Judgment 12/2005 **B v. B – Royal Court (Divorce file 5399) – 18 February, 2005**

Matrimonial cause – husband's application for variation of Agreed Order – variation sought as respects maintenance of child of the marriage, lump sum and vesting of matrimonial home – issues of maintenance adjourned to a late date and other limbs of application refused.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before John Russell Finch, Esquire, Lieutenant Bailiff.

On the 18th day of February, 2005

Between:

B

Petitioner / Respondent / Wife

and

B

Respondent / Applicant / Husband

IN THE MATTER OF the Respondent / Applicant's application of the 21st January, 2005 to vary or set aside the Agreed Order dated 8th June 1999 as varied by the Court on the 13th March 2002 and 4th July 2002;

WHEREAS on the 25th January 2005, the Lieutenant Bailiff, having heard the Respondent / Applicant in person and Advocate A.M. Merrien, Counsel for the Petitioner / Respondent respectively, reserved Judgment;

THE LIEUTENANT BAILIFF this day issued written Judgment in the terms attached hereto, and DISMISSED Paragraphs 2 and 3 of the application and ADJOURNED Paragraph 1 of the said application.

AND THE COURT reserved costs.

M. J. TOSTEVIN
Her Majesty's Deputy Greffier

Approved Text

IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION

Between:

Case heard on 25th January, before
John Russell Finch, Esquire, Lieutenant Bailiff

B **Applicant**

and

B **Respondent**

The Applicant appeared in person
Advocate A.M. Merrien for the Respondent

Date of Judgment: 18th February, 2005

The Lieutenant Bailiff set out the legal position in paragraphs 8 and 9 of his judgment, and his conclusions in paragraphs 10, 11 and 12

The Legal Position

8. Advocate Merrien suggested that variation is only permitted where there is a material change in circumstances, this applies only to maintenance, not capital. Guernsey follows the English Matrimonial Causes Act, 1973 in this regard. Lump sum orders and property adjustment orders cannot be varied, as they are not included in the list of variable orders in Section 31(2) of that Act. Since an agreed or consent order is made with the express agreement of the parties, there are only limited grounds on which it can be set aside, there is no appeal on the merits. There are four recognised ways of attacking the fundamental basis of a consent order, viz:

(i) non-disclosure of some essential matter;
(ii) fraud or misrepresentation;
(iii) supervening events which invalidate the whole basis of the order;
(iv) undue influence.

In my view, on the facts adduced in the present case only (iii) could be a possible "runner". It must be emphasised that the courts will not set aside a consent order merely on the ground that things are now different from how they appeared at the time of the original order, see e.g. Mc GLADDERY v Mc GLADDERY [1999] 2 FLR 1102. The House of Lords has visited the question "of "supervening circumstances" in BARDER v. CALUORI [1988] AC 20. In his speech Lord Brandon referred to the need for new events which invalidate the fundamental basis of the order, occurring in a relatively short time - with it being extremely unlikely it could be as long as a year, and with no prejudice to third parties being incurred. It should be noted that Lord Brandon was referring from an appeal out of time, but I consider that an application to the original court is also available (and governed by the same principles) in the light of Ormrod LJ's observations to that effect in ROBINSON v. ROBINSON (1983) FLR 102 CA and Lord Woolf MR's similar words in FOURNIER v. FOURNIER [1998] 2 FLR 990.

9. The application should have been made reasonably promptly and in no way does it fall within the ambit of Lord Brandon's guidance, nor are there any merits in it. There are clear and obvious policy grounds for keeping to a Consent Order and matters of such seriousness as property vesting and lump sum payment should not be re-opened in the absence of the clearest possible and very limited grounds.

Conclusions

10. I am happy to echo Brelsford LB's observations in her judgment of 4th July, 2002, page 2 that:

> *"It is obvious from the evidence given by the Husband and Wife that they both in their own way have the interests of the child at heart although it is apparent that they cannot always agree what these interests are."*

It seems to me that H is motivated by a desire to do his best for the child, but the fact remains that H and W are on bad terms and mutually dislike each other. But leaving aside these factual matters it seems very clear to me, as a matter of law, that H has not got his case off the ground in relation to the house and lump sum. The 1999 Agreed Order cannot be reopened on these facts and I am glad of this, as it seems to me to be a bad idea on the merits to do so. H's applications fail and are dismissed.

11. That leaves the question of maintenance variation. A date will need to be fixed for this to be considered. A change in circumstances will need to be established before there is a variation.

12. Costs reserved.