

JERSEY / JUDGMENT

V v K [2008] JRC 109A (08 July 2008)

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judgment

the registrar: 1. The facts of this case are a little unusual but not controversial except in detail. 2. The husband said in his evidence that he met his future wife in Thailand in January 1996. Together they travelled, finally moving back to his wife's home country, Sweden, in April of that year, where they set up home together and where their 2 children were born. 3. The time came when the parties decided to move to Jersey, where it seems there were better career prospects for the husband, and where his parents lived. This was in 2001, when the parties had already been together 5 years, although the husband told me that at one point before that they had separated for a time. 4. Be that as it may, they married in 2003 and bought a property in St Clement "off plan" for the sum of £285,000 in June 2005. At that time they were renting property in St Brelade, but as they became more heavily committed financially to the purchase of the new property, they moved to the husband's mother's property in June 2006. 5. In October 2006, the parties separated, though the husband continued to make 50% mortgage contributions for the property as it was being built, until the end of that year. 6. When the property was finally finished, the wife moved in with the children in February 2007. From January 2007 to date, she alone has paid all the mortgage contributions. These are the total contributions paid by her:- A family loan to fund the deposit £14,705.00 50% mortgage June 05 - December 06 £ 3,974.47 100% mortgage January 07 - June 08 £27,000.00 payment to Water and Warmth £ 4,900.00 Fixtures and fittings £ 6,000.00 £57,540.22 7. The husband's total contributions towards the mortgage from June 2005 - December 2006 amount to £4,935. 8. The husband's pension Cash Equivalent Transfer Value is £15,220. The wife's pension has a value of £667. 9. So the far greater asset is that of the house. I hesitate to call it the "former matrimonial home" because it never was. However, I accept that it was bought at a time when the parties had been married for 2 years and had been together, nearly consistently, for 9 ½ years, and they already had 2 children. 10. What is extraordinary is the enormous increase in the value of the house. It was bought "off plan" for £285,000 in June. Shortly after, a bank valuation for the purpose of the mortgage was carried out. The home was then valued at £310,000. However, a valuation carried out by Slomans on 8 th April 2008, places a value of £459,000 on it. The bank mortgage stands at £267,956, leaving an equity of £182,043. Deducting the parties total contributions, including the deposit, made over 3 years, this represents a profit of over £62,500. 11. Not surprisingly, the husband is disappointed by the wife's final offer to him of a mere £30,000, because, potentially, she will continue to reap the benefit of the increasing value in years to come, whilst he pays rental on his property and might see no benefit. 12. This is

not an easy decision. Taking all the circumstances into account, (including the husband's larger pension provision, although this is not a major factor in my decision, given the much greater value of the home,) this is how I see the matter. 13. The wife and children clearly have priority to live in the house. It should be transferred to her. The situation is one for a clean break if at all possible, which can easily be achieved here. I see no clear advantage to either party in making a "Mesher" order for the property to remain temporarily in joint names, which could easily give rise to disputes about property maintenance and improvement. As far as I know, the husband has not even set foot in the property. 14. Not only does the Court need to give the children first consideration in accordance with the law, the wife and her family have made the greatest contribution towards it and have the greater need for the use of it. She has, and will, pay the mortgage contributions without assistance from the husband. True, he will pay child maintenance, but that does not equate to a contribution to the mortgage instalments. 15. In my judgement he should receive a sum equivalent to 20% of the equity. The payment should be split into 2 lump sum payments. She must pay the maximum she can afford now. The second amount will be linked to the increasing value of the house as time passes. 16. The present equity in the house is now £182,043. 20% of that is £36,408. I will round this up to £37,000. 17. He should receive £10,000 upon the transfer of the property to the wife - the first lump sum. 18. He should receive £27,000 (as increased

- see below) - the second lump sum - on the occurrence of the first of the following trigger events:- (i) the death of the wife (ii) the wife electing to sell (iii) her cohabiting with a partner for 12 months (iv) her re-marriage (v) the youngest child attaining 18 years. 19. So that he doesn't lose a share in the increasing value of the property, the £27,000 is to be expressed as a percentage of the property's existing gross value, namely £450,000. The percentage is 6%. 20. Supposing the property is worth £1,000,000 in 9 years time, he will be entitled to £60,000. 21. Presumably the property in 9 years time will still be subject to a mortgage, so the percentage sounds low in relation to the gross value. However, as explained in paragraph 15, the husband is to receive at least 20% of the existing equity. If the equity increases in the years to come, it will be thanks to the wife's payment of the mortgage. However, I think it fair to base the final amount received by the husband on the gross value, which is unaffected by the mortgage or remaining part of it. 22. I can cite no authority in favour of my approach to this case, which seems to me to revolve around its own facts. This was not a matrimonial home in the true sense, but at the time of the purchase, the parties were indeed married and they and their 2 children had been together for some years, even if the relationship was not always settled. Needs, contribution and the consideration of the children are my reasons for allocating the majority of the equity to the wife. Both parties' earning prospects are good, even if the wife could be at some disadvantage on the labour market until the children are more grown up. However this property has been and will be purchased substantially by the wife's contributions from the beginning. Right from the start, her family paid the deposit and she will have paid 100% of the contributions from the beginning of 2007. 23. Notwithstanding all of the above, I think it right for the husband to benefit from the increase in the property value up until the time his 2 nd lump sum materialises. This is not a case like

Sewrey -v- White (Unreported 6 th March 1986), decided at a time when interest rates were high and property values relatively stable as compared to present times, and when the Greffier of the time said:- "In assessing the lump sum payable by the petitioner to the respondent, I found that the respondent should not necessarily benefit from the increase in the value of the house over the last four years." 24. I have also born in mind that this is a first time buyers' house and that if and when the husband wants to purchase property in the future, he may not be afforded the same advantages he enjoyed in this purchase. It would certainly be wrong for him to find that his capital sum had not kept pace over the years with the increasing value of property. Authorities Sewrey -v- White (Unreported 6 th March 1986). Page Last Updated: 15 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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