

JERSEY / JUDGMENT

W -v- X (Matrimonial) [2015]

JRC 108B (19 May 2015)

[2015] JRC 108B

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judgment

the registrar:

Reasons

1. The parties were married on the 20 th August, 1994. The wife is 54 and husband 51. It has been a long marriage. There are two children, Bobby (this is not his real name), just 18 and Bethany, (this is not her real name), aged 15. A decree nisi was pronounced on the 2 nd July, 2014, on the grounds that the parties have lived separate and apart since March 2012. It is the husband's application for ancillary relief and he filed his application on the 16 th December, 2014. 2. A joint statement of issues was filed and the issues are:- (i) what level of child maintenance should be payable by the husband to the wife and for what term; (ii) is the case suitable for a clean break; (iii) how should the assets and debts be divided. The open position of the husband 3. The husband seeks the following orders:- (i) that there be a clean break in respect of financial provision; (ii) that both parties retain all assets (including the respondent's pension with Standard Life with a CETV of £54,542.02) and be responsible for all debts that remain in their sole name (including all mortgage interest and capital repayments due in respect of the mortgage secured against Property 1) (save for any adjustment in this document). (iii) each party will indemnify the other for those liabilities currently in their own name and those taken out in their own name; (iv) the respondent shall transfer the shares with B Fund presently held in her sole name (valued by her at £12,002) into the petitioner's sole name; (v) that the petitioner and respondent will continue to jointly maintain and remain responsible for the premiums in respect of the Standard Life assurance policy number Y71455752 on their joint lives in accordance with the terms the policy was taken out on; (vi) the respondent shall receive all the child income tax allowances in respect of the children. The petitioner shall receive the benefit of any income tax relief payable on the maintenance payments made by him. In the event that either party do not utilise their allowance in whole or in part, the balance remaining shall accrue to the other party; (vii) that the petitioner shall pay child maintenance to the respondent for the benefit of Bethany at the rate of £100.00 per month until she reaches the age of 17 or finishes full time secondary education whichever is the later of such dates. Such payments to be made by

standing order shall increase in line with the Jersey Retail Price Index (or such other "cost of living" index as shall supersede it) in the preceding 12 months. There is to be a review of child maintenance should Bethany attend tertiary education; (viii) that the parties will draw up a schedule of the items in the former matrimonial home, noting whose possession they are now in, then agree an equitable division. That there be liberty to apply should matters not be agreed; (ix) that the respondent bears the full costs of £295.95 owed to P Trust; (x) there be liberty to apply limited to the implementation and timing of the terms of this order; Costs (xi) the petitioner seeks an order that the respondent contribute towards his legal costs. The open position of the wife 4. The wife proposes that an order be made in the following terms:- (i) upon the parties agreeing that the terms of this proposal are accepted in full and final satisfaction of all claims for capital, lump sum payments and transfers of property (including pension rights) costs and claims against and the other's estate on death; and (ii) upon the petitioner and respondent agreeing that neither of them has any legal or equitable interest in any property or assets owned by the other, save as provided for by this agreement; and (iii) upon the petitioner and respondent undertaking to the Court and agreeing to:- (a) discharge all liabilities in their sole names; (b) indemnify each other in respect of such liabilities; and (c) for the avoidance of doubt, upon the petitioner undertaking to the Court and agreeing to discharge and remain responsible for all mortgage interest and capital repayments due in respect of the mortgage secured against Property 1 and to indemnify the respondent in respect of the same; and (d) upon the petitioner and respondent agreeing that the contents of the former matrimonial home shall remain the absolute property of the party in whose possession they now are; and (e) upon the petitioner and respondent undertaking to the Court and agreeing that they will continue jointly to maintain and remain responsible for the premiums in respect of the Standard Life assurance policy number Y71455752 on their joint lives and forthwith jointly and irrevocably instruct Standard Life that in the event of the death of one or either of the petitioner and the respondent, the proceeds of the policy shall be paid out to or for the benefit of Bobby and Bethany in equal shares; SUBJECT TO DECREE ABSOLUTE it is ordered that:- the petitioner shall pay maintenance pending suit until the date of decree absolute and afterwards by way of periodical payment to the respondent at the nominal rate of £1 per annum. Payments shall commence on 19 th May, 2015, and shall end on the first to occur of:- 1.1. the death of the respondent; 1.2. the respondent's remarriage; 1.3 further order terminating the payments; the Petitioner will pay periodical payments to the respondent for the benefit of Bobby and Bethany as follows:- 2.1. forthwith a lump sum in respect of unpaid arrears at a rate of £32 per child per week (or such other rate as the court deems appropriate) from 3 rd October, 2014, until date of order; and 2.2. monthly in advance in the sum of £32 per child per week (or such other sum as the court deems appropriate), until each child reaches the end of full time tertiary education (limited to first degree level) or their twenty first birthday, whichever is the later; the petitioner's and respondent's claims for capital, including lump sums and property adjustment orders shall stand dismissed and neither the petitioner nor the respondent shall be entitled to make any further application under Articles 27, 28, 30 or 31 of the Matrimonial Causes (Jersey) Law 1949 as amended; there be no order as to costs;

