

Judgment 21/2007

**B v B – Royal Court (Divorce File 5744)
– 24th July 2007**

Matrimonial Causes Law (Guernsey), 1939 (Article 45) – judicial separation by consent – husband’s application to reduce maintenance payable in respect of he two minor children of the marriage, and for remission of arrears – not for the Court to re-open the terms agreed by the parties – material change in the husband’s circumstances – maintenance reduced from £305 to £176 per month for each child – held that the husband had not given full disclosure of his available assets – arrears of £6,533.03 ordered to be paid within one month

Advocates P A Allen and F J Haskins appeared for the husband and the wife respectively

Before reviewing the evidence as to the financial circumstances of the parties, the Deputy Bailiff summarized the law as follows, in paragraphs 7, 8, 11 and 52-54 of his judgment: -

The Law

7. The parties accept that in an appropriate case the Royal Court has the power to vary or modify the maintenance payable pursuant to a Judicial Separation. The power is to be found in Articles 45 (1) of the Matrimonial Causes (Guernsey) Law 1939 which provides as follows:-

“The Court, after the making in the Island of Guernsey of a decree of divorce or nullity of marriage, may, upon the application of either party to the marriage which is the subject of such decree, or upon the application of either party to the marriage which is the subject of such decree, or upon the application of any person beneficially interested,

- (a) cancel, vary or modify, or*
- (b) terminate the trusts of*

any marriage contract, marriage settlement, post-nuptial settlement, or terms of separation subsisting between the parties to such marriage, in any manner which, having regard to the means of the parties, the conduct of either of them or the interests of any children of such marriage as appears to the Court to be just.”

8. The parties are also agreed that before exercising such power, I must be satisfied that there has been a material change in the husband’s circumstances. If I am satisfied there has been a material change I am to approach the application as if it was an original application for maintenance, in other words, by having regard to all the circumstances of the case. I consider later what

weight should be attached to the earlier terms that the parties had agreed between themselves.

11. In any event it is not for me to reopen the terms agreed by the parties. The Guernsey Court of Appeal made it clear in A v A 21 April 2004 that when making an Order of Judicial Separation by Consent the Court need only be satisfied that the terms reflect the genuine desire of the parties and the Court has no need to satisfy itself as to whether they reflect the terms that might be imposed after a contested hearing.

52. What account should I take of the terms agreed by the parties in the Judicial Separation? I have already explained that the basis of the separation was an equal division of capital assets with no obligation to pay maintenance to the wife in respect of herself, even though her earnings were substantially lower than the husband's and she had the responsibility of maintaining the children. The only maintenance payments were in respect of the children which the husband argues were unreasonably high. I have explained why I do not believe that the children's maintenance represented as high a proportion of his earnings as he claims, but I do agree that they were more than 20% of his net income which, these days, would be taken as a guide when assessing the level of maintenance to be paid. If that is correct, it is explainable on the basis that the parties had otherwise agreed a clean break. It must be remembered that the Court accepts that parties are free to agree terms that are appropriate to them and, when granting a Judicial Separation, the Court does not investigate how those terms compare with what the Court would assess to be the parties legal obligations towards each other.

53. I respectfully adopt the approach of Booth J in Boylan v Boylan [1988] 1 FLR 282. Booth J held that in assessing all the circumstances of the case:

“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 Consent Order was made”.

54. In the light of all the evidence that has been presented to me, I consider it appropriate that the husband should pay more than the guideline figure of 20% of his income and I consider that 22% would be appropriate. I will take his net income to be his income from his employment. Whilst I consider, on the balance of probabilities, that he has some undisclosed capital assets, I do not consider that those assets are of such magnitude as to produce any substantial income.
