

Judgment 11/2005

**A v. A – Royal Court (Divorce file 6636) –
8 February, 2005**

Matrimonial cause – existing judicial separation order – wife’s application for reduction of maintenance in respect of the two children of the marriage – applications for variation and remission of arrears dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before John Russell Finch, Esquire – Lieutenant Bailiff.

On the 8th day of February, 2005.

Between:

A

Wife

and

A

Husband

In the matter of the application by the wife, the Applicant, pursuant to Article 28 of the Matrimonial Causes (Guernsey) Law, 1939 , as amended;

WHEREAS on the 24th day of January 2005, THE COURT having heard Advocates P.A. Allen and F. J. Haskins for the Applicant and Respondent respectively RESERVED JUDGMENT;

THE COURT THIS DAY issued Judgment in the terms attached hereto and DISMISSED the application.

And the Court reserved costs.

C. S. WEETMAN
Her Majesty's Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION**

**Before: John Russell Finch, Esquire, Lieutenant
Bailiff**

Between:

A

Applicant

and

A

Respondent

Date of hearing: 24th January, 2005

Date Judgment handed down: 8th February, 2005

P. A. Allen for the Applicant
F. J. Haskins for the Respondent

The Lieutenant Bailiff set out the legal principles in paragraph 3 of his judgment, and his conclusions in paragraphs 10 and 11: -

3. Legal Principles

In accordance with the consistent approach of the Matrimonial Causes Division the English statutory provisions are followed. The statutory powers to vary are contained in section 31 of the Matrimonial Causes Act, 1973. The principles which govern the exercise of the Court's discretion are to be found in section 31(7) and consist of three parts which can be summarised as follows: -

- (i) the court shall have regard to all the circumstances of the case "first consideration" is given to the welfare of any minor;
- (ii) the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the original order; and
- (iii) [this is relevant to termination of periodical payments and not applicable in the present case].

Although the Court must review all the relevant matters it is inevitable that some change in circumstances is necessary before there is a variation, otherwise repeat applications in lieu of appeal could be made. The starting-point must be that the

order was correctly made. In the words of Booth J in *BOYLAN v BOYLAN* [1988] 1 FLR 282:

“The court should not adopt an approach which differs radically from the approach taken by the parties themselves in assessing quantum of maintenance when the original order was made.”

This was a case involving variation of a consent order. It seems to me that this is the correct approach to follow in the present case. I also consider that the onus lies on W as the Applicant, to demonstrate that her application should succeed and that there is no onus on H to disprove W’s case.

10. Legal Position

I reiterate that no attempt was made to set aside the J S nor could one have been mounted on the authorities. That also means that this variation cannot be used as a flank attack on the J S. As indicated in paragraph 3 above the correct approach in my judgment is to look at all the aspects of the case in the light of the English Section 25 guidelines, but apply what Booth J said in *BOYLAN v. BOYLAN* (supra) and “not adopt an approach which differs radically from the approach taken by the parties themselves in assessing quantum of maintenance when the original order was made”.

Any change in W’s circumstances has been an improvement due to her increased wages. I can also take into account the renting of the flat at a decrease of £300 per month. As a matter of law H is correct when he pointed to the welfare of the children being a prime (or first) consideration. This is maintenance for the children and should be paid in the agreed amount in all the circumstances of this case. It is not possible to regard the agreed arrangements as flawed, or to pray in aid any deterioration in W’s financial circumstances. Her record of non-payment is substantial and unjustified. This part of her application has no merit and fails.

The areas should not be remitted in whole or in part. A good deal (at least 6 months) of the delay in this case getting to court can be ascribed to the pressing need to deal with child welfare issues now resolved, and which were the predominant theme in this matter for a long while. In addition, W’s record of non-payment necessitated separate civil proceedings in the Petty Debts Court and arrears have continued to accumulate as W pays what she thinks fit. Every case needs to be looked at on its own merits and on the facts of this case no remittal should be granted; W has had the money to pay or the potential to receive such money.

11. Conclusion

W's applications for variation and remittal fail and are dismissed. Costs reserved.