

JERSEY / JUDGMENT

T -v- B [2008] JRC 077A (19 May 2008)

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[2008] JRC 077A,

[2008] JRC 77A [New search] [Help] [2008]JRC077A royal court (Family Division) th May 2008
Before : V. J. Obbard, Esq., Registrar, Family Division. Between T Petitioner And B
Respondent Advocate Z. G. Blomfield for the Petitioner. Advocate C. Davies for the
Respondent.

Reasons

for decision made on 9 th April 2008 Former Matrimonial Home to be held in Joint names until 6 months after youngest child leaves full time education

- Whether husband's pension value to be discounted - Upon sale, net Proceeds to be divided 80% to wife and 20% to husband 1. These are my reasons for making a 'Mesher' order in this case. Discussions still continue with regard to an adequate level of child maintenance. 2. The parties separated in August 2006 after a marriage of 20 years. The decree nisi was pronounced in January of this year and the decree absolute in March. There are three children: K who is 20, J who is 18 and B who is 16. K is about to leave University, J is taking his 'A' Levels and B will take her 'A' Levels next year. 3. The wife and children live at the former matrimonial home in Jersey which has three bedrooms. K stays in a room downstairs when she visits. 4. The husband still pays the mortgage and mortgage insurance. Without that contribution the wife would not make ends meet with her salary which she earns as an administrator. Although a part-time job, she would prefer to find full-time work. The husband can only afford to contribute £300 per week maintenance at the moment for all three children, but has been paying K's University fees and expenses as well as the mortgage. He no longer has contact with any of the children. 5. The husband has a new partner who, herself, has a child from her previous marriage. An expensive Court case was won recently as a result of which G (the partner) was allowed to leave the United Kingdom with A (the child) to live with the husband in Jersey. However, the previous husband of G has announced that he will not be paying maintenance for A and it will be difficult to enforce it.

6. The husband also still pays a mortgage on a property in Coventry, which has been on the market since January, but it is unlikely to sell in the present market conditions. Furthermore, since moving back to Jersey, he pays rent on a property for himself, his partner and A. 7. The husband and G would understandably prefer to purchase a property in Jersey. One would have thought that easily possible on his salary of £6,083 per month (net of tax and social security) plus usual annual bonus of £8,000 (net). G also has a job as a trust officer earning £2,400 per month, but they have no spare cash to put down a deposit. The amount requested by him as his share of the matrimonial "pot" is £120,000, provided he can also retain his pension rights. He doesn't want anything else. This would be the deposit money. 8. This is a summary of expenses paid by him:- (i) mortgage and insurances on former matrimonial home £ 796.00 (ii) Jersey College for Girls fees (B) £ 294.00 (iii) Child Maintenance Contribution (K,J & B) £ 300.00 (iv) K's University fees & Expenses (ending June) £ 540.00 (v) Rent (Jersey) £1,600.00 (vi) Coventry Mortgage £ 700.00 (vii) Living Expenses (Less provision for pension which he cannot afford at the moment £3,291.00 (viii) Legal Costs £1,180.00 Total (Per month) £8,701.00 9. The former matrimonial home is valued at £393,343.69. This is a net value taking into account repayment of the mortgage of about £50,000 and sale costs. 10. Neither party has any substantial savings. 11. Here is a list of the principal assets:- (i) The Husband's Pension Company £189.44 (ii) Husband's Pension CETV £244,189.70 (iii) Insurance Policy £12,209.70 (iv) The Former Matrimonial Home (net) £393,343.69 Total: £650,532.53 12. The case for the husband was presented on the basis of his needs. He wants to keep his pension and, in addition requires capital of £120,000. Together, they are, at least on paper, worth:- £244,189.70 £120,000.00 £364,189.70 That is about 56% of the principal assets. 13. Clearly, that is too high a proportion of the assets, but it is calculated using the straight Cash Equivalent Transfer Value of the pension which, it must be born in mind, is an illiquid asset. 14. The husband's advocate maintained that allowance should be made for the fact that he started contributing to his pension before the marriage. For that reason, it was submitted that / should be deducted and a further / of the value should be deducted for the fact that it is illiquid. If I were to accept this argument at its face value, the adjusted value of the pension would be £130,234.00 and the new total asset value £536,576.93. 15. If we now add:- (i) Net Value of Pension £130,234.00 (ii) Required Capital £120,000.00 Total £250,234.00 He would receive 47% of the total pot, on the basis of the revised pension valuation. 16. In my judgment, that is still much too high a proportion, even if I were to accept the husband's advocate's argument in its entirety about the discount to be given to the pension. This is a wife who has made an impeccable contribution to a long marriage and has not been criticised for her exemplary rôle as a wife and mother to three children. She does not have the financial muscle to compete with her ex-husband and new partner who, very quickly, when the pressures on their finances subside, could save considerable sums towards a new property. He has the security of a pension. She has none. 17. I have therefore considered transferring the property to the wife outright or to enable her to keep it at least until the children until they have all completed their education. At that stage it might have been appropriate for her to pay him an appropriate lump sum of capital. This may have forced her to sell the home but only at that stage. 18. However this would only

have been possible if there was any way in which the wife could have taken over the mortgage. I am satisfied from figures provided to me that her salary (£19,914 per annum net) is not adequate to support taking it over into her own name, even though the day when the mortgage is fully redeemed is tantalisingly close, only 5 years away. The repayment mortgage in respect of which the instalments are £716 per month represents very good value for money and it provides an adequate family home for the wife and 3 children. Taking into account relative incomes and her mortgage contributions between the date of the transfer until the date of sale, the lump sum payable by her, if any, would have been very small indeed. 19. I'm afraid the only alternative is for the property to remain in the joint names of the parties until a "trigger" date. As the children grow up and leave home, it may be fair to conclude that the wife does not have the need to retain such a large property, but she will find it difficult if not impossible to find appropriate accommodation in Jersey on such reasonable terms. 20. The fact that the husband pays the mortgage and that the wife is unable to take on the responsibility for it has played a large part in my decision. However, the fact that he needs capital as soon as possible to house his second family must not override his responsibility for his first wife and the children. 21. My decision is that the "trigger" date for the sale of the house will be six months after B, the youngest child leaves secondary education. That will give the parties time to adjust to the situation and will not put too much pressure on the family near to the time when B is taking her 'A' Levels. 22. Because of the wife's special vulnerability, for example her lack of any pension provision, and the need to re-house herself, coupled with her much lower income, a fair distribution of capital at the time of the sale will be 80% to the wife and 20% to the husband. No Authorities

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