

***Judgment 12/2006 – C v. C – Royal Court (Matrimonial File
5606) 8th March, 2006**

Matrimonial Causes (Guernsey) Law, 1939 – wife’s application for the husband to be ordered to assist her in the discharge of her debts – principles set out in S.25 of the English Matrimonial Causes Act 1973 – relevance of the wife’s financial conduct – need to consider all the circumstances of the case and principle of fairness – application refused.

***[Reissue of this judgment. The previous summary of this judgment, issued on 8 January 2007, should be DELETED]**

IN THE ROYAL COURT OF GUERNSEY

The 8th day of March, 2006 before John Russell Finch, Esquire – Lieutenant Bailiff.

Between	C	Petitioner /Wife
	and	
	C	Respondent/Husband

In the matter of the application by the Petitioner under the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended and the Petitioner’s appeal to the Court of Appeal, which was upheld and the said application having been remitted to the Royal Court for hearing;

WHEREAS on the 25th day of January, 2006, THE COURT having heard Advocates P. A. Allen and A. J. Ayres for the Petitioner and Respondent respectively **RESERVED JUDGMENT**;

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

C. RODGER
Her Majesty's Deputy Greffier

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

Between	C	Petitioner/Wife
	and	
	C	Respondent/Husband

Date of hearing: 25th January 2006

Judgment handed down on 8th March 2006

Before: John Russell Finch, Esq., Lieutenant-Bailiff

Advocate for the Petitioner:	P A Allen
Advocate for the Respondent:	A J Ayres

Statutes referred to:

- 1. Article 47 of the Matrimonial Causes (Guernsey) Law, 1939**
- 2. Section 25 of the Matrimonial Causes Act, 1973**

Cases referred to:

- 1. KOKOSINSKI v KOKOSINSKI [1980] Fam72**
- 2. MARTIN v MARTIN [1976] Fam 335**
- 3. PARRA v PARRA [2003] 1 FLR 942 CA**
- 4. WHITE v WHITE [2001] 1 AC 596 and [1998] 2 FLR 310 CA**

Introduction

1. This Judgment should be considered in conjunction with the decision of the Court of Appeal in relation to earlier proceedings in this case dated 20 July 2005 (Matrimonial Court Appeal No. 350). [...] The case concerns the Petitioner’s (hereafter “W”) application for (as set out by *Beloff J A* in paragraph [1] of the judgment:

“An Order that there should be a more equitable distribution of the liabilities arising from the marriage ie (the Respondent be ordered to pay a lump sum or to make such periodic payment to (the Appellant) or such as

other person as (the Appellant) may, from time to time where the Court shall direct, to ensure the repayment of the liabilities of the marriage”.

2. The Court of Appeal remitted the matter to myself (having found that my ruling on a preliminary point was wrong and that I did have power to determine the application). In order for this Court to determine:

“Whether or not to order the Respondent to make periodic payments to assist the applicant in the discharge of her debts”.

(Para [12] of the Judgment).

3. Although some early reference was made by counsel for the Applicant to lump sum orders, whether secured or not, the hearing has centred on whether the Respondent (hereafter “H”) should pay maintenance in the region of £1,000 or £1,500 per month for a 5 year period to enable W to discharge her debts. H does not consider any payment should be made.

Background

4. The parties were married [in 1992]. There are no children of the union and a Final Decree of divorce was granted to H [in 2000]. W is responsible for debts totalling £110,408.71. There was a “full and final settlement figure” of £77,333.93 if paid in 2005 – see the Schedule of Liabilities as at July 2004, Exhibit [...]14 to W’s affidavit of 19 September 2005 at pp.37-40 of her bundle (hereafter “W’s bundle”). Other figures given at the date of the hearing are more approximate. H has paid in the region of £125,000, including some £25,000 negative equity, on the former matrimonial home. The last amount he proposes to pay is £28,000 on the credit cards. At the time of the last hearing he had paid off £86,609.20 on joint debts and was paying off £31,856.00 of them, totalling £118,475.00. H’s position is that he has cleared the vast majority of the joint debts and is not responsible for W’s own debts. W argues “fairness requires otherwise”.

