

JERSEY / JUDGMENT

U -v- V (Matrimonial) [2014] JRC 027A (28 January 2014)

[2014] JRC 027A

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

[Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback] [DONATE]

Jersey Unreported Judgments You are here: BAILII >> Databases >> Jersey Unreported Judgments
>> U -v- V (Matrimonial) [2014] JRC 027A (28 January 2014) URL: https://www.bailii.org/je/cases/UR/2014/2014_027A.html Cite as:

[2014] JRC 027A,

[2014] JRC 27A [New search] [Help] Matrimonial - application by the petitioner for ancillary relief including child maintenance. [2014]JRC027A Royal Court (Family) 28 January 2014
Before : Carol Elizabeth Canavan, Registrar, Family Division. Between U (the wife)
Petitioner And V (the husband) Respondent APPLICATION FOR ANCILLARY RELIEF AND
CHILD MAINTENANCE Advocate M. J. Haines for the Petitioner. Advocate J. F. Orchard for
the Respondent.

REASONS

the registrar:

Background

1. The petitioner wife ("the wife") and the respondent husband ("the husband") were married on the 13 TH July, 2002. They have two children, Riley age 10 and William age 6 (these are not their real names). The husband moved out of the former matrimonial home in May 2010 and a decree nisi was issued on the 11 th January, 2012. Nothing further happened until the 6 th August, 2013, when the wife filed a notice of her intention to apply for ancillary relief including child maintenance. No reason was given for the delay in finalising financial matters. The final hearing took place on the 28 th January, 2014, with Advocate Haines representing the wife and Advocate Orchard representing the husband. Assets, liabilities and income positions 2. The parties filed an agreed schedule of assets, liabilities and income positions (schedule 1). It was agreed that the former matrimonial home, Property A ("the FMH") had a net value of £147,213.77, the husband's pensions had a total value of £118,236.55 and the wife's two pensions amounted to £12,097.10. 3. The schedule showed that the wife has an income of £3,000 per month comprising £1,000 per month maintenance

paid by the husband and £2,000 per month allowance from her partner. The husband's net monthly income is £4,659.46. The wife's car was valued at £6,007 and the husband's at £1,075. Open positions 4. The wife's open position is set out in schedule 2 and the husband's open position in schedule 3. The three main areas of dispute concern:- (i) Child maintenance and incidental costs incurred on behalf of the children; (ii) The husband's pensions - should they be taken into account using their full values or discounted values or completely disregarded; (iii) The FMH - should it be sold or retained by the husband. In addition, Advocate Orchard submitted that the ongoing liability with regard to the outstanding Black Horse Loan needed to be addressed. Advocate Haines submitted that this case is a "sharing case" whereas Advocate Orchard submitted that this is a "needs case". Child maintenance 5. Much was said by both parties about the contact (and holiday contact) which the husband had with the children after the separation and the financial contributions made by the husband towards their expenses. I do not propose to outline the evidence on these points as I do not consider them to be relevant to the issue of what maintenance should be paid for the children now. While the contact with the husband may have been sporadic after the separation both parties agreed that since January 2013 the husband has one overnight with the children in one week and he has them from Thursday to Monday in the next week. He has holiday contact. He is currently paying maintenance at the rate of £1,000 per month. 6. There was a suggestion made that at some stage in the future the boys might go to boarding school, although this has not been discussed in detail by the husband and wife. If the boys do go away to school then the fees would be paid by the wife's partner - he currently pays their school fees. The husband is not being asked to make any contribution to the school fees. 7. The wife is asking for an order that the husband should pay by way of maintenance, 20% of his net monthly salary, which is £930 per month on his present net salary, and 20% of any bonus he might receive. She is also asking for a 50% contribution to the children's incidental expenses which she says are approximately as follows:- School clothes and shoes £75 per month School activities Golf (£300 per child per annum) Rugby (£90 per child per annum) Sports trips (£650 per child per annum) Swimming lessons (£360 per child per annum) School trips £400 per child per annum Total £3,675 per annum £306.35 per month 50% of these costs amount to £153.12 per month and therefore the wife is asking the husband to pay approximately £1,083.12 per month which would equate to just over 23% of his present net salary. 8. In his open position, the husband confirms he pays £1,000 per month at present but proposes that the maintenance should be reduced to £750 per month, being 80% of the CSA guideline figures. In his open position, in his evidence and in the submissions made on his behalf by Advocate Orchard, a direct link was made between the amount of maintenance he could pay and the repayment of any loan taken out to provide the wife with a lump sum. In his open position he said "However if the Husband has to undertake a further loan in order to pay the Wife a lump sum, he will struggle to continue to meet these payments". In his evidence he said that he could only realistically pay to the wife a lump sum of £70,000 but that could be varied depending on the amount of maintenance he has to pay. I cannot accept that these issues are linked. Maintenance should not be "reduced" so that he can make the repayments on a loan taken out to pay a lump sum to the wife. 9. In her affidavit of

