

Judgement 26/2004

**B v B – Royal Court (Divorce file 6267) –
15 June, 2004**

Matrimonial cause – financial relief – matrimonial home, etc. – division of assets and maintenance of children.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before Sir de Vic Carey - Bailiff

On the 15th day of June, 2004.

Between

B

Petitioner

and

B

Respondent

In the matter of the application by the Petitioner and the Respondent under the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended;

WHEREAS on the 13th May, 2004, THE COURT having heard Advocates P. A. Allen and S. E. Wallis for the Petitioner and Respondent respectively RESERVED JUDGMENT;

THE COURT THIS DAY issued Judgment in the terms attached hereto and MADE AN ORDER:-

1. *[THAT the former matrimonial property be vested in the Petitioner.]*
2. THAT the Petitioner shall pay the Respondent the sum of £80,000 of which £35,000 shall be payable immediately and the balance to be paid on or before the 1st day of August, 2018, such balance to be discounted for early payment at a rate of 4% per annum simple interest;
3. THAT the Respondent shall pay maintenance for the children of the marriage the sum of £300 per child per calendar month;

4. THAT the joint savings account and the joint current account shall be closed forthwith and the proceeds shall be divided equally between the Petitioner and the Respondent;

5. THAT the proceeds of the NASDAQ Bond previously held in the name of the Respondent and which matured in 2004 shall be divided equally between the Petitioner and the Respondent

AND THE COURT reserved judgment as to costs.

C. S. WEETMAN
Her Majesty's Deputy Greffier

Approved text

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

Between:

B

Petitioner

and

B

Respondent

**JUDGMENT OF THE BAILIFF ON RESPONDENT'S APPLICATION FOR ORDERS
UNDER PARTS VII AND VIII OF THE MATRIMONIAL CAUSES (GUERNSEY) LAW, 1939
AND THE PETITIONER'S CROSS APPLICATIONS THEREUNDER.**

Date of hearing: 13th May, 2004

Judgment handed down: 15th June, 2004

Advocate for the Petitioner: P. A. Allen

Advocate for the Respondent: S. E. Wallis

Introduction

1. The parties married in April 1992 and separated on the 1st June, 2001. *[There are two children, aged six and four.]*

Orders relating to the Children

2. The proposal that there should be joint custody with care and control to the Wife is now agreed. There were problems over access by the Husband stemming from the very difficult relationship that exists between Husband and Wife. Through the good offices of Mrs. Spaargaren it appears that these difficulties have been ironed out and I am advised that I will be in a position to make a Consent Order relating to all matters relating to the children. In those circumstances I can proceed with the applications for financial relief.

The parties

3. *[The ages and employment of the parties were set out.]* I have not had to explore issues relating to the break up of the marriage because happily there are no suggestions that I should take the conduct of either party into consideration in reaching my conclusion as to the division of their assets. From what I gleaned during the hearing the Wife felt that the Husband was somewhat overpowering and felt she could no longer live with him. As a result he moved out of the matrimonial home by agreement and went to live with his mother. This was in the beginning on a temporary basis but it became permanent.
4. Both the parties were members of *[a local Church]* and it seems that every effort was made by ministers from the Church to try and save the marriage but this was unsuccessful. The result is that we have a Wife who is feeling bruised after what she found an unfulfilling and unsatisfactory marriage and a Husband who has found it very difficult to accept that the marriage has ended, to the extent that only recently has he been able to contemplate the idea of the Wife and the children going on living in the former matrimonial home. I do not underestimate the hurt that the parties feel but in so doing I make no apportionment of blame for the situation that has arisen. Clearly the children, although they are quite young, will have suffered as a result of this break up and as always in these cases my first consideration in reaching a fair settlement of the financial affairs of the parties must be the children and, vicariously, the interests of the Wife as the parent having care and control of them. Neither party has large incomes. The Husband is earning about £2,000 net per month and the Wife quite a lot less as she is not working full time.

The main issue – the former matrimonial home

5. There are various assets declared by both parties which I will deal with at the end of this judgment. However, as always in these cases the real argument is over what should happen to the former matrimonial home. Here the matrimonial home was bought early on in the marriage. It is now valued at £275,000 with an outstanding mortgage of £42,000. This makes the net equity in the property £233,000. This windfall is wholly attributable to the inflation in

house prices during the time the parties were married. As always difficulties have arisen as to the fairest way of ensuring that both parties share the benefit of their endeavours in establishing a home. Ideally both parties want to have sufficient funds to enable them to remain in home ownership, but as always, when there is only one house and the Husband and Wife go their separate ways, unless there is a very substantial equity it is hard to achieve the goal of both parties going away from the divorce settlement with sufficient funds to get on their feet again as home owners.