[In Paragraphs 5 to 29 the Lieutenant Bailiff set out the evidence and his findings on the facts]

Applicable Legal Principles

30. I start with the guidance given by the Court of Appeal in this case:

“[12] Accordingly, in our view, and in the light of our ruling the matter must revert to the Lieutenant Bailiff to exercise the power under Article 47, which we have held he enjoys, to determine whether or not to order the Respondent to make periodic payments to assist the Appellant in the discharge of her debts.

[13] In so doing, the Lieutenant Bailiff will naturally bear in mind that pursuant to Article 47 any sums he orders must be reasonable, and that in determining what, if any, sums should be paid by the Respondent, he must take into account all of the circumstances of the case, including those specified in the Article. It will be for him to decide in light of the so-called Section 25 check list, any relevant jurisprudence, what importance he attaches to the factors referred to in a letter from the Respondent’s to the Appellant’s Advocate, dated 15th July 2005, namely: -

“the circumstances in which the liabilities arose, the extent to which they were for the parties’ joint benefit, whether (as alleged) the Respondent was responsible for incurring any of the liabilities and, having regard to his other financial commitments and the extent to which he has already met joint indebtedness, whether it is reasonable to make an order”. ”

31. I approach the case bearing uppermost in my mind the wording of Section 25 of the English Matrimonial Causes Act, 1973, which the Guernsey courts follow. Decided cases are of assistance but do not replace the words of the legislation. No single factor is more important than the others, all of them must be considered. In most cases, one or more of the factors may assume particular significance, but all of them must be borne in mind. When the court has assessed the Section 25 factors, it must arrive at a provisional view as to

what is required, before comparing that view with what the result would be on the basis of equal division. If the provisional view does not approximate to equal division, the court must be able to set out reasons, based on the Section 25 criteria as to why it should not do so. Where there are no such reasons equality should prevail (WHITE v WHITE [2001] 1 AC 596).

32. In the Court of Appeal decision in WHITE v WHITE [1998] 2 FLR 310, CA, Butler-Sloss LJ said:

“Sections 25 and 25A provide the guidelines and require the court to have regard to all the circumstances of the individual case and to exercise the discretion of the court to do justice between the parties”.

33. Section 25 (1) states that it is the duty of the court to *“have regard to all the circumstances of the case”*. Although particular factors are set out, *“all the circumstances”* is a wide phrase, and it has been held that the court must not confine itself to the specified factors, but all other circumstances, whether past, present or future (see e.g. KOKOSINSKI v KOKOSINSKI [1980] Fam 72 at 183). WHITE v WHITE (House of Lords, supra) also refers to two other extra-statutory principles, *“the yardstick of equality”* and *“fairness”*.

34. Section 25(2)(g) of the Act directs the court to have regard to:

“the conduct of each of each of the parties if that conduct is such that it would in the opinion of the court be inequitable to disregard it”.

35. The reported cases indicate that where the conduct of one party has had a clear, detrimental effect on the fortunes of the spouses this factor can assume real significance. In MARTIN v MARTIN [1976] Fam 335 the husband had dissipated the family capital and it was held that he could not be permitted to fritter away assets and then claim as much of what was left as if he had acted reasonably. The court must also have regard, by virtue of Section 25(2)(b) to:

“the financial needs, obligations and responsibilities which each of the parties..... has or is likely to have in the foreseeable future”.

36. No authority on all fours with the present case, or even approximating to it, has been cited by counsel. The situation where one party seeks periodical payments purely to reduce indebtedness and avoid being insolvent would appear to be *sui generis*. However, it seems to me that the factors quoted above are the most helpful in this unusual set of circumstances. It would not be a gross over-simplification of the task the court has to perform to describe it as seeking to achieve “*fairness*” - a word used by both counsel in their submissions. It should be noted that it is W who is seeking to persuade the court to depart from the “*yardstick of equality*”, as was frankly put by counsel for W in her opening speech. The wording of Article 47 of the Matrimonial Causes (Guernsey) Law 1939 refers to such sum as the court deems “*reasonable*”, which is consistent with the overall concept of “*fairness*”.