means sworn on the 3rd September, 2013, the wife states that her income needs amount to £2,553.01 at present and the children's income needs are £1,176 including the incidental expenses mentioned above and school fees. As already stated, the school fees are paid by her partner and therefore should be taken out of the calculation, bringing her claimed income needs for herself and the children down to £2,912.01 per month. It has to be noted that the income needs under the heading "Self" include household expenses not only for herself and the children but also for her partner and his daughter. These household expenses should therefore be discounted, unless they are specifically expenses for the children, to arrive at a figure which can reasonably be calculated as the costs incurred in relation to the children. I have therefore discounted the household expenses and attributed 2/5 to the children and attributed 2/3 to the children of the expenses specified as being for the wife and the children. I accept that it is a rough calculation but the wife's figures are all marked "approximate". Moreover, the expenses claimed for the children's sporting activities are very high. I accept that the children are talented at rugby and golf and they are fortunate that their mother is in a situation where those expenses can be met but I am sure that they would not be participating in those sports to such a degree if the wife was not being supported by her partner. I am going to make the order requested by the wife that the maintenance should be set at 20% of the husband's net monthly salary, which equates to £930 per month at present. In addition, he will pay one half of the school clothes, school shoes and school trips. On the figures provided by the wife these expenses amount to £141.66 and therefore one half will be approximately £70 per month. This should result in the husband paying no more than the £1,000 per month which he currently pays. 10. The maintenance will be paid until Riley attains the age of 16 or leaves full time secondary education whichever shall be the later date. He is not 16 until 2019 and I therefore decline at this stage to make an order as to the maintenance payable for William in 5 years' time. There will therefore be a review of child maintenance at the appropriate time. 11. There shall be a review of child maintenance should either of the children embark on tertiary education. 12. The maintenance shall be increased annually in line with the increase in JRPI. 13. The maintenance shall be reviewed in the event of a material change in the circumstances of either party or of the children. 14. In addition to the maintenance, the husband will pay to the wife for the benefit of the children 20% of any bonus he receives until Riley attains the age of 16 or leaves full time secondary education whichever shall be the later and thereafter he shall pay 15% of his bonus to the wife until William is 16 or leaves full time secondary education, whichever shall be the later date. The husband's pensions 15. The husband has three pensions, one of which commenced prior to the parties getting together. For ease of reference they are set out in the following table:- Standard Chartered Offshore Pension 17.7.1995 to 11.8.2000 (pre-marriage) 2.1.2001 to 8.8.2005 £15,188.23 £20,194.59 Barclays Pension £15,687.63 Standard Bank Jersey Employee Retirement Plan Pension £67,166.10 Total value £118,236.5 The value of the part of the pension which accrued before the parties met was £15,188.23 ("the pre-marriage pension"). The wife's position 16. On behalf of the wife, Advocate Haines asserted that the value of all assets to be taken into account, including the pensions, must be the values as at the date of the hearing. He cited a passage from Rossi

v Rossi

- [2006] EWHC 1482 (Fam) :- "The statute requires all assets to be valued at the date of trial". In his client's open position there was an option A and an option B. In option A, the three pensions, including the pre-marriage pension and the wife's pensions, were discounted down by 20%, the resulting value added to the agreed net value of the FMH and then divided as to 55% to the wife and 45% to the husband. The wife would retain her own pensions and take cash from the sale of the FMH in the sum of £128,636.70. The husband would be left with his three pensions intact and would receive £18,577.07 in cash from the sale proceeds of the FMH. The principle behind option B was to deduct the pre-marriage pension, discount the other pensions by 20% and then divide on a 55%/45% basis. In option B in the open position however, the incorrect figure was deducted and therefore his calculations were not quite correct. Deduction of the correct figure of £15,188.23 would result in the wife retaining her pensions and taking £120,283.17 from the sale proceeds with the husband retaining his pensions and receiving £26,930.59 from the sale proceeds. Although he submitted that the Court has a discretion whether or not to exclude the value of any pensions accrued before marriage, Advocate Haines submitted that in the circumstances of this case, the value of the pre-marriage pension should not be excluded. With regard to discounting pensions he referred to *Brownbill v Southern* 1999/70, *S v W* 1999/103B, and *R v W* 1999/103A, cases in which the full CETV of the pensions were taken into account with no discounting. He submitted that it is usually only in "big money cases" that pensions are discounted and referred to in *S v L* and *C*
- [2009] JRC 044A , *A v B* in *In the matter of S*
- [2011] JRC 119 and *T v B*
- [2008] JRC 077A . The overriding principle, he submitted, is to achieve fairness. Although it did not form part of the wife's open position, Advocate Haines submitted during the hearing that if the full value of all of the assets is taken into account then 50% of the value of the assets would be a fair outcome for the wife, but if the assets are discounted then she should receive a higher % of the assets. The husband's position 17. Advocate Orchard for the husband submitted that the value of the pensions should be discounted and in calculating the appropriate discount, account should be taken of the age of the parties, pre-marital and post-marital acquisitions and the illiquidity of the pensions. He submitted that the wife had accepted that the pensions should be discounted in her open position where she had proposed a discount of 20%. In the husband's opinion, none of the pensions should be taken into account in the division of assets as they are not realisable for a number of years and so do not assist with providing immediately for the parties' reasonable needs. He noted that the case of *Brownbill v Southern* is some 15 years old and times have moved on in that period. The pension in that case related to a PECSRS, a final salary scheme based on a person's wages when leaving the scheme. The nature of pensions has changed to a certain extent in that modern day pensions are usually defined contribution schemes whereby the pension is used to purchase an annuity in the future

which will produce income. He went on to say that the Court will discount where a pension is a large part of the award in a case where needs must be met or the parties are young. He referred to A v B - In the Matter of S

