull-out bed, a microwave, a TV and TV stand, a computer and computer desk plus a glass table, cutlery, pots, a fridge freezer and a small dishwasher. She did take the TV which she said the husband had gifted to her and Child 1. The Mobile Home (the "Home") 23. The mobile home was purchased by the parties during the marriage. Neither party was able to afford the repayments on the mobile home. In 2011 the husband signed over his share of the interest to the wife and renounced any claim to it. He authorized that any proceeds from the sale of the mobile home could be paid immediately to the loan company. He expected her to sell it. However, the wife said that the mobile home could not be sold off in 2011 as there was too much outstanding by way of debt so her mother took over the payments. She said in hindsight she should have "sat with my mum and dad and gone through" the paperwork. Her mother paid outstanding bills, including the ground rent, sorted out the removal to the current site, got plumbers in to fix a leak and took over the mortgage payments. Her mother wants to be repaid. Her mother has stopped the payments and is adamant she will not pay any more money. It is the wife's belief that the home will be seized by the site owner. The wife does not have the means to repay her mother for the sums the mother has paid out for the mobile home. Health of the wife 24. The wife was in a car accident in 2001. It was a rear end shunt and it left her with back, neck and shoulder problems. She has degenerating discs which tend to bulge and her evidence is that she is constantly in pain. This affects the use of her right leg and the pain is such that it "takes the use of her right leg out" and if this happens she drags her leg as it does not work properly. There is nerve damage down her right spine. The symptoms were diagnosed in 2001 so she said that the husband is well aware of them, and he knew before he married her about her health problems. She has now got a tremor in her right hand which she hopes is only due to stress but this could be the onset of Parkinson's disease. Despite the husband maintaining she can work more, she is doing as much as she can. Sometimes she can only cut hair for 10 minutes and then needs to take a break. Her evidence was that due to her health, she has had to take weeks off work. In an ideal world she said she would not be seeking nominal maintenance. She accepted that when she first took on the business she was working 5 days a week. The wife's business 25. The wife works in a hair salon which she has set up. The wife is a barber rather than a hairdresser due to her back and health problems. She

said that she cannot do that many clients due to her health. She has a hairdresser who gives her 50% of her takings but uses her hair products so in effect the business receives 25% and the other 25% is spent on stock used by the hairdresser. She gave evidence that she has tried to recruit but she cannot get staff who have a 5 year licence. She did employ a beautician, who was qualified to do more than nails, but this did not work out and she was making nothing and she left in September 2017. She did have an additional person who finished employment in December 2016 and is now a chair renter, but she is not continuously in the shop. 26. The wife produced accounts for her business Company A Ltd for 2015 and 2016, which she said had been prepared by an accountant. She said they were accurate. In 2015 her net sales were £32,227 and she paid wages to a member of staff who handed in her notice in January 2016. Her net income for 2015 was £2,457. In 2016 her net sales were £14,600 and her evidence was she had no member of staff. She did have someone who "rented" but left half way through the year. The director's salary of £2,000 was for her to top up her income and the business made an operating loss of £2,458. Her evidence is that the business is barely keeping its head above the water. She was asked if she did a cash flow on her business and she said there was no management of her business. 27. In February 2016 her mother froze the bank account used for the business, ending in Y. She said it has only been in January 2017 that her mother has agreed to take the mother's name off the account, so she could use it again. The husband asked about this as he said the latest statement produced for September 2017 says "T & " which suggest the mother is still on the account. However, the wife pointed out at the top of the HSBC statement it only says "T". The Y statements had previously gone to her mother's address. As a result of the account being frozen, there had been no movement on it save that the overdraft had been cleared by stages, for example £120 in August 2016 and £200 in September 2016. She has a PayPal account used for card payments. She had been banking cash from the business into various accounts and using her personal accounts to pay the business whilst the business account was frozen. Her evidence was that this year's finances have been horrendous and she said that sometimes she just wants to throw the key in the letter box. Fortunately she has still been able to pay the rent. The wife said that her business has no value. The wife's Loans and Monies due 28. The wife's evidence is that she has had to resort to borrowing money from family and friends as she has been unable to make ends meet. Her business is struggling and she is in effect the sole provider for Child 1. She has borrowed a total of £8,483 from B. The first loan of £3,536 was in June 2016 when the husband had said he would pay maintenance for Child 1 but did not do so. She had to borrow from B to pay a rental deposit which was £1,700. The husband asked what happened when the tenancy finished and the deposit was returned, but she said she spent that money on rent. Since then she has had to borrow to get bits and pieces, school uniform and subsidise her income. She pays B back in cash or by bank transfer. Her most recent loan was for £1,299 from C, to cover Child 1's college expenses such as fees, laptop and smart clothing. The loan was made on the basis of the husband's assertion to the Petty Debts Court that he would make payments of £430 per month by way of child maintenance. The husband said he would have got Child 1 a laptop. The wife said Child 1 did not want it to be bought on HP so she borrowed the money on the basis she could repay the loan to her friend from the money the husband was giving for Child 1. The husband has failed to make these payments, and as a consequence she is in default of her most recent loan.