Decision

37. The journey through the financial details in this case has not been an easy one. If the account of the debts and their origins has appeared complex and at times confused, it is because that is how the evidence has presented. It is clear that both parties were living beyond their means and a huge debt resulted. It is also clear from my findings on the facts that H’s account of the circumstances is to be preferred. It seems to me that the watershed came with the letter to Nat West in 1999. The letter to the parties from the Bank manager dated 19 August 1999 in reply is about as firm a “Yellow Card” as one can get. It is important to note the phrase used by Mr Bernard Wood in relation to W (at pages 440-441 of the Supplementary Documents Bundle):

“A very real period of belt-tightening is necessary and [she] must understand that constant requests for increased credit are not in anyone’s interests and any evidence of seeking such credit elsewhere will not be met sympathetically at this end if we are expected to pay the resulting bills”.

38. Whilst it is right to contrast the respective financial positions of the parties and clear H is earning considerably more than W. H has made a real effort to deal with the debt problem. Even allowing for her circumstances, W has hardly made any impact. I was unimpressed by the inertia shown by W in the disposal of 75% of her business and the lack of any realistic return. Nor did the failure to engage more closely with Mr Wood and achieve some sort of repayment plan utilising the business appear sensible. H's counsel is right in effect when he says W "gave away" the business, which is still operating under a different name. In contrast, the steps taken by H have resulted in £125,000 of the joint debts being paid and the intention to pay off the £28,000 owing on his cards. It also seems to me that H's remarriage and the mortgage taken out do not justify any financial criticism. The difference between the parties is that H is operating on a plan and W seems still to be drifting; and this bears out my clear impression that W is hopelessly awry in financial matters.
39. I have referred to the "*conduct*" aspect of the Section 25 criteria, and it is right to say that cases where it has been a major determining factor are uncommon. Nevertheless on the facts in this case I consider it would be inequitable to disregard W's financial conduct, especially during the course of the marriage. W showed an inability to control her spending to the extent that it became out of control and although H certainly did not present to best advantage, he was not aware of the extent of the problem, for the reasons he gave in evidence, which I have accepted. I also consider H is correct in his view that W did not want him to know what the position was, and agree that he was not nearly as active a participator in W's [business] as she claimed. It is also unfortunate that W, at least to an extent has persisted in her allegations about H's "*gambling*" activities, when the evidence wholly fails to support this.
40. The substance of W's case is that H can afford to pay £1,000-£1,500 per month for a term of five years so that W can deal with the creditors. W's counsel suggested that we have to depart from the principle of equality as H has a greater capacity to repay the debts – this is down to the "*fairness*" of the situation. As counsel said, "*regrettably*" that means H pays all of the debt. But as counsel for H submitted, it is the job of the court to decide the finances

between the parties, not help the creditors. It appears to me that the determining factors in this case are the way the debts arose, the steps taken by H to pay off the joint debts, and my finding that W was responsible for incurring the liabilities that she now seeks an order against H for. The only reason that might subsist to justify an order as sought by W is the imbalance between the incomes of W and H, but that would be unfair, taking account of all the circumstances.

41. Accordingly, having attempted to take account of all the circumstances of the case and the principle of fairness, I consider that W fails in her application. H has already, when one considers the total amount of indebtedness, paid well over 50% and none of the Section 25 considerations appear sufficiently cogent in this case to justify ordering a larger amount. In addition, I have found on the facts that W ran up the debts herself, having had the advantage (in the words of Lord Macmillan, quoted in Cross on Evidence, Ninth Edition p. 202) of observing the demeanour of the witnesses *“their candour or their partisanship, and all the incidental elements so difficult to describe which make up the atmosphere of an actual trial”*.

Conclusion

42. For the reasons I have set out, W’s claim fails and is dismissed.

Costs

43. Costs reserved.