6. Here the problem is aggravated by the fact that the Wife is the parent with care and control of two very young children. She impresses me as quite a good manager but she can only work 23 hours a week on average as she has heavy commitments to the care of her young children. Since White and White upon which Mrs. Wallis, as is natural with any advocate charged with representing the Husband in circumstances such as this, places great emphasis, judges are encouraged to look to achieving equality between the parties particularly where, as we have here, an asset which has arisen quite fortuitously as a result of their joint efforts and the inflation in house prices in Guernsey. Clearly no considerations arise as to who contributed to this "windfall", as I have described it, and the Husband is as entitled to participate in it as the Wife is.
7. However, we come back to the problem of cases where the only asset is the matrimonial home. There is an old case of Hanlon v. Hanlon which emphasises the point that where the only asset is the matrimonial home due care must be taken to ensure that the Wife, if she is the parent with care and control, remains satisfactorily housed. The Husband was originally anxious that the present matrimonial home be sold and the Wife trade down into a smaller property, so freeing up capital to provide money for him to buy a new home.
8. I always feel that it is better to leave the Wife and children where they are if at all possible. The Husband, to his credit, now appears to accept this, and in any event I would not be proposing that the Wife should be required to move because of the likely risk to the children

and the very uncertain benefit that would be gained from this, particularly as the housing market at the present time looks as if it is slowing up.

How do we achieve a fair split between the Husband and the Wife?

9. There is clearly equity here and the Wife, who is young and fit to work, can raise money to provide the Husband with immediate cash to put down a deposit on a new home. The Husband is talking about having accommodation in which he can have the children for staying access. Parents without care and control often want to be able to move forward to having staying access for the children. We do not know whether the children are ready for staying access with father at the present time, but in any event, desirable as it is that the Husband should be accommodated with sufficient space to receive the children, I do not regard that as of top priority with the fairly tight financial situation with which I am faced at the present time.
10. The Wife's original proposal was that she should buy out the Husband by raising £60,000 from the bank. The bank was prepared to do this, but the Wife would be dependent on what I regard as a fairly generous maintenance, on the part of the Husband, so that she could service the mortgage. Although Mrs. Allen originally put such a proposal forward, I became concerned during the course of the hearing as to the risk that the Wife was facing if she took out a large mortgage to provide funds for the Husband, and then the Husband, for some reason, was unable to meet maintenance at the rate which I ordered. It is not too difficult to envisage a situation where this might arise. The Husband is employed in the finance industry and could easily find his job under threat in the general contraction that seems to be going on in that industry. He has not had very much augmentation of his salary in recent years. He indeed suggests that in real terms he is not earning what he was a few years ago with bonuses etc. I fear this may be partly due to the fact that he is still suffering from the break up of the marriage, but, in saying this, I emphasise that I have had no evidence on his condition and this suggestion emanates from observations I have made as he gave evidence.

11. It therefore worries me that, if he is ordered to pay high maintenance, and falls down on it, the Wife could be in difficulty. It seems to me undesirable, despite the fact that Mrs. Allen was prepared to go along with the Wife's proposals, for the Wife to be taking on a heavy commitment to a third party bank to finance the Husband's property purchase, in the expectation that he will provide her with the maintenance that she is proposing. [Of course he may not spend the money on buying another property.] I fully accept that the Wife is anxious to have a clean break, but I have to accept that this is not possible in all cases. The usual practice where there are young children and the Wife's earning capacity is reduced because of her commitments to looking after those children is to provide for a deferred payment for the Husband when the children have grown up. Here as the youngest child is only four we are potentially facing a long period before the Wife is in a position to free up some capital from the home for the benefit of the Husband.

Maintenance for the children

12. It seems to me that the first issue that I must resolve is what is the appropriate level at which I should fix the maintenance payment to be paid by the Husband for payment to the children. I have to remember that I am looking at the needs of very young children which are likely to increase as the years go by. Any maintenance payment must take account of the fact that as between the Husband and the Wife, the Wife is the parent with care and control. This impacts on her in two ways; firstly her commitments to the children, particularly while they are young, are such that she may not be able to work full time and secondly, if I am to vest the house in her, she is going to have an ongoing expense in providing a roof over the children's head.
13. What I do not consider to be appropriate is to gear the maintenance to the amount of any mortgage payment that the Wife is having to meet in order to provide a lump sum to the Husband at this stage.
14. As I have said the Husband claimed that he has a net income of approximately £560 per week. As always in these cases there is some argument about this. However, I am satisfied that his wages and prospects do not appear to be as good as they were a year or so back. His

outgoings at present are lower than they may be in the future because he is living with his mother at home, but that is not material one way or the other.