29. She has also received a loan of £20,000 from her mother which was used to help her start up her business. She had moved premises and the new shop was a shell which needed to be kitted out. The money needs to be paid back to her mother. Her mother, rather than putting the money into a bank account, preferred to pay for bills as required. 30. The wife owes legal fees of £4,156. The husband's financial position and evidence 31. The husband is employed by Company D. His total gross salary for 2015, having moved from Company E to Company D in November 2015 was £49,517. He receives occasional bonuses (such as the £500 Christmas bonus received in 2015). His net salary in July 2017 was £3,241 and in August 2017, £3,057. There are no bank statements for September or October 2017 to verify his latest salary, nor payslips. His son (over 18) from a prior relationship lives with him and he receives an income from his son of approximately £400 per month. The husband's total net income is, therefore, about £3,459 per month. 32. The husband said the wife told him that she wanted no maintenance for Child 1. In June 2016 she texted him to ask when he was going to pay and he told her that they should discuss matters through lawyers. At the time he did not make an offer about child maintenance. He said he did not try to avoid responsibilities for Child 1, but mounting debts from the marriage caused problems. However he accepted that in June 2016 he paid for a trip away. Around September/October 2016 he had offered £250 per month, but then agreed a figure of £430 in December 2016. In December 2016 he had paid for a trip by Condor. In December 2016 he had paid £430, in January 2017 £430, he had missed February and March 2017. He said he was "not happy" about the figure of £430 per month and could not pay it, but did accept he agreed he would pay in March and did not do so. However he paid in April and May 2017 and made the June payment in July 2017. In June 2017 he paid for a trip to France. He paid until Child 1 left secondary school. He said he had no further correspondence from the mother until a Petty Debts court summons arrived, but in cross-examination did accept that he had received a request to carry on paying for Child 1 whilst Child 1 was at college. He also confirmed he had told the Judge at the Petty Debts court he would pay. He has paid £1,000 through the Viscount's Department in July 2017 towards arrears. However since then he has only paid £250 for October 2017. He did accept that the wife had primary care of Child 1 during this time, and he had in effect paid only 5½ payments for the 23 months since they separated, although has paid the £1,000 as well. In cross-examination he said he had not thought about how much the wife had had to pay for Child 1 and accepted that bitterness to the wife had "clouded his judgement." 33. He can only pay £250 per month until February 2018 he said, and from then £500 per month and will do this by reducing the payments to F, from whom he has borrowed money, to £100 per month and using that money towards child maintenance. He did not produce documentary evidence. When asked why he could not pay an extra £100 now, given he would be saving £100 from February 2018, he said he had not worked this out and it is possible he may get a pay rise. 34. With regard to his expenditure, he was referred to the list of expenditure as set out in his affidavit sworn on the 3rd November, 2016. He confirmed that the HP car payments had ceased. The Airtel bill was still about £47 per month. Advocate Orchard asked him to confirm that if his net income was £3,058 and expenditure was £2,288.43 it meant he had surplus income of £769.57 per month. He agreed that this was so. If he receives £400 per month rental income from his son in addition, this means a surplus of £1,169.57. Advocate Orchard said that even if he pays F £250 per month, this means a surplus of £919.57 per month.