there be liberty to apply limited to the implementation and timing of the terms of this order.

Financial history of the marriage

5. The parties met in September 1990 soon after the husband came to Jersey. He worked for the C and the wife was also working for C. In 1995 the husband obtained J Category Housing with a new job as Group Manager for D. The wife had promotions within C and consequently their income increased so they were able to enjoy holidays, meals out and regular travel to the UK.

6. Bobby was born in 1997 and the wife returned to work but from 8 am to 2 pm as a Compliance Manager and Money Laundering Reports Officer with C. In 1998 the husband moved to E. In 1998 a loan was provided from the husband's father.

7. In 2000 Bethany was born. The parties looked at the finances and although it would be a struggle agreed the wife give up work to look after the children. In 2000 they purchased a 2 bedroomed non-qualified off plan apartment for £310,000 which was sold for £410,000.

8. In 2000/1 the wife's share options with C were cashed in and were used as a house deposit. E was taken over by F and share options were bought back so the husband realised about £330,000 profit. He had worked for F previously and did not want to work for them again.

9. The husband set up a company, G Trust, with Mr H but it was a "tricky" start; no wages were taken for 2 years and they lived off the E shares. £100,000 was invested in the trust company.

10. In 2001 they acquired a 4-bedroomed non-qualified house in J for about £1,000,000 with a large interest only mortgage and in 2001/2 purchased a 3-bedroomed apartment in K off plan which was sold in 2004 at a profit.

11. The business was developing extremely well and by 2003 there were five employees and an opportunity to move abroad.

12. In 2003 the husband purchased an apartment in L with a partner and it was sold in 2004 with £30,000 profit for the husband. In 2004 the wife obtained her housing qualifications.

13. In 2004 the parties decided to take a chance and set up abroad so J was sold and they moved away. The children went to an international school. The husband owned 50% of G Trust but it was decided to give up 2½% of the shares to a lady who worked in the company.

14. Unfortunately the woman and the partner, because they held 52% of the shares, decided to fire the husband.

15. The husband sold his interest in G Trust for in excess of £1.1 million paid over 3/4 years. Unfortunately as the husband said in his evidence "this was the start of our demise". Neither the husband nor the wife had expertise in the foreign market. In 2005 he set up M Limited but lost money on this.

16. In 2005 they purchased a house abroad which was sold at a loss and in 2005 a building plot was acquired with plans to build a large property to be the matrimonial home with an estimated value on completion of €3 million. The property was officially bought for £340,000 but the actual price may have been about £500,000-£600,000. £140,000 of steel was stolen from the site so had to be re-purchased. The wife ran the household budget with the parties spending about £80,000 per annum so "the pot was eaten into" the rest of the money from G Trust went on poor investments.

17. By 2008 the wife and children moved back to Jersey and the husband moved back in 2010. The wife began working at N and School 1.