15. What I need to consider is what share of this father's income should be devoted to maintenance of the children. In my view it is not unreasonable to look to a quarter of his income being devoted to maintenance of his children. This would produce a weekly maintenance figure of £70 for each child. At present the Husband is paying £500 per month. The Wife is asking for £900 per month. In my view the appropriate rate of maintenance should be £300 per child per month.

Adjustment in respect of the equity in the former matrimonial home

16. This is the fundamental issue. Let us start with the words of Lord Nicholls in White v. White 2000 2 FLR 981 at p.989.

Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.

This is not to introduce a presumption of equal division under another guise.

Even providing for the Wife and Children's needs in the immediate future can I approach the division of assets on the basis of equality. Taking the equity in a round sum I suggest that we should look at the Husband receiving a £115,000 at the end of the day. The first issue is what figure can the Wife be expected to find to pay to the Husband at this stage. She can make an immediate payment on the basis of borrowing money. I take account of the fact that the parties have been separated for some time. I accept that money needs to be spent on the house and that the Wife may well have to be borrowing some money to catch up on overdue maintenance.

17. I consider that her borrowing capacity in total is £40,000. It is always difficult to be precise on these matters, but I reach the £40,000 on the basis that she seemed to think she could meet a borrowing of £60,000 provided she had £900 a month maintenance and I am providing for her to get two-thirds of that sum and as maintenance I am assuming that she can borrow two-thirds of the capital proposed. On the basis that she needs £5,000 for her own purposes she can produce for the Husband immediately £35,000. Going back to my notional half figure for the equity, that leaves £80,000 to come to the Husband. The longstop repayment date for the £80,000 should be the 1st August, 2018. I calculate that date by reference to the school year during which the younger child attains its eighteenth birthday. I will stipulate separately the conditions in which repayment before that date will have to be made.

A discount for early payment

18. Although in my figures I have striven for equality I have of course not achieved this by virtue of the fact that the Husband is going to be out of his money for many years. In such cases it seems to me unfair to both sides to leave a sterile situation whereby a fixed sum of money is payable at some date in the distant future and no credit is given if circumstances arise whereby the debt can be discharged earlier. This is not an easy matter because it could be argued that if the Wife has the good fortune to remarry a rich man in five years time the Husband at that stage should be getting his full £80,000. On the other hand the Wife may have the opportunity of moving house or have to assume responsibilities to aging parents or another who cannot assist her in meeting her obligations to provide a roof over the head of her children.

19. I have in a number of previous cases provided for such a discount. It is difficult to be consistent because ultimate repayment dates vary. Here we have a very long repayment date. Also interest rates vary. It is also necessary to cross check what figure would be achieved if after the discount for early payment one was facing a situation where the Wife chose to pay the Husband off in the next year or two. Taking these factors into consideration I consider the appropriate discount rate to be 4% per annum simple interest. Interestingly that would mean that if the Wife were paying the Husband off on the 1st August, 2004 she would pay him

£35,200. The discount figure will be applied with quarterly rests, that is to say calculated to the nearest single percentage point.

Circumstances in which the deferred sum will be liable to early repayment

20. The capital sum duly discounted will be liable to payment by the Wife within three months of the happening of any of the following events:-
- (a) the Wife remarrying
 - (b) the Wife cohabiting for a period in excess of three months
 - (c) the younger child aged under eighteen years of age ceasing to reside with the Wife at the matrimonial home
 - (d) on the sale of the matrimonial home
 - (e) on the death of the Wife

Disposal of other assets

21. The Wife and Husband should both keep their respective bank accounts and their motor cars. The Wife should keep the whole of the contents of the matrimonial home. The Husband's pension is worth in excess of £26,000, but it clearly would not be appropriate to ask him to surrender it at the present time. It is an asset that I have taken into account in my calculations along with his not insubstantial credit balance at the bank. This balance, and the expectations of a pension, in my opinion support the view that the Husband can finance a borrowing to enable him to get a property of his own in which to live. I also think this cash will help him acquire second hand furniture with which to furnish the new property rather than have a detailed review of what the Wife does or does not need to furnish the matrimonial home, although it is to be commended if there is any surplus furniture at the home that the Wife lets the Husband have this – it will not be of any substantial value when working out the figures that we are considering. The monies in the joint accounts and in the NASDAQ Bonds should be split in order to provide some funding for the not inconsiderable costs both sides have run up in this matter. I will, however, hear argument as to costs if need be.