The husband stated he had received a discretionary bonus in 2016. He had paid nothing of this for Child 1 and whilst he was prepared to pay a percentage of his income for Child 1 he did not pay anything from his bonus as he considers the wife will use it to subsidise her business. On the 9 th December, 2016, £4,385 was paid to him from his firm and £1,859.60 on the 21 st December, 2016. 35. The husband said that the level of animosity increased " due to lack of communication ", about contact, claims about loans and her suggestions that he had a property in the UK which was not correct. He said "I have known her to be extremely dishonest ." The husband's loans 36. The husband gave evidence that he has not applied for a loan to buy furniture. He did get an HP agreement however. He currently has loans as follows, but did not provide up to date documentation:- (i) He borrowed £5,000.00 from F in April 2016. This debt arose " as a result of allegations ", to pay the deposit for the flat, to pay an outstanding electricity bill and for legal costs but also the fine for assaulting the wife. The loan has reduced over the last few months and he gave evidence he is paying £250 until the debt is paid off. In July 2017 it was down to £3,000, so if he has been paying £250 since then, it is down to £2,000. He denied he had used part of this loan to go on a trip away in July 2016. He said the trip was paid in June 2016. He went on a skiing trip in March 2016, but it " had already been paid " but did pay for " things " whilst on holiday. (ii) £2,500 was borrowed in June 2016 from G, a work colleague and £1,000 of this was used to pay arrears of child maintenance. (iii) In the spring of 2015 according to the paperwork, although he gave evidence this was in November 2014, he borrowed £8,000 from a bank to be paid back at £194.41 per month over 59 months. The money borrowed was partly to reduce the overdraft and clear payday loans. He said his wife knew about this, although it is her position that she did not know about the loan. He accepted that with hindsight, borrowing £8,000 to go on holiday was not a good idea. £3,500 paid for ski trips for the children and he said his salary paid for a snowboarding trip. The amount outstanding was £6,026 as at 3 rd July 2017, so would have paid a further £776 since then. (iv) The J Debt was £4,308 on the 31 st July, 2017, with payments of £100 per month, so a further £300 of payments since then. (v) He owes legal fees to Firm A of £900 paid at £80 per month and in April 2017 owed Firm B £700 to be paid back at £70 per month. 37. He maintains his total liabilities are £16,426. No up-to-date credit card or bank statements were provided by him, so the figures could not be checked. He said he struggles to live within his means which, given his confirmation about excess income over expenditure, does not bear this out. He maintains that his debts are marital debts, but some of his borrowing is post-separation. The husband's Pensions 38. The husband currently holds two pensions

- a Company E pension and a private pension with K Ltd. The CETV of the Company E pension has been valued as £58,478.87 as at 30 th June, 2017, and the CETV of the K Ltd pension has been valued as £58,710.19 as at 17 th July, 2017. This gives the husband a total CETV of £117,189.06. With a 30% discount on both, this gives a CETV of £82,000. He considers however that the K Ltd pension should be £13,816, because it was built up mainly pre-marriage. The Company E pension should be discounted to £39,825, he considers, totalling £53,641 for the two pensions. Items left at the former home and furniture in the husband's current accommodation 39. The husband said that when he returned to the home there was nothing substantial left. There was a TV stand in the lounge, nothing in the master