18. In November 2011 the husband returned abroad to set up Q Limited (now called R) and he still remains a director. In April 2012 the husband returned to Jersey for a holiday and told the wife he was moving in with a girlfriend and her three children abroad. However in April 2013 he returned to live in the family home and in October 2013 moved into his own flat and the wife

and children moved to S where they continue to live. In July 2013 the share sale agreement for R was signed. The husband's financial position 19. The husband works as a warehouse manager for T, having started there in September 2014. He works a 37½ hour week. His net income from T is £1,012.76 per month and in addition he receives weekly income support of £132.16. His net income is therefore £385.35 per week but on average about £1,550 per month. He said that Income Support undertook rigorous checks before allocating this to him. His monthly needs are now about £1,487 as his rent has increased to £733 per month and he is paying legal fees of £30 per month. His evidence was that he therefore has about £80-90 per month "spare". He lives within his means. He was asked about his aspirations as he had been an investment manager and he is only 51. He said he had been through 2 years of stress and depression but he had changed his lifestyle, is fitter and is happy doing what he is doing. He was not asked whether he is still looking for other jobs and/or whether he considers he is maximizing his income. 20. The husband offers to pay Bethany £100 per month (now 15) until she is 17 or finishes full time secondary education whichever is the later. However he has made no offer for maintenance in respect of Bobby who will be 18 in June and is doing his A-Levels, because Bobby has been offered a place with U starting in September 2015. 21. The husband has no savings or pension, not even a Jersey States pension, having encashed £100,000 of pension and £20,000 of premium bonds and endowment policies. He sold R two years ago for £50,000. He is a non-executive director but receives no remuneration or benefit from the company. The husband confirmed he has no undisclosed trust assets. Property 1 was bought in 2006 from the proceeds of the sale of G Trust and was settled in a trust but the trust collapsed and the land was transferred into the husband's sole name. The valuation is agreed at £148,139 but with the outstanding mortgage, which has not been paid for the last 2 years, costs of sale and legal fees there is negative equity of about £61,000. The husband's evidence was that abroad people are not paying the asking price so the negative equity could be more. There are also unpaid community fees in respect of the property. 22. The parties bought a property 15 years ago, Property 2. When they sold it they had to give an indemnity relating to costs for stabilization works which have now been quantified at £26,889 and a letter from a firm of lawyers has been received in March 2015 requesting this money now be paid. 23. Mr V owes the parties jointly £4,000 and Mr V had agreed he would pay Bethany's school fees but has only paid one instalment in January 2014 of £1,286, so the balance of school fees not met by a small bursary are paid by the wife's mother. The wife's financial position 24. The wife is a café manager at School 1 and earns £1,545 per month. She does however sometimes get overtime. She also receives £300.16 per week income support for herself and the two children so her monthly income is £2,831.40. There were some adjustments to the expenditure schedule provided in her affidavit of means but her income falls far short of the expenditure. Both children are very good badminton players and Bobby narrowly missed playing for Jersey in the Island Games. The wife put down £300 per month in her schedule of expenditure for badminton but said she has had to pull the children out of competitions and some training although has managed to get some coaching for them by providing catering for badminton events. 25. Fortunately the wife is currently renting a property from a friend with a reduced rent of