[2011] JRC 119 at paragraph 64:- "Whether it is fair to include pensions at their full value or at a discounted value or not at all will depend on the facts of each case, the circumstances of which will vary enormously." He submitted that it is not fair to put a general principle on these discounts - an arbitrary 20% is not appropriate. The pensions are illiquid and cannot be used for the needs of the parties. In addition further considerations have to be taken into account - neither the husband or the wife can benefit from these pensions for a considerable time, the marriage was short and most of the husband's pensions were acquired either pre or post marriage. The pensions cannot be used for his needs now and he will not benefit from them for 20 - 25 years. The husband can only borrow £70,000 to pay as a lump sum to the wife (although during his evidence the husband did say that he might be able to take an additional private loan of £10,000) and because of this the Court would need to disregard the pensions in their entirety. If the Court does not accept that they should be completely disregarded then they should at least attract a substantial discount. He submitted that the pre-marriage pension should be disregarded as it is a non-marital asset. His current pension has a value of £67,166 but he produced a valuation showing that as at the 30 th July, 2010, (not long after he had left the FMH) the value of that pension was £21,525.78. Therefore there has been an increase of over £45,000 during the period of separation. If the pre-marriage pension is taken out of the equation the increase of £45,000 during the separation period represents 44% of his pension assets, and this should be disregarded for the purposes of these proceedings. With regard to the accrual of assets he cited a passage from Rossi v Rossi :- "24.3 Assets acquired or created by one party after (or during a period of) separation may qualify as non-matrimonial property if it can be said that the property in question was acquired or created by a party by virtue of his personal industry and not by use (other than incidental use) of an asset which has been created during the marriage and in respect of which the other party can validly assert an unascertained share. Obviously, passive economic growth on matrimonial property that arises after separation will not qualify as non-matrimonial property". Advocate Orchard submitted that the drastic rise in the pension value could not be attributed to anything the wife had done. The increase in the pension was a non-matrimonial asset and as the marriage was short, it should not be taken into account unless needed. He submitted that the other pensions had not increased during the separation period and therefore the values should be as at today but with a discount. He cited S v S 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." And then at paragraph 88 he said:- "But to view the financial circumstances as they are at the hearing date can, in what I regard as the exceptional circumstances of this case, in any event only be a starting point. What has happened in the intervening years may be very significant, as I find in this case is the case, as it is the extra factor that if this company is to be brought to market at all it will by dint of H's endeavours for an indefinite future period to be counted in years rather than months." Advocate Orchard said that the starting point for the Court is the value of the assets at the date of the hearing but if there has been a dramatic increase attributable only to one party after the separation, this can be taken into account. The rise in the value of the pension cannot be attributed to anything the wife has done since the separation. He accepted that the Barclays pension and part of the Standard Chartered pension had accrued during the marriage. They had not increased significantly during the separation period and in the event that the Court should deem a discount necessary, the husband would be willing to accept that the pensions should be valued at the date of the hearing rather than looking back to the separation date but only on the basis that an appropriate discount is applied. He went on to point out that if the pre-marriage pension and the post separation pensions are removed from the matrimonial pot then the value of the remaining pension accrued during the marriage would be approximately £35,000. The wife has a pension of approximately £12,000 and therefore the disparity between the parties' marital pensions is only £23,000. I do not accept this argument on the basis that Advocate Orchard has ignored the balance of the Standard Chartered pension which it was agreed was accrued during the marriage (£20,194.59). Taking this into account the discrepancy would be in the region of £43,000. He went on to say that there have been recent cases in Jersey where there have been considerable discounts in relation to pensions and he cited the case of *S v L and C* as an example. It is correct that at paragraph 15 of that case Registrar Obbard said:- "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." There was no explanation as to how Registrar Obbard arrived at that figure. Advocate Orchard said that the husband could raise his mortgage by an additional £70,000 and he could raise a private loan of £10,000 in order to pay the wife a lump sum of £80,000. If the lump sum were to be any higher he would not be able to afford the payments and he would have to sell the house. He calculated that if the further £10,000 was ordered to be paid to compensate for any disparity then a discount of 57% would need to be applied to the husband's marital pensions, i.e. 57% of the £35,000 mentioned above, which he submitted was not an unreasonable discount in the circumstances. He summed up the husband's position by saying that the wife's needs are being met and in any event, the pensions do not assist in meeting needs. They are "minor matters" if the pre-marriage pension and the pension increase in the post separation period are removed from the equation. 18. In his reply to Advocate Orchard's submissions with regard to pensions, Advocate Haines submitted that *S v S* was quite different from this case as the period of separation had been ten years during which substantial assets had accrued. The CETV is the recognised yardstick for the valuation of pensions - the Court

should not depart from it and make new law. From the cases it can be seen that 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 on the facts of each case. The FMH The wife's position 19. The wife's position with regard to the FMH was quite clear. It should be sold and the proceeds divided between the parties. In her evidence, the wife recounted how she had remained at the FMH with the children following the separation and the husband rented a flat for himself. The parties agreed to put the FMH on the market in January 2013, a buyer was found but unfortunately the sale fell through at the last moment. The husband had moved back into the FMH shortly after this. She herself had moved out in April 2013 into a rental property in St Ouen with her new partner. She did not know why the husband had changed his mind about selling the FMH. Advocate Haines submitted that the husband does not need the FMH in order to have contact with the children. He had been content to rent a two bedroom flat for 2½ years and he could do so again. The children reside with the wife as their primary carer and therefore there is no need for the FMH to be retained for the children - he does not need it for the needs of the children. Advocate Haines had found no authority to support the argument that a FMH should be retained so that a father can have contact with his children. 20. The husband said in evidence that he had gone to the FMH after the wife had moved out to check it was secure and, as it was unoccupied and he was still paying the mortgage, he decided to move back in. He redecorated the children's bedrooms and he thought the children were happier with him at the FMH rather than at the flat in which he had been living. He said that he wanted to keep the FMH primarily for the children and he thought that moving back into the FMH was in the best interests of the children. Advocate Haines put it to him that he did not need a 3 bedroom house and that a two bedroom flat would be sufficient for his needs but the husband said that he wanted a garden for the boys. Advocate Orchard submitted on behalf of the husband that if the wife's proposals were accepted, the husband would only receive approximately £20,000 from the sale proceeds and he would not be able to buy another property as he would not have enough money to put down as a deposit on a house capable of housing the children appropriately. The FMH is appropriate for the husband's needs. He cited a paragraph from *M v B* (Ancillary Proceedings: Lump sum)