bedroom, no bed in the spare room, there was a small coffee table and office chair. He had taken the TV to his sister's home. The other bedroom had a single bed and futon sofa. The dining table had been removed from the kitchen, but there was a microwave and a fridge freezer. He said that the brown leather sofa was rotten. There was rubbish left. He gave the keys back to the management company and it is unlikely the deposit of £1,850 will be returned. He purchased a red leather sofa for £130, and his son brought with him a coffee table crockery and cutlery. The wife however thinks he took out a loan towards purchasing furniture. The mobile home and the wife's business 40. The husband says the mobile home does have a value as does her business. He considers it unfair he is left with the debts. He considers the mobile home is worth £16,000, although on the schedule of assets produced by him, he stated the mobile home was worth £12,000. He does accept that the wife's mother made payments in respect of the mobile home, and he accepted that once the mother had been repaid these monies there will probably be nothing left, but it is not his fault that the wife had a debt against the mobile home. I therefore find that the mobile home has no value. 41. The husband had previously estimated the business value was £35,000 as set out on the schedule of assets produced by him based on turnover of £35,000, but he now considers the business is worth £16,000. In 2015 the net income was £2,900 having taken into account the expenses. When Advocate Orchard asked him if a business had a turnover of £1 million, but expenses say of £2 million, would he say that the business was worth £500,000 because of the turnover, he accepted he was "not a person who can make a valuation." He was asked if the net income should be taken into account, given in 2015 this was £2,900 and in 2016 the business made a loss of about £2,000. The husband maintained that the business had goodwill and when asked what goodwill was there, he was unable to answer. With regard to the wife's earning capacity, he did not accept she could only work part-time. When asked about her receiving LTIA, his response was that she had worked full-time so that whatever ailments she is displaying, she can work full-time. His view was that the business was "fine", and she had enjoyed a reasonable lifestyle while people were working for her. She takes cash from the business and the business has now "dropped" due to the divorce proceedings, but this will change when the proceedings are over. He stated that her ability to earn "is far greater than his salary". 42. It was put to the husband that the loan of the wife for £20,000 from her mother was a marital debt. Even if her business and mobile home were each valued at £16,000, which the wife did not accept, this would reduce the figure of her assets to £12,000. If one discounted his two pensions to a total CETV of £82,000, again which the wife does not accept, less the debts he says of £16,426 (some of these are not a marital debt) give total assets to the husband and wife of £77,574 and divided by half is £38,786 each. It was put to him that on this basis, if the wife has £12,000, she is owed £26,000. The husband agreed to this analysis. The Law and decision 43. In deciding ancillary relief applications, a court must consider Articles 25 to 32 of the Matrimonial Causes (Jersey) Law 1949 as amended ("the Law"), and also Section 25 of the Matrimonial Causes Act 1973. First consideration must be given to the welfare of any minor child of the family who has not attained the age of 18. A court must have regard to all the circumstances of the case as and in particular to:- (i) the income, earning capacity, property and other financial resources

which each of the parties to the marriage has or is likely to have in the foreseeable future; (ii) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (iii) the standard of living enjoyed by the family before the breakdown of the marriage; (iv) the age of each party to the marriage and the duration of the marriage; (v) any physical or mental disability of either of the parties to the marriage; (vi) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family; (vii) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; (viii) benefits lost by reason of dissolution of the marriage, e.g. pension rights, death-in-service, insurance cover. 44. There is a dispute between the parties as to the assets and liabilities. These need to be considered as at the date of the hearing as was confirmed in the case of S-v-S

[2006] EWHC 2339 (Fam) where Mr Justice Singer considered the date of valuation of assets and said at paragraph 87:- "I have considered the relevant judicial pronouncements as to whether ancillary relief applications should be approached on the basis that valuation of the relevant assets should be undertaken as at the date of the hearing in 2006, rather than by looking back to the date of separation in 1996 and fixing the parties' fortunes at that date... I accept... that I should look at the disposition of available assets and (so far as practicable) at their value actual or potential as at the hearing date." 45. A court has to consider whether the assets represent matrimonial property, or non-matrimonial property. Do the assets pre-date the parties' marriage (i.e. there is non-matrimonial property); is there inherited property, or gifts from sources external to the marriage (i.e. non-matrimonial property), which are not 'mixed and mingled' with matrimonial property. Have there been post-separation accrual of assets and post-separation contribution which is unmatched by the other spouse. The mobile home 46. It is accepted by both the husband and the wife that her mother has been making payments in respect of the mobile home. The wife says it has no value and the husband conceded that once the mother had been repaid these monies there will probably be nothing left. I have found that the mobile home has no value. The wife's business 47. The business currently runs at a loss. Although there is an income from a third party who "rent" a chair in the salon, the wife gave evidence that she has had difficulty in recruiting staff and also retaining people. I accept the evidence of the wife that her health issues have impacted on her ability to make the business profitable. The husband considers she can take on extra staff and were she able to do so, the finances would improve; this may be so were she able to take on staff and/or "renters". The business has limited assets. Whilst the husband asserted it was worth £16,000, he did concede he was not a person who could make a valuation, and despite asserting there was goodwill, he was unable to answer what goodwill there is in the business. He was not able to provide a basis for his calculation of the value of the business. A court needs to look at the reality of the situation. I accept that a business such as this will be based upon the net asset position of the company, especially where there is