£1,187 per month which will remain until July 2016. She did turn down the offer of a housing trust 3-bedroomed property but is still on the list for housing. The wife was questioned about her schedule of expenditure and accepted she has not been to the dentist as she cannot afford this, goes to the hairdresser only twice a year and cannot afford a physiotherapist or chiropodist. Bobby whilst working for his A-Levels does waitering. Bethany has two jobs so they help contribute for their upkeep when they can. 26. The wife explained that whilst Bobby had been offered a job with U he would like to go to university, having got two conditional offers. A grant has been applied for but Bobby is worried that university cannot be afforded and feels pressurised into accepting the U job. The wife said that the decision is his but one option may be to defer his university place for a year and take up the placement with U in the meantime to see if he likes it. 27. The wife has shares in Y mainly from the funds from her C pension. The husband says they are worth £49,669 but the wife's valuation is for £12,002 as the shares are suspended. An opportunity to sell was given in 2014 but at a price of 30% of the value. The husband said that the fund invests solely in teak in Brazil. He considers the full value of the fund will not be realised until 5 or 6 years' time. The wife agreed the husband knew more about the shares. The wife wants the money in order to pay back her mother who is paying the bulk of school fees for Bethany and hopefully will do so for the next 3 years, although it appears her mother is not pursuing her for this money. It is not clear how much the wife will receive from the shares in due course but it could be £49,669. The wife has a pension with Standard Life with a CETV of £54,542. 28. The wife accepted that Property 1 had been a joint venture and that the husband would be taking on the negative equity. She said she was surprised that Property 1 was not in her name. She is not being charged legal fees by her lawyers. 29. Both parties have a car of a similar value and a watch of a similar value. 30. The wife was questioned about her inheritance prospects. She assumes she will get £70,000 from her mother but cannot be sure about this. Her mother is in her 90s and has breathing difficulties but she said that the husband's parents were in their 80s. The Law 31. Financial orders are made pursuant to Articles 27 to 33 of the Matrimonial Causes (Jersey) Law 1949 as amended. Jersey courts take into account the matters set out in section 25 of the Matrimonial Causes Act 1973. Section 25 of the Matrimonial Causes Act ("MCA") 1973 says:- "It therefore the duty of the Court to have regard to all the circumstances of the case first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18." Child maintenance 32. The husband is paying no child maintenance at present although did offer £5 per child per week as at 3 rd October, 2014, and the wife agreed this amount on an interim basis only until the correct level could be finalised. Two weeks later his lawyers referred to the agreement. The husband gave evidence that he did not pay this as his lawyers told him not to pay this sum. He does pay £20 per month for Bethany's phone bill. 33. The husband is only offering to pay child maintenance to Bethany until she reaches 17 or finishes full time secondary education with no maintenance to Bobby. Bethany is 3-4 years away from leaving school but may want to go to university; Bobby could be attending university as from September 2015. The husband says he understood Bobby was definitely going to U which offers £22,000 per annum. The husband's advocate said that having heard the evidence, the

husband agreed that there be a review of the child maintenance if the children attend tertiary education. However, if Bobby goes to university it will be in a few months' time. The wife's advocate accepted that it was not unreasonable to have a review of maintenance if Bethany wants to go on to tertiary education. 34. What should the level of maintenance be? The husband proposes £100 per month for Bethany but the wife requires £32 per child per week in accordance with the informal tariff referred to at S v G

[2003] JLR N 29 i.e. 20% of net income. Reference was also made to W v O

[2004] JLR 53 which said that whilst the tables may be useful, maintenance should be checked:- "for overall fairness and common sense." 35. In the case of A (Child Maintenance)

[2012] JRC 027B the tariff of 20% of net income was not ordered because the expenditure of the father included loans for items which he left with the mother. 36. I accept that the husband's lifestyle is modest. He has no holiday provision although is spending £100 per month on entertainment and hobbies. He has to spend £30 per month on legal fees which are £2,566 less £419. The wife's advocate said that he should not be paying legal fees; but I have to assume that Viberts are entitled to charge as set out in the statement of costs provided. I do not consider the husband can afford £64 per week or £277 per month, but can afford £70 per month for Bethany until she finishes full-time secondary education or reaches the age of 18 whichever is the later, with a review of maintenance if she goes on to tertiary education. The husband is required to pay maintenance for Bobby of £70 per month until he finishes full-time tertiary education or further order. The maintenance payments are to be made by standing order, with the usual the Jersey Retail Price Index increase. Should Bobby take up employment with U and defer his university placement for a year, the maintenance for him will be suspended during that time and will be paid for Bethany at the rate of £140 per month during that time. In respect of the maintenance the husband had agreed to pay, arrears amount to £330 from the 3rd October, 2014, he must pay in addition in total £15 per month to pay off these arrears. Spousal maintenance 37. The wife is seeking nominal spousal maintenance. Rule 49 of the Matrimonial Causes Rules 2005 says that an application for ancillary relief must be made by way of Form 16. When the wife's advocate was asked where her Form 16 was, he did not apply for leave to file the form. The wife therefore has no application before the Court. 38. Even if there were such an application would it have been granted? On his current income, the wife would receive no spousal maintenance from the husband. She seeks a nominal maintenance order on the basis that in the past he has provided a good lifestyle for the family. She asks for this because this will:- "...provide her with a potential source of comfort should her health or ability to work fail, especially in the years when she remains the children's carer and home giver. As the wife is prepared to dismiss her capital claims, the competing needs of the parties lead to the inexorable conclusion that to deprive her of such an order would be unjust after a marriage of this length." 39. The Court was referred to the case of Flavell v Flavell

