

Judgment 18/2008

C v C – Royal Court (Divorce File No 7150) – 9 April 2008

Judicial Separation by consent – Wife’s application to reduce the maintenance payable by her in respect of children – proper approach on appeal seeking variation of a consent order – welfare of the children remains the first consideration

Advocate Miss C J Fletcher appeared for the Wife

The Husband was unrepresented

Cases referred to:

A v A (2004) Court of Appeal 21.04.2004

Boylan v Boylan [1988] 1FLR 282

R v R [1988] 1FLR 89, CA

Lieutenant Bailiff J R Finch, sitting alone in the Royal Court, set out the applicable legal principles as follows in paragraphs 4 and 5 of his judgment: -

Applicable Legal Principles

4. I consider that the correct approach is set down in the English case of Boylan v Boylan [1988] 1 FLR 282, per Booth J. In this case, involving variation of a Consent Order, it was said that “*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 Order was made*”. Further, valuable guidance came in the Guernsey case of A v A Court of Appeal, Civil Appeal 340, 21st April 2004. Although the circumstances were different, the words of Sumption JA are helpful:

“First, the fact that the parties have themselves agreed certain arrangements as reasonable is strong evidence that they are indeed reasonable, at least as between the parties themselves, unless the agreement was unfairly procured or made under some misapprehension, or unless circumstances have changed in some material respect. But even strong evidence may be displaced by other evidence that the terms operate unreasonably, in which case a variation will be made.

Secondly, in many cases the Respondent to an application to vary will have organized his or her affairs on the basis of the agreement in a way which would make some variations unfair. The Court needs to be sensitive to this.”

5. In addition, I must consider that the welfare of these two children remains “*the first consideration*”. This is not the same as the paramount consideration, but is the first matter to which the Court should direct itself. So that in *R v R [1988] 1 FLR 89, CA*, it was said that, broadly speaking, someone under an obligation to maintain his or her children is obliged to order their financial affairs with due regard to their responsibility to pay reasonable maintenance for them, and to meet his or her reasonable financial obligations. These considerations must remain at the forefront of my mind and not be submerged simply because this is an application to vary.

The application to vary the sums of maintenance agreed under the Consent Order was dismissed, but the current arrears were remitted in part.