no profit being made by the company. There are limited assets and also a liability of £20,000 which was a loan for items and works paid by the wife's mother which needs to be repaid. I find that the business has no value. The husband's pensions 48. Aside from the very limited personal belongings, there are no assets of any value except the husband's two pensions. The CETV of the Company E pension which is a final salary scheme, has been valued as £58,478.87 as at 30 th June, 2017, and the CETV of the K Ltd pension has been valued as £58,710.19 as at 17 th July, 2017. This gives the husband a total CETV of £117,189.06. 49. The husband maintains that the Court should discount his pensions to only take account of the years which the parties were together. With regard to the K Ltd pension, his employment there began in February, 2003, and ended in April, 2010, but they did not marry until 2007, so some of this pension is pre-marriage. The husband has put forward a figure of £13,816. The wife is prepared to accept a 30% discount on the K Ltd pension, so this reduces to £41,097. Whilst the husband produced no evidence (actuarial or otherwise) which demonstrates that a reduction of the number of years that the parties were not together can be applied as an appropriate discount, neither does the wife produce evidence (actuarial) or otherwise to show why only a 30% reduction is appropriate. 50. In the case of *In the matter of S*

[2011] JRC 119 , the issue was considered as follows:- "Whether it is fair to include pensions at their full value or at a discounted value or not at all will depend upon the facts of each case, the circumstances of which will vary enormously." 51. A court should make an order with a view to achieving fairness and any discount to the pensions is dependent upon the facts of the case. In *U-v-W*

[2014] JRC 027A "there is no right figure and no wrong figure in respect of discounting pensions, Discounts have been applied in an arbitrary way with a view to achieving fairness." 52. A court also has a discretion as to whether or not to disregard the pre-marriage element of a pension. I accept that the element of pre-marriage pension should be disregarded, bearing in mind the facts of this case, and consider that a figure of £25,000 is more appropriate, being approximately 3/7ths of the total sum. 53. So far as the Company E scheme pension is concerned, it is submitted on behalf of the wife that it should not attract any discount. In the case of *Downes-v-Marshall*

[2010] JRC 115B such a pension was described as a " gold plated asset " i.e. £58,478.87. It is submitted on behalf of the wife that as a result of the parties' joint decision that the wife would focus on bringing up Child 1, she has been unable to build up her own pension. She has no assets of any worth and she has suffered a relationship disadvantage. The wife argues that it would not be equitable for the Court to discount the pension in the way that is sought by the husband because this is a long marriage (10 years with a period of pre-marital cohabitation of 7 years). 54. The husband states that the Company E pension started in May 2011 and the contributions made were " for the most part whilst he and the wife were separated ," namely until April 2014, although the wife maintains they were still in a relationship during that period and were married. The wife can locate no case law

which suggests that where parties separated and then reconcile, that the period of separation should be ring-fenced from the marital pot and I do not propose to do so. 55. The wife wants £50,000 in total now in respect of the pensions, or if the husband is unable to raise a lump sum, which he is on the evidence unable to do, payment by way of instalments of £500 per month until the £50,000 has been paid off, once child maintenance and arrears of child maintenance has been paid. The pensions are illiquid assets, and in any case the husband cannot give her a lump sum now as he does not have liquid assets with which to pay her. He is only 48 and will not receive monies from his pension for some years, but the wife is asking for money now. 56. In the case of *E v P and G*