[1998] 1 FLR 53 in support of his submission that both parties need to be housed:- "In all these cases it is one of the paramount considerations, in applying the s 25 criteria, to endeavour to stretch what is available to cover the need of each for a home, particularly where there are young children involved. Obviously the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit it is of lesser importance, that the other parent should have a home of his own where the children can enjoy their contact time with him." Advocate Orchard said that the wife's needs are being met and therefore the husband should retain the house. He said that the husband does not want to move into a flat because the children would consider him as the "poor relation" compared to the wife. It would be unequitable and unfair if he cannot retain the FMH given the reality of the parties' situation. 21. Mention was made during the hearing about

the possibility of a Mesher order. The husband would accept such an order but the wife argues in favour of a clean break. Liabilities 22. The wife gave evidence that when the parties met and began to cohabit, the husband had debts of approximately £15,000 for which he took out a loan but that she had no debts. When the parties decided to marry they wanted to clear the debt so as to be able to buy a property. They therefore decided to pay off this debt between them by agreeing that the husband would pay for some things and the wife would pay for others but the end result would be that the loan was paid off by a joint effort. 23. In 2010, when the parties separated, the wife said that the husband had credit card debts in his own name, she did not know what the debts were for but they had not been accrued by expenditure on the family or the home. She had never had a credit card. She only found out about the credit card as she had found some Virgin MBNA statements. She did not know why the Black Horse loan was taken out. The husband had at some time purchased a Mazda two seater sports car but it was not practical as a family car and he therefore traded it in and bought a VW Golf. During the marriage the parties had taken out two Equity Release loans charged on the FMH. The first was to renovate the kitchen and the second was to purchase the wife's Land Rover and to pay for a new boiler and a new water tank. Both Equity Releases still have balances outstanding. 24. The husband gave evidence that the first Black Horse loan was taken out in 2007 and was used to purchase the Mazda sports car. By 2011, this loan had reduced to approximately £7,000. He then took out another Black Horse loan adding a further £5,000 to the £7,000 still outstanding. He said that the additional £5,000 was used to pay his credit card bill of £3,000 and £2,000 supplemented his income. The wife was a joint card holder. The Mazda had proved to be unsuitable for family life and so he had traded it in for the VW Golf. There was a direct conflict between the evidence of the husband and the wife in relation to these credit cards and the debts attached to them. Unfortunately no statements were produced which could shed light on (a) whether or not the wife had a card and (b) how the debts arose. The husband had not produced any credit card statements because the cost of obtaining copy statements would have been extortionate. He therefore accepted that he would have to take responsibility for the payment of the additional £5,000 but he maintained that the original balance of £7,000 was a joint liability and that the wife should contribute towards this. He had, in fact, taken one half of that liability into account in his offer to pay her £70,000 for her interest in the FMH. It was not accepted by the wife that the £7,000 was the balance due for his car but rather it represented debts which the husband had incurred and that is the reason why he had not produced any statements as they would show how the debt had been incurred. The husband denied that this was the reason why he had not produced any statements. Advocate Haines put it to him that he was wheeling and dealing to pay off his debts but this was denied by the husband. 25. It is unfortunate that no credit card statements were produced but I am not prepared to go as far as to say that the non-production of the cards was an attempt to cover up the husband's spending. As Advocate Orchard submitted, if this lack of disclosure was of genuine concern, it should have been addressed earlier. Earning capacity and future prospects 26. Before she gave up work the wife was a Senior Health Care Assistant, and had taken

professional examinations. Although she is financially dependent on her partner, her future is not guaranteed. She gave evidence that she would have to go back to work if the relationship failed. There is no intention between the wife and her partner of remarriage - she said they had discussed this but that "it is not an option". Advocate Haines submitted on her behalf that her new relationship has no bearing on this case. He referred to two passages from the Encyclopaedia of Financial Provision in Family Matters :- "In looking at the reality of a party's income, the absence of a legal entitlement to it may be a relevant factor, particularly where the source of the income is a person who owes no legal or fiduciary duty to the recipient." "As to the prospects of remarriage, the mere chance of remarriage will not be a factor to take into account, particularly where the wife has earned her share of the capital assets. If the mere chance of remarriage was a relevant factor, it would arise in nearly every case since it can always be said that there is a chance that either party to a divorce might remarry". Advocate Haines submitted that the wife has earned her share of the matrimonial assets and her future prospects or the fact that she has moved in with someone else cannot deprive her of her entitlement to that share. 27. The husband is employed by a local fund company

- the nature of his employment as stated in his affidavit of means is "Client Relations - Fund Management". As already seen, the husband earns a respectable salary, receives bonuses and there was no intimation that he would not continue to do so. His salary will be increased as from the 1st April, 2014. Division of assets 28. It was clear from evidence of the wife that she worked throughout the marriage, taking breaks when the children were born and thereafter on a part time basis. Her evidence was not disputed and therefore the evidence does not need to be set out in detail. Suffice it to say that she is entitled to a share of the matrimonial assets. The wife's position 29. On behalf of the wife, Advocate Haines submitted that there are two steps in the division of the assets - computation and distribution. Under the computation heading, the assets to be divided are the net proceeds of sale of the FMH and the pensions of the husband and the wife. Each party should retain his or her own bank accounts and personal assets. The Court is under a duty to make a clean break. The House of Lords in *Miller v Miller and MacFarlane v MacFarlane*