- [1996] EWCA Civ 649 . In the Flavell case the husband had been ordered to pay spousal maintenance for 2 years. The wife applied to vary this and spousal maintenance was granted without a termination date on the basis that the wife had a very limited earning capacity and would not be able to adjust to the ending of maintenance without undue hardship. 40. The wife is seeking nominal spousal maintenance until her death, remarriage or further order. The husband's position is that such an order can be varied to provide for substantive maintenance, and he does not consider it his responsibility to keep his ex-wife when he and she both have the ability to work, bearing in mind that both had good jobs in the past, albeit she ceased working for C in 2000. 41. The case of *Le Geyt v Mallett and Rodrigues*
- [1993] JLR 103 considered whether a clean break agreement could be ratified by a Jersey Court. The then Bailiff held that although the English Law on "clean break" provision under Section 25A of the Matrimonial Causes Act could not be imported into Jersey Law, a Jersey Court order could give effect to such an agreement which effectively amounted to a clean break. 42. There were two English cases from the 1980s the latest being the case of *Ashley v Blackman*
- [1988] 2 FLR 278 in which Waite J said:- "No humane society could tolerate, even in the interests of saving its public purse, the prospect of a divorced couple of acutely limited means remaining manacled to each other indefinitely...." 43. In the case of *O v O*
- [2005] JLR 535 the then Deputy Bailiff Birt made a clean break order when there were children of 17, 14 and 9. 44. In the earlier case of *J v M*
- [2002] JLR 330 the then Bailiff Bailhache said:- "...periodical payments have a tendency to prolong the misery and exacerbate feelings of bitterness. They should be avoided if at all possible." 45. In the case of *P-S v C*
- [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"." 46. In the case of *O'Brien v Marett*
- [2010] JRC 003 the question of whether a nominal spousal maintenance should be made was considered. It was accepted by the wife's advocate that the husband was not in a position to pay any maintenance at present. The wife wanted to come back to Court should his circumstances change but this was strongly opposed by the husband. The wife was 49 and her earning capacity was limited to £920 per month. She had looked after the home and family but now had a part time job with modest earnings with a limited pension due to the husband's failure to make regular contributions for her. The Court refused to make a nominal maintenance order, thereby enabling the parties "to get on with their lives afresh". 47. Having considered all the circumstances, nominal spousal maintenance would not have been ordered. Assets and Liabilities 48. There are no joint assets. There is a debt owed to the parties by Mr V of about £2,714 but it appears that neither party seem to be actively pursuing him for this debt. There is a joint and several liability owed by the parties of £26,899 in respect of an indemnity given by them and it may be likely it will be

