

JERSEY / JUDGMENT

U -v- V (Matrimonial) [2015]

JRC 155 (14 July 2015)

[2015] JRC 155

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judgment

the deputy bailiff: 1. The Court has before it two applications for the variation of interim spousal maintenance. 2. The first in time, that of V, was issued on 25 th February, 2015, and seeks a reduction in the spousal maintenance payable on a monthly basis to U from the sum of £2,800 to £1,600 per month. 3. The second application in time, that of U, was issued on 26 th February, 2015, and seeks to increase the figure for spousal maintenance from £2,800 per month to £4,000 per month. 4. The applicable Law is largely agreed between the parties. It can be summarised as follows. 5. Article 31 of the Matrimonial Causes (Jersey) Law 1949 ("the 1949 Law") gives power to the court to make an interim order requiring one party to pay to the other such sums for their maintenance and support as the court thinks just. 6. In K v P

[2009] JRC 170A , the court noted a quotation from Butterworth's Family Law Service Section 4A

[1366] which states:- "The primary aim of the court will be to make such an order, if possible, which will give a spouse at least sufficient money to discharge the day to day outgoings and to feed, clothe and keep a roof over the head of that spouse until the final adjustments and orders are made in relation to the matrimonial assets and finances after decree nisi." 7. In Re T (Divorce:-Interim Maintenance: Discovery)

[1990] FLR the Family Division set out the approach to be taken to maintenance pending suit. The Court stated:- "Given the standard of living they enjoyed, it is reasonable, in my judgment, for the petitioner to expect to be maintained pending suit at a substantial if not lavish rate, subject always, however, to the husband's ability to pay such maintenance." "This was a case where the husband had agreed to pay maintenance at a certain level and then retracted that agreement, complaining that insufficient disclosure had been made by the Wife. The Court noted at p7 "The levels of maintenance he was prepared to agree must be compelling evidence of what amounts it would be reasonable to afford". 8. In the Matter of O

[2010] JLR N 18 the Court held that overall considerations of reasonableness and relative standards of living should be applied. 9. In the case of L v D and R

[2004] JLR 334 the Court referred to the correct approach in questions of a variation of spousal maintenance when an amount has been agreed. At paragraph 16 of the judgment Birt, Deputy Bailiff as he then was, said this: - "... Miss Colley was correct to accept that proposition. One starts with a strong presumption that parties are free to enter into such agreements as they think fit and once they have done so they should be held to their bargain. It is in the public interest that this should be so and that parties should not be encouraged to revisit and seek to reopen an agreement simply because of some change of circumstances. The Court should take the agreement figure as a starting point and then simply decide what variation would be fair and reasonable in the light of the changed circumstances. 17. This principle is particularly applicable when the Court is considering financial provision for a spouse... in the average case, where the parties have agreed a reasonable figure (even if it is not the figure which the Court itself might have fixed upon initially had it been called upon to resolve the matter) it is not appropriate to reopen the whole level of maintenance simply because there had been a change in circumstances. The correct course is to acknowledge and respect the fact that the parties have reached an agreement and the Court's role is limited to determining what variation, if any, would be fair and reasonable taking into account the change in circumstances." 10. Of course that case was dealing with a variation of a final figure for spousal maintenance and not an agreed figure for interim maintenance as we are in this case. However, it seems to us, that the correct starting point in this case is also the agreed figure. Further, in our view, the Court should consider the applications for variation of interim maintenance in the context of the proceedings as a whole and, in particular, the proximity of a final

determination.

11. In this case the figure for spousal maintenance was fixed by consent in an order of the Court of 27 th November, 2012, in the following terms:- "It is hereby ordered by consent that: From the date of this order the respondent shall make periodical payments to the petitioner at the rate of £2,800 per month, payable on the 13 th day of each month into the petitioner's bank account with Royal Bank of Scotland (sort code 83-23-13) with Account number 00176439, in the form of maintenance pending suit; The respondent shall pay the regular oil, electricity, council tax, mortgage, buildings, contents insurance and property maintenance costs of the petitioner until further agreement or order of the court. Said bills to be paid directly to the utility provider within the stated payment period on provision of the relevant bill;" 12. Although V stated in evidence that he had agreed to the terms of the consent order in the expectation that the matter would be resolved within 18 months in fact that order has remained in effect, without variation, to the present time. 13. It would be fair to say that this matter has taken a considerable time to resolve and appears to us from the material before us to be in part characterised by difficulties with regard to disclosure and by acrimony and mistrust between the parties. 14. However, a timetable has now been established which would bring this matter for a final hearing, presently set for two weeks commencing on 29 th September, 2015. It may accordingly be thought somewhat strange that, the consent order

having lasted so long, and the final hearing being relatively imminent, that the parties should have sought a variation at this stage. 15. V, for his part, informs us in evidence that he has brought this application because he fears that the dates set aside in September and October would be adjourned. There have been adjournments in the past and he fears that there will be adjournments again and hence he wishes to vary the spousal maintenance at this stage. 16. U, for her part, brings her application to vary because V is insistent on proceeding with his own application. She would not have done so if V had acceded to her suggestion that variations of spousal maintenance should at least abide the outcome of a mediation which is scheduled to take place between now and the final hearing although the precise dates are not yet fixed. 17. We heard evidence at some length from V who told us of a worsening financial position over the last three years in connection with his business and therefore personal finances and indicates, although we were shown no direct evidence of the amounts involved, that his savings were largely now exhausted. However, as we have noted above, he would not have made an application were he confident that the dates set aside in September would go ahead. 18. U also gave evidence. She explained what her needs were by reference to her affidavit of means filed within this proceedings and was cross examined at length by Advocate Heath, for V, on the detail of her requirements on the basis, in part, that a number of figures that she was claiming would not arise as expenses between now and the dates set aside in September. 19. This, it seems to us, created the somewhat unusual juxtaposition of propositions in the sense that V's application was based on his fear that the proceedings would not go ahead in September but his challenge to U's application was based in part on the proposition that it would go ahead in September. 20. We do not feel the need to resolve these

issues.

We have regard to the dicta in *Re T* and in *L v D and R* referred to above and we are not persuaded that there is a sufficient basis to accede either to V's request to lower spousal maintenance or to U's application to raise it between now and the final hearing. 21. Accordingly we find against V on his application and against U on her application. The matter of spousal maintenance will fall to be determined and dealt with by the Court during the course of the final hearing which, as we have said, is scheduled to start on 29 th September. 22. It did not appear to us to be appropriate to apply to vary interim spousal maintenance so close to a final determination, particularly when it has lasted so long, other than in the clear cases of necessity. We are not persuaded that either V or U needed to make their applications at this point. Indeed, in considering what V might have hoped to achieve had the Court acceded to his request for a reduction in interim spousal maintenance between now and the trial hearing, it seems to us likely that a significant amount of that advantage would have been eroded by the costs of the preparation for and conduct of the hearing before us today. 23. Naturally should unforeseen circumstances mean that it is impossible to proceed to a final hearing on the dates set aside, and the Court is determined if at all possible that the matter does proceed, then we would be prepared to consider again, if necessary, the correct level of interim spousal maintenance. 24. We leave over the matter of costs

to be argued at the end of the final hearing. Authorities Matrimonial Causes (Jersey) Law 1949. K v P

[2009] JRC 170A . Butterworth's Family Law Service Section 4A. Re T (Divorce:-Interim Maintenance: Discovery) [1990] FLR. In the Matter of O

[2010] JLR N 18. L v D and R

[2004] JLR 334 . Page Last Updated: 16 Jan 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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