[2006] 2 AC 618 identified that "fairness" has three strands - needs, compensation and sharing. The wife's case was put forward on her entitlement to a share of the matrimonial assets rather than her financial needs. Whilst he submitted that the starting point should be an equal division of all the matrimonial assets, he said that the wife should be entitled to a greater share because of various things which have happened during the relationship which he referred to as "relationship disadvantages". It would be appropriate in this case to depart from an equal division and award her a greater share because of the following:- (i) The wife is seven years younger than the husband; (ii) The wife's life expectancy is longer; (iii) The wife's earning capacity had been lower than that of the husband; (iv) There are two young children (10 and 6) and she has been the carer of the children; (v) The wife's ability to enhance her career prospects and improve her earning capacity had been restricted and limited by being a carer of the children; (vi) The husband has had the

opportunity to enhance both his career prospects and his earning capacity. For 2013, his salary was £75,000 together with a bonus of £10,600 and a car allowance of £1,200; (vii) The wife has lost her entitlement to enhance her pension pot whilst caring for the children; (viii) As the parties were married after the 1 st April, 2001, the wife cannot substitute the husband's contributions to the state scheme in place of her own as she was not working or working full hours for all of the time. Therefore over the period of the marriage she has lost the opportunity to build up her own state pension. (ix) The children are still young and reside with the wife. The wife's ability to enhance her earning capacity will accordingly remain restricted and limited for some time. 30. The date of the value of the assets is the date of the hearing (see paragraph 16 above). 31. The assets should be divided as set out in option A or B in the wife's open position (55%/45% split in her favour) although in examples of various computations which he produced at the hearing, the wife's share had risen to 57% and the husband's dropped to 43%. The husband's position 32. Advocate Orchard, as already stated, disagreed that this was a case based on a sharing principle - he submitted that this is a reasonable needs case. The leading authority is *Miller and McFarlane*. In that case the Court held that there were four guiding principles in order for the Court to try and achieve fairness:- (i) the needs of the children; (ii) the needs of the parties; (iii) compensation aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage; (iv) equal sharing. The needs of the children and the parties should therefore be the Court's primary concern. The wife is the primary carer of the children; the children's housing needs when they are with their mother are met. The educational fees are being met by the wife's partner and will continue to be met by him should they go to boarding school. Her personal income needs are being more than met. She does not want for anything. Advocate Orchard submitted that there was no legal or equitable reason why the wife should be awarded 55% of the assets. Her evidence was that she had voluntarily given up her career to live with her new partner and it could not be equitable for the husband to be ordered to contribute towards her preferred lifestyle. She has the earning capacity to provide for her own needs should she so wish, but her circumstances are such that she does not need to and does not wish to. In order to depart from the yardstick of equality, the wife must show good reason for a departure from a 50/50 division. As Lord Nicholls said in *Miller v Miller* :- "When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less." The departure from equality is also only equitable where the parties' needs can be met. If there was a departure from equality in this case, the husband's needs would not be met. It was submitted that the husband's needs are greater than the wife's and the Court should therefore strive to make an order which would allow the husband to keep the FMH in order to provide an appropriate home for the children and so that he does not become the poor relation. The Court should seek to stretch the assets of the parties to allow both parties to be housed and for their reasonable needs to be met. The husband's proposed division of the matrimonial assets is that the FMH should be transferred to him, each party would retain their own pensions and that he would pay to

the wife a lump sum of £70,000/£80,000. This is an appropriate time to mention the parties' personal assets. The wife retains the Land Rover which is valued at approximately £6,000 and the husband retains the VW Golf valued at approximately £1,000. The wife contends that these assets should not be taken into account in the division of assets but the husband contends that they should. I have some sympathy with the husband's position in that if he retains the FMH he will continue to pay the Equity Release loan outstanding on the wife's car but he will gain no benefit from it. If the house is sold, the Equity Release will have to be paid off and again, he will not benefit as the wife will still have the Land Rover. I therefore accept that the wife should be responsible for a contribution towards the outstanding Black Horse loan. I will come back to this later in this judgment. The decision 33. If the wife's proposals are accepted by the Court, the husband will clearly not be able to retain the matrimonial home and it will have to be sold. He says he would not then be able to afford a house capable of providing for the children appropriately. He said that he does not want to move into a flat because the children would consider him as the "poor relation" compared to the wife. I do not accept that as a valid argument for keeping the FMH. 34. I appreciate that the husband would like to retain the FMH but I do not accept the submissions that the husband needs to keep the FMH or should keep the FMH because the wife's needs are being met and his needs are not. I accept the submission of Advocate Haines that as the children reside with the wife as their primary carer, there is no need for the FMH to be retained for the children - the husband does not need it for the needs of the children. 35. The arguments with regard to the value of the husband's pensions have been rehearsed about at paragraphs 16 - 18 above and I do not propose to repeat them here. I have to consider, in the light of the parties' proposals for the division of assets, at what date the pensions should be valued and whether the pensions should be:- (i) excluded on the basis that they are pre-marital or post-marital assets. (ii) discounted or completely disregarded. (iii) all included at their full value. 36. I cannot accept Advocate Orchard's submission that all of the husband's pensions should be disregarded. Nor can I agree that the pension fund into which he is paying currently should be disregarded in part. The passage he cited from *Rossi v Rossi* clearly refers to assets "acquired or created by one party after (or during a period of separation)" and might qualify as a non-matrimonial asset "if it can be said that the property in question was acquired or created by a party by a party by virtue of his personal industry and not by use...of an asset which has been created during the marriage". The present pension started during the marriage, it carried on through the period of separation - it was not "acquired or created" by the husband during the period of separation. I cannot see that he did anything personally to increase the value of his pension after the separation, other than to continue to contribute a monthly sum from his salary, and I therefore conclude that the value of this pension must be taken into account in full. 37. With regard to the pre-marriage pension I accept that I have a discretion as to whether or not to disregard it and I will refer to this pre-marriage pension later on in this judgment. 38. It is my view that, when formulating his proposal, the husband did not consider the value of the assets and then apply the law. Rather, he worked backwards - he worked out the maximum figure he