[2004] JLR Note 42 , Registrar Obbard held:- "Where it would be undesirable to commute a spouse's pension on divorce in order to pay a lump sum to the remaining spouse, the latter's share in the pension may be replaced by increased periodical payments." 57. If the figure of £25,161 and £58,478.87 are added together, the total is £83,638. The debts 58. Both parties have a number of debts. The husband accepted that with hindsight borrowing £8,000 to spend towards holidays was not a good idea and the wife said she should have gone through the finances before her mother spent money on the mobile home. With his income in excess of his expenditure, and because the husband has not paid regular child maintenance, it is puzzling that the husband took out a loan with G for using only £1,000 towards arrears of maintenance. I am not clear exactly how much the husband owes as he did not provide up-to-date documentation, despite having been requested to do so. Aside from the monies owed to her mother, the wife has debts incurred because her finances have been difficult, caused in part by the husband's failure to pay consistent child maintenance. 59. The overall objective of the Court, in accordance with the principles set out in *White-v-White*

[2000] 2 FLR 981 is:- "to make a fair financial arrangement between the parties, giving first consideration to the welfare of the children". The concept of "fairness" must be checked against "the yardstick of equality" and "As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so " (per Lord Nicholls in *White* at [989].) Lord Nicholls stated:- "There is no place for discrimination between husband and wife and their respective roles. even if, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets". 60. The principle of sharing applies to all the parties' property, but, to the extent that their property is non-matrimonial, " there is likely to be better reason for departure from the principle of equality " (see *Charman v Charman*

[2007] 1 FLR 1246 at (para 66)). 61. The date at which the property built up during the marriage is measured is usually the date of separation, although there will be circumstances in which post-separation accrual will be treated as matrimonial property (per Lord Mance in *Miller v Miller and McFarlane v McFarlane*

- [2006] UKHL 24 at [174]). 62. A court must consider the matters set out in Section 25 of the Matrimonial Causes Act 1973 . In this case, the only capital available is the illiquid assets of the husband's pension. The parties each have debts which they need to service. Taking into account the assets and liabilities, I order that the husband pays a lump sum by instalments of £30,000 which he will pay out of income at the rate of £520 per month on arrears of child maintenance being cleared. I have taken into account that the pension is an illiquid asset and the husband will not get his pension for some years hence. His income exceeds his expenditure (which I will deal with below) and he is clearing his liabilities. I have noted the case of *U v W*
- [2014] JRC 027A in which Registrar Canavan held that: "From the cases it can be seen there is no right or wrong figure in discounting pensions. Discounts have been applied in an arbitrary way to achieving fairness on the facts of each case." Child maintenance 63. Child 1 lives with his mother. Her expenditure is much greater than her income, and the sum does not even cover the monies specifically spent on Child 1. The husband on the other hand receives £3,059 per month net, not including any bonus, and his son who lives with him pays him £400 per month rent. His total net income is, therefore, £3,459 per month. According to the CSA guidelines, on the basis of his net salary alone, he should be paying £458.85 per month. The wife is prepared however to accept a sum of £430 per month. The husband offers £250 now rising to £500 per month from February 2018 per month, being £430 plus arrears of £70 per month. In cross-examination he accepted he had surplus income of £769.57 per month not including the rental, but taking this into account and payments to F a surplus of £919.57 per month. It is the wife's position that child maintenance should be remitted until January 2016 when the parties separated and that he should have paid £430 per month from then. I am therefore ordering he pays £430 per month payable on the first of each month as from the 1st December, 2017 by standing order until Child 1 finishes full-time education, to be index linked annually with the JRPI, and paid until Child 1 is aged 18 or finishes full time secondary education (which includes college) whichever is the later, whereupon there shall be a review as to maintenance should Child 1 go on to tertiary education using the CSA 2000 UK guidelines as guidance (15% net income as the starting point). I was not told whether Child 1 is intending to go on to tertiary education. 64. The husband had agreed to fund any " extra " costs for Child 1 in respect of:- (i) dental care (ii) future extra-curricular activities. However, I am ordering that parties shall share equally any " extra " costs for Child 1 as follows:- (i) Child 1's medical, dental care and optical care (including glasses/contact lenses); and (ii) any future extra-curricular activities (as shall be agreed between the parties) which Child 1 may undertake. 65. I have noted that the husband has failed to make child maintenance payments in the past. A wage arrest was not requested but it is an order that a Court could make should it be necessary to do so. 66. In her open position the wife asked for a lump sum payment of £7,800 to cover arrears of child maintenance, although Advocate Orchard in summing up said that there were 23 months at £430 totalling £9,890. The husband considers he should pay arrears only from June 2017, but did not justify why this should be

