

**Judgment 17/2008 A v B – Royal Court (Civil Appeal No 14 of 2007) –
4 April 2008**

Loi relative à l'Entretien des Enfants Illégitimes, 1927, as amended – Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 – appeal from maintenance order made by the Magistrates Court - proper approach on appeal to review of findings of fact by the Magistrate

Advocate Miss C M Fooks appeared for the Appellant Father

Advocate Mrs F J Haskins appeared for the Respondent Mother

Statutes referred to:

“Loi relative à l'entretien des enfants illégitimes” of 1927, as amended by the Domestic Proceedings and Magistrate's Court (Amendment) Law, 1992.

The Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, especially Section 3.

Cases referred to:

Attorney-General for Jersey v O'Brien [2006] UKPC14

Guille v Mackay (1967) Court of Appeal, 14.06.1967

H v H (2004) Royal Court, 23.11.2004

Hawkins v Greenwood [1985] 2GLJ 19

Kaduna Ltd v R Durnell & Sons Ltd (2003) Court of Appeal, 18.12.2003

Texts referred to:

Rayden and Jackson on Divorce, Eighteenth Edition, Vol 1(2) at p 51/74

Lieutenant Bailiff J R Finch, sitting alone in the Royal Court, summarised the appeal process and the applicable law in paragraphs 2 – 6 of his judgment: -

The Appeal Process

2. It is important to stress that this is not a re-hearing. In considering the submissions of Counsel, I have throughout borne in mind that findings of fact by the Magistrate should be accepted unless perverse. This is well set out in Rayden and Jackson on Divorce, Eighteenth Edition, Vol 1(2) at p 51/74:

“Great weight has always been given by the Court of Appeal to any finding of fact made by the judge in the Court below on the basis of his view of the credibility and reliability of witnesses seen and heard by

him, arising from their demeanour and manner. There is a presumption that the decision below was right, and this is adopted today.”

3. In relation to the exercise of judicial discretion, there is a valuable summary of the position in a judgement of Brelsford L.B; *H v H (Royal Court) 23 November 2004*, paragraph 3:

*“In *Kaduna Ltd v R Durtnell & Sons Ltd*, the Guernsey Court of Appeal set out the test in appeals against the exercise of a discretionary jurisdiction by the Royal Court. Such an exercise of discretion by a court of first instance is not to be interfered with by an appellate court unless the appellate court has reached the conclusion that the judge’s exercise of discretion must be set aside. The appellate court does not begin by exercising an independent discretionary judgment of its own. It must defer to the judge’s exercise of his discretion and must not interfere merely because it would have exercised the jurisdiction differently. In reviewing the judges decision, it may set aside the decision only if:*

- (i) *the decision was based on a misunderstanding of the law or of the evidence before him or a wrong inference of fact drawn from that evidence.”*

(Sub-paragraph (ii) is not relative to the present appeal).

4. An example of an appellate court yielding to the temptation to act as a trier of fact at first instance is found in the case of *Attorney General For Jersey v O’Brien [2006] UKPC 14*, where the Privy Council firmly repudiated such an approach. Mention should also be made of the Guernsey cases of *Guille v Mackay (Court of Appeal), 14th June 1967* and *Hawkins v Greenwood [1985] 2 GLJ19*. In the latter case, the Bailiff, in an appeal from the Court of Alderney, directed the Jurats that, findings of fact in the lower court could not be interfered with unless there was no evidence to justify them or they were perverse.
5. I propose to follow these well-established principles in assessing the merits of this appeal and will look at the Magistrate’s very detailed judgment in accordance with them.

Applicable Law

6. The application was under the “*Loi relative à l’entretien des enfants illégitimes*” of 1927. It was amended and updated by the Domestic Proceedings and Magistrate’s Court (Amendment) Law, 1992. The provisions most directly in point are found in the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988, as amended by the law of 1992, Section 3(1), section 3(2)(a) and (b) and Section 3(3). These are set out at paragraph 10 of the judgment. “*First consideration*” must be given to the welfare of the child, who is the subject of these proceedings, and the Court must have regard to

“all the circumstances of the case”. As the Magistrate put it at paragraph 14(iii): *“The priority is this child and his needs”*. The summary of the situation and the views of the Magistrate in paragraph 14 seem to me to be accurate and properly open to her.

The Court held that the Magistrate’s conclusion was well within the range of decisions open to her on the facts found, and the appeal was dismissed.