could afford to pay to the wife and then sought to apply the legal principles in such a way as to make that figure a fair division of the assets. Indeed Advocate Orchard said that the husband can only borrow £70,000 to pay as a lump sum to the wife and because of this the Court would need to disregard the pensions in their entirety. I cannot accept that this is a fair way of calculating the division of the assets. The husband's proposal would result in 68% of the total assets being awarded to the husband and 32% to the wife. Having rejected the husband's proposal it inevitably follows that the FMH will have to be sold. 39. What then is a fair way to decide upon the division of the assets? The agreed valuations of the net proceeds of sale of the FMH and the agreed valuations of the pensions have been used in calculations provided by Advocate Haines to illustrate what each of the parties would be awarded in different scenarios. These figures are not "cast in stone" as if the property were to be sold it might achieve a higher or lower net figure than the figure of £147,213.77. I have decided to follow Advocate Haines' argument that if the division of assets is to be based on the full valuations then 50/50 would be an appropriate division. Having said that, should the pre-marriage pension be disregarded? Using the agreed figures purely to arrive at a % for the division of the net proceeds of sale in due course, the both scenarios are as follows:-

Full valuation of all assets	Full valuation of all assets disregarding the pre-marriage pension (£15,188.23)	FMH Wife's pension	Husband's pensions ½	Wife has pension	Husband has pension	cash
£126,676.61	£126,676.61	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£20,537.16
£147,213.77	£147,213.77	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£277,547.42
£138,773.71	£138,773.71	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£138,773.71
£119,082.49	£119,082.49	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£119,082.49
£103,048.32	£103,048.32	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£103,048.32
£28,131.27	£28,131.27	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£28,131.27
£147,213.77	£147,213.77	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£147,213.77
£103,048.32	£103,048.32	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£103,048.32
£262,359.19	£262,359.19	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£262,359.19
£131,179.59	£131,179.59	£12,097.10	£118,236.55	£12,097.10	£118,236.55	£131,179.59

40. I will exercise my discretion and remove the pre-marriage pension from the calculations but the remaining pensions should be taken into account at their present day values. Therefore using the calculations in the right hand column of the table, I order that the wife should receive 80% of the net proceeds of sale of the FMH. The husband will receive 20%. This will give him more cash than he anticipated and should provide him with sufficient funds to put down as a deposit on another property whether it be a flat or a modest house. Over time, because of his earning capacity, I am sure that he will be able to purchase a more expensive house should he so wish. 41. Returning to the personal assets and the liabilities (paragraph 32), I have decided that from the gross proceeds of sale there should be deducted the usual legal and estate agent's fees, the mortgage and equity release loans and £3,500 to be paid towards the Black Horse Loan. 42. The parties will share the cost of the Court stamps equally. Schedule 1:-

Agreed Schedule of Assets, Liabilities and Income Positions

Joint	Wife	Husband	ASSETS	FMH valuation as at 29 August, 2013
Property A	Mortgage/Equity Release as at 27/09/2013	Barclays 'Home Loan' **1377	Barclays 'Home Loan' **0228	Barclays 'Home Loan' **7435
Total Net Equity: Less Costs:				
Sale costs: 1.5% = £2,241.83				
Total Net EQUITY including sale costs = £430,000.00 -				
£231,312.57 -£33,419.64 -£15,812.20 £149,455.60 £147,213.77				
BANK ACCOUNTS				
Barclays Bank (current) *3517 (as at 23.12.2013) £73.95				
William's Account ending: 6402 (as at 01.11.2013) £72.69 (William's account) Riley's Account ending: 6591 (as at 11/10/13) £9.47 (Riley's account) Barclays Bank (Current) *7313 (as at 19.12.2013) (£437.65) Barclays Bank				