chased as a letter has recently been received from a firm of advocates asking for payment. 49. The wife has share in Y and the value has been considered at paragraph 27. She has her pension with a CETV of £54,500. She has a car and a watch. 50. The husband discloses no assets save a car and watch. He put Property 1 into his sole name and there is a negative equity of £61,311 and he owes £5,270 in community fees. The husband wants each party to retain their own assets and be responsible for their own debts save that he is seeking the transfer of the Y fund and a sum of £274.95 he has been charged by the P Fund to be paid by the wife. He has outstanding legal fees of £2,166. 51. In the husband's reply to the wife's questionnaire in October 2014 it was stated that the sale proceeds of R were £25,000. The husband was also asked for details of the debt he said was owed to his father of £50,000 borrowed in 1998, and why no monies were paid back from the £1.1 million from the sale of G Trust. In response no details were given, the reply being "that the debt has now been waived." There was no reference to paying the husband's father £25,000 or any other sum. However, by February 2015 in the replies to the schedule of deficiencies, the husband accepted that the sale price of R was actually £50,000, "£25,000 as demonstrated by the copy of the share sale agreement", with a further £25,000 paid "once the 2013 year end accounts were audited." £25,000 came into his bank account and "immediately left in favour of his father to reduce the debts owed to him", these transactions appearing in his bank statement of July 2013. However it also states "the petitioner's father received £25,000 directly from the sale of R". In his affidavit of means he indicated he owed total debts to his father of £42,548 which was not a joint debt. 52. It was also written that the purchase price of Property 1 was €340,000. In cross-examination, the husband, having said he could not recall the price of the land was able to say that the purchase price of the Property 1 was not as written €340,000 but actually about €500,000 to €600,000. 53. The husband is seeking £274.95 charged him by the P Trust. This arose because the wife indicated she considered his replies to the questionnaire were deficient. The husband rang P to say the wife's lawyers would contact them and without waiting for a letter, which in fact was never sent, archive boxes were recalled with the husband being charged the £274.95. It seems clear that some of the husband's responses were deficient. I am not going to order the wife pay the cost of P. 54. The father says the mother's inheritance should be taken into account. However the father's parents are also elderly and neither party is bound to inherit as the parents may need funds for themselves or spend their money as they wish so this will not be taken into account. 55. In the case of J v M

[2002] JLR 330 , it was held that the touchstone is fairness but bearing in mind that the first consideration must be the welfare of the minor child. I was referred to the case of M v N

[2013] (2) JLR Note 20 which was a low value case it was held:- "...it is not appropriate to decide which of the parties is deserving and thereafter pick the best assets for that party, leaving the remainder for the other party." And one must take into account the guidelines set out in section 25 of the MCA. 56. The wife will have the burden of meeting the bulk of the costs of providing a home and other items for Bethany. Her assets are illiquid. The fact that the children are trying to assist their mother to cover the expenditure which exceeds her

income should not be held against her. Although the husband has debts abroad he has no means of paying them and I was not told he is being pursued for the money. The loan made by the husband's father in 1998 was not paid off following the sale of G Trust for over £1.1 million. The husband has paid his father £25,000 in July 2013 so it is not available in these proceedings. He wrote in October 2014 that the debt to his father was "written off/waived" and yet his father received a further £25,000 direct from the purchaser of R. 57. Having considered the section 25 guidelines and the cases to which I have been referred, I am ordering that each party retains the assets they have in their sole name and be responsible for the debts in their sole name. They are jointly and severally liable in respect of the indemnity. There will be a clean break. I note that each party agrees to jointly maintain the premiums in respect of a Standard Life policy on their joint lives. The husband shall pay child maintenance to the wife as specified in paragraph 36 above. The wife will receive all the child income tax allowances in respect of the children, but the husband shall receive the benefit of any income tax relief on the maintenance payments made by him. In the event that either party does not utilize their allowance in whole or in part, the balance shall accrue to the other party. All claims of capital, including lump sums and property adjustment orders shall stand dismissed. Each party shall bear their own costs, if incurred, and there shall be liberty to apply as to the implementation and timing of this order. 58. Neither party addressed me on the issue of furniture and effects so I presume that this issue has been resolved. *Authorities Jersey Authorities S v G*

[2003] JLR Note 29 W v O

[2004] JLR 53 A (Child Maintenance)

[2012] JRC 027B M v N

[2013] (2) JLR Note 20 O'H v B

[2007] JLR Note 29 O v O

[2005] JLR 535 J v M

[2002] JLR 330 Le Geyt v Mallett

[1993] JLR 103 B v P [1985-86] JLR Note 13a P-S v C and M

[2003] JRC 116 Y v N

[2005] JRC 116 J v M

[2008] JRC 031A J v H and R

[2005] JRC 160 English Authorities Flavell v Flavell

[1996] EWCA Civ 649 Ashley v Blackman [1988] 2FLR 278 Fletcher v Fletcher [1985] Fam 92
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