so. The husband has paid £1,000 plus 5 payments at £430 and one at £250, totalling £3,400 so taking the figure of £7,800, there is a balance of £4,400 due. Given that the husband cannot raise a lump sum of £4,400, he will have to make payments off the arrears by instalments, and his evidence was such that I order that he now pay £430 per month child maintenance plus £90 per month off the arrears, a total payment of £520 per month. Bearing in mind his evidence, I consider that the husband can pay £90 per month off the arrears, at the same time as child maintenance. He should have paid child maintenance in the first place and the wife has had to borrow money as a result of his failure to do so, which she needs to repay. This means he will clear the arrears in about 4 years' time should Child 1 still be in tertiary education. If Child 1 does not go on to tertiary education, and the child maintenance therefore ceases, then the husband will repay the arrears at the rate of £520 per month to clear them off. Nominal spousal maintenance 67. The wife seeks a nominal spousal maintenance order. A Court will however usually try to order a clean break between the parties. In the case of *PS v C and M*

- [2003] JRC 116 where the wife was 57, the then Bailiff Bailhache said at paragraph 7:- "In general, the Court should strive for a "clean break". 68. It is submitted on behalf of the wife that because of " her health difficulties and the relatively meagre income from her business " nominal spousal maintenance should be ordered " in case her financial position deteriorates further in the future ". In the case of *Warn v Cornetta*
- [2009] JRC 202, the Court accepted, that because of the wife's ill-health spousal maintenance could not be terminated without undue hardship to her despite it being " the policy of the court to strive to achieve a clean break ". That said, the spousal maintenance was to be " reviewed after three years from the date of this order, at which point it is our serious expectation that the respondent will have achieved financial independence. " 69. I was not referred to In the case of *Q-V-R (Matrimonial)*
- [2016] JRC152A. In this case Registrar Canavan held that:- "I accept the wife's evidence that, due to her health issues, she will be unable to return to gainful employment in the near future." Registrar Canavan wrote that the wife:- "had issues with her joints since childhood. The husband was aware of this and he was also aware of the many appointments she had had with her general practitioners and hospitals. She has degenerative discs, she suffers from severe asthma, pain in her joints and loss of sensation in her neck and arm. At the husband's request, she produced a lever arch file containing her medical records from the UK and Jersey and copies of her applications for benefits. However she is in receipt of benefits and therefore has an income sufficient for her present needs." Registrar Canavan ordered that there should be a clean break in this case and therefore the application for spousal maintenance was dismissed. 70. The wife in this case is seeking nominal maintenance should her financial circumstances deteriorate in the future, presumably the nominal maintenance during joint lives or until she remarry. I do not consider that the parties should be tied to each other indefinitely by the possibility that she could seek spousal maintenance in the future, so I am ordering a clean break.

Authorities Matrimonial Causes (Jersey) Law 1949 as amended. Matrimonial Causes Act 1973. S-v-S

[2006] EWHC 2339 (Fam) . In the matter of S

[2011] JRC 119 . U-v-W

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[2004] JLR Note 42 . White-v-White

[2000] 2 FLR 981 . Charman v Charman

[2007] 1 FLR 1246 . Miller v Miller and McFarlane v McFarlane

[2006] UKHL 24 . U v W

[2014] JRC 027A PS v C and M

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