(Current) *8417 (as at 23.09.2013) £.44 Barclays Bank (Current) *6910 (as at 23.09.2013) £0 PERSONAL ITEMS Car (Land Rover Freelander 2x5) as at 11.10.13 Jackson's valuation £6,007 Car (Golf) Jackson's valuation £1,075 Life Assurance -Aviva - Policy No. 6868354EF - (Petitioner currently paying approx. £30.00 per month) Nil value PENSIONS PERCS - Scheme no. 18733 as at 10.10.2013 CETV = £4,203.23 UBS AG Jersey DC Pension Scheme: Policy No. 87936572 as at 4.11.13 CETV = £7,893.87 Barclays Pension: Policy No. 46691544 as at 21.10.13 CETV = £15,687.63 Standard Chartered Offshore Island Pension as at 21.11.13 Mercer letter dated 21.11.13 states CETV for the following dates: - (1) 17.07.1995 to 11.08.2000 = £15,188.23 (2) 02.01.2001 to 08.08.2005 = £20,194.59 CETV = £35,382.82 Standard Bank Jersey Employee Retirement Plan Pension: Policy JY274275D as at 07.10.13 CETV = £67,166.10 TOTAL ASSETS £147,213.77 £18,178.05 £118,873.90 LIABILITIES Previous loan before consolidated valued as at 31.08.2011 (£6,946.07) Black Horse Loan - Agreement no. 79060434/2 - consolidated loan of £12,000 taken out on 31.08.2011 for 5 years Advance to Respondent of £5,053.93 of which he paid CCD of £2,970.00 £9,288.84 as at 30.08.2013 Legal Fees as at 23.12.2013 £22,088.50 approx £3,000 approx TOTAL Liabilities: £0.00 £22,088.50 (£11,044.25) £12,288.84 Total Realisable Assets £147,213.77 £7,133.80 £106,585.06 INCOME Child Maintenance (currently) Allowance from Petitioner's partner Standard Bank Per month net: £1,000 £2,000 Annual Income net: £36,000 £4,659.46 net per month [Annual Income Gross: £75,000 plus £10,000 bonus for 2013 Plus annual car park allowance of £1,200] Total Net Income £3,000.00 £4,659.46 per month (excludes bonus) ** Please note that the petitioner will contribute 50% towards these costs. SCHEDULE 2 The wife's open position This is a case based on needs that has been generated during the marriage. (a) There are two children of the marriage; (b) The Petitioner ("Wife's") ability to pursue a career and improve her earning capacity have been seriously affected by her natural role; (c) The Respondent ("Husband") has a large current earning capacity; (d) The husband has the platform and capacity to increase his income going forward; (e) The wife will continue to care for the two children; (f) The wife is in a new relationship which is in its early stages and is uncertain. This is also a case based on fairness, requiring the wife to be given an equal and greater share of the matrimonial pot. 1. 'Property A' Former Matrimonial Home ("FMH") It is the Wife's position that the FMH shall be sold. The available equity after the costs of sale are £149,455.60 less £2,241.83 = £147,213.77 . 2. Bank Accounts All bank accounts should remain in the name of the present holder. 3. Personal Items All personal items should remain in the name of the present holder. 4. Pensions The Wife's pensions have a CETV of £12,097.10 Taking these pensions at 80% = £9,677.68 The Husband pensions have a CETV of £118,236.55 which is made up of the following:- 1. Barclays Pension £15,687.63 2. Standard Chartered £35,382.82 3. Standard Bank £67,166.10 Taking these pensions at 80% = £94,589.54 N. B. If the pre marriage pension (Standard Chartered) is deducted from No.2, this reduces to £103,048.32. At 80% this equates to = £82,438.65 5. Liabilities The Husband brought into the relationship liability of £15,000, solely attributable to the Husband. Both parties cleared this debt. Liability at the date of separation is unknown. This was incurred by the Husband to purchase a two seated car and to pay his credit card debt. At 2011, it was

£6,946.07. 6. Income In 2013, the Husband earned (gross) £75,000, a bonus of £10,650 and £1,200 car allowance. The Wife has no salary income. 7. Child Maintenance The Husband has paid child maintenance since the date of separation at £1,000 per month. Taking the Husband's gross income £76,200 (£75,000 plus £1,200) less tax (20%) and social security (6%) = £56,388 net annual income. Child maintenance calculated in accordance with the CSA guidelines at 20% = £939.80 per month (£469.90 per child per month; £108.43 per child per week). Such child maintenance ought to be paid as follows: - · 20% of the Husband's net income should be paid until Riley reaches the age of 16 years (23.08.2019) or completes secondary education, whichever is the later. · Thereafter, child maintenance shall reduce from 20% to 15% for William until William reaches the age of 16 years (02.11.2023) or completes secondary education, whichever is the later. · There shall be a review of child maintenance in the event that either child goes on to tertiary education. · Child Maintenance shall increase yearly on the anniversary of the award by the Jersey Retail Price Index ("JRPI"); · In the event of a material change in the circumstances of the husband or wife, or of the children, an application may be made to the court seeking a review of child maintenance. In addition, the wife seeks the following: - · the respondent shall refund to the petitioner (or vice versa) one half of all doctor and dental bills incurred in respect of Riley and William on production of the receipted doctor and dental bills; · the parties shall each be responsible for 50% of Riley and Williams's school expenses (including but not limited to school uniforms (when necessary) and school activities). All large expenditure (over £30.00 per item) shall be agreed by both parties prior to any purchase being made. · the parties shall each be responsible for 50% of the reasonable costs incurred in respect of Riley and/or William in relation to all the necessary and reasonable school trips on and off Island, provided that the petitioner first gives notice to the respondent before such cost is incurred and the respondent gives his consent to make his 50% contribution (or vice versa); it being understood that such consent should not be unreasonably withheld. Bonus : The Husband received the following bonuses:- March 2011 - £2,725.85 net (usual net salary was £4,189.67; Husband was paid in March 2011 =£6,915.52) March 2012 - £2,580.00 net (usual net salary was £4,241.83; Husband was paid in March 2012 £6,821.83 March 2013 - £8,520.20 net (usual net salary is £4,282.27; Husband was paid in March 2013 £12,802.47 - this was a £10,650 bonus (gross). The wife seeks 20% of any bonus received by the Husband for both children as above. Thereafter, it shall reduce to 15% for William as above. In addition, the wife seeks the following:- 7.1 Within 21 days of receipt of any bonus, the husband shall give a copy of the written notice of such an award to the wife; 7.2 Within 21 days of receipt of any bonus, the husband shall pay 20% of the net sum to the wife (15% where there is only one entitled child); 7.3 At the end of each calendar year, the husband shall provide to the wife a letter from his employer setting out all bonus payments for that calendar year, if any. 8. Costs No order for costs. Both parties to meet their own costs. In Summary: A) The assets for distribution are: - FMH: £147,213.77 Wife's Pensions: £9,677.68 Husband's Pensions: £94,589.24 TOTAL = £251,480.69 On a 55/45 split: Wife = £138,314.38 Husband = £113,166.31 The wife will retain her pensions at £9,677.68 and receive £128,636.70 from the equity in the FMH. The

husband will retain his pensions at £94,589.24 and receive £18,577.07 from the equity in the FMH. In the event that the FMH is sold at a lower or higher price, this will be reflected in the distribution (for every pound percentage increase or decrease will be on a 55/45 split in favour of the wife). B) Division excluding pre-acquired pension before marriage (less £12,150.58) TOTAL = £239,330.11 On a 55/45 distribution Wife = £131,631.56 Husband = £107,698.55 The wife shall retain her pensions at £9,677.08 and receive £121,954.48 from the equity in the FMH. The husband would retain his pensions at £82,439.31 and receive £25,259.24 from the equity in the FMH." SCHEDULE 3 The husband's open position This is a case based primarily on needs. Relevant Facts 1. There are two children of the marriage; 2. The Wife is 33 years old and the Husband is 40 years old. The marriage lasted 8 years. 3. The Wife currently lives with her new partner who also provides her with a living allowance. Her needs are currently being met. 4. The Husband currently resides in the former matrimonial home ("FMH"). 5. The Husband cares for the children approximately 25% of the time including overnight contact. 6. The Husband's primary assets are by way of pension assets which are unrealisable at present and will not be realisable for a number of years. The Husband's Position FMH 7. The husband wishes to remain in the FMH as it provides for his needs to care for the children. 8. There is currently £149,000 in equity in the FMH. 9. The Husband shall transfer the FMH into his sole name together with the mortgage 10. The Husband shall pay to the Wife the sum of £70,000 as payment for the Wife's interest in the FMH. Pensions 11. The Husband has three pensions in his name and the Wife has two pensions in her sole name. None of these pensions are realisable at present and do not assist with providing for the parties' current needs. 12. In any event the majority of these pension assets were accumulated prior to the marriage or post separation. 13. It is therefore submitted that neither parties' pensions should be taken into account. Black Horse Loan 14. During the marriage the Wife took out an equity release loan (of £15,000) in order to pay for a new car for herself which has been secured against the FMH. The Husband took out a black horse finance loan in order to purchase a car for himself. 15. Shortly after the parties separated, the Black Horse loan had approximately £7,000 outstanding on it (the husband has taken out a further subsequent loan which has increased the loan further). This is accepted by the Wife. 16. Given that the equity release loan will remain with the FMH when it is transferred to the Husband's name, it is equitable that this loan is deemed as a joint loan as the Husband will take over both the Black Horse loan and the equity release loan. 17. The Husband has taken account of the £3,500 contribution as part of the £70,000 lump sum payment. Other Assets 18. Each party will retain all other assets in their sole name. Clean Break 19. There shall in all other respects be a clean break. Child Maintenance 20. The Husband has care of the children for 25% of the time. He has been paying the sum of £1,000 per month by way of child maintenance. However, if the Husband has to undertake a further loan in order to pay the Wife a lump sum, he will struggle to continue to meet these payments. 21. The Husband therefore proposes to pay to the wife the sum of £750 per month being 80% of the CSA guideline figures. 22. Such child maintenance shall reduce to £650 per month when Riley reaches the age of 16 or completes secondary education, whichever is the later. 23. There

shall be a review of child maintenance in the event that either child goes on to tertiary education. 24. He shall further undertake to pay 15% of any net bonus that he may receive in the future. 25. Child maintenance shall increase annually on the anniversary of the award in accordance with the rise in the Jersey Retail Price Index for the preceding 12 months. Division of the Assets 26. Under the terms of this Open Position, the parties will retain the following assets: Asset Wife Husband FMH (net value including further £70,000 borrowing) £79,455.60 Cash payment £70,000 Pensions £0 £0 Accounts £73.95 -£437.65 Vehicles £6,007 £1,040 TOTAL £76,080.95 (49%) £80,057.95 (51%) Less liabilities Legal Fees £11,000 £3,000 Black Horse Loan £9,288.84 Net Asset position £65,080.95 (49%) £67,769.11 (51%) Authorities Rossi v Rossi

[2006] EWHC 1482 (Fam) . Brownbill v Southern 1999/70. S v W 1999/103B. R v W 1999/103A. S v L and C

[2009] JRC 044A . In the matter of S

[2011] JRC 119 . T v B

[2008] JRC 077A . S v S

[2006] EWHC 2339 (Fam) M v B (Ancillary Proceedings: Lump sum) [1998] 1 FLR 53.
Encyclopaedia of Financial Provision in Family Matters. Miller v Miller and MacFarlane v MacFarlane

[2006] 2 AC 618 . Page Last Updated: 18 Jan 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2014/2014_027A.html

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2014/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/u-v-v-matrimonial-2014-jrc-027a-28-january-2014>

Prepared on 26 October 2026 · Esheria