Judgment 27/2007 C v C – Royal Court (Divorce file 5863) – 23 August 2007

Matrimonial Causes Law (Guernsey), 1939 – judicial separation by consent – former husband's application for reduction of maintenance payable in respect of the two minor children of the marriage – principles to be adopted in considering application to vary consent order – application dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

No: 5863

The 23rd day of August, 2007 before John Russell Finch Esq., Lieutenant Bailiff.

Between

C Petitioner

v

C Respondent

In the matter of the Final Order of Divorce granted by the Matrimonial Causes Division of the Royal Court on the 3rd January 2002 and in the matter of the application by the Respondent under the provisions of Part VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended;

WHEREAS on the 15th day of August, 2007, THE COURT having heard Advocate A. M. Merrien for the Petitioner and the Respondent in person RESERVED JUDGMENT;

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

C RODGER
Her Majesty's Deputy Greffier

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IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION

Between	**C**	Petitioner (W)
	-v-	
	C	Respondent (H)

Date of hearing: 15th August 2007

Judgment handed down on 23rd August 2007

Before: John Russell FINCH Esq., Lieutenant-Bailiff

Advocate for the Petitioner: **A M Merrien**
Advocate for the Respondent: **The Respondent appeared in person**

Cases referred to**:**

1. Boylan v Boylan [1988] 1 FLR 282

2. A v A (Civil Appeal 340) (Judgment 19/2004)

3. Roots v Roots [1987] Fam Law 387

The Lieutenant Bailiff summarised the law and set out his conclusions as follows in paragraphs 4, and 8 – 13, of his judgment: -

4. [……..]. This was a Consent Order, and it has been 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 original Order was made" (*Boylan v Boylan [1988] 1FLR 282, per Booth J). This approach was confirmed in the Guernsey case of *A v A (Civil Appeal 340)*, 21st April 2004, per Sumption JA, who said:

> *"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 organised 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".*

This seems to me, with respect, to be the approach that I should follow where a Consent Order exists.

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8. It should also be remembered that the Consent Order was for the maintenance of the children and this Court must not lose sight of the fact that their welfare is the *"first consideration"*. Broadly speaking, a person having an obligation to maintain his children has an obligation to order his financial affairs with due regard to his responsibility to pay reasonable maintenance for them and to meet his reasonable financial obligations (*Roots v Roots [1987] Fam Law 387)*.

Conclusions

9. Inevitably, circumstances change after Orders are made, and it has to be emphasized that the Court will not set aside or interfere with a Consent Order merely on the grounds that things are now different from how they appeared at the time of the Order. I have already referred to the English case of *Boylan v Boylan (Supra*) in para 4 above and this seems a sensible approach to this type of application. In Guernsey the Court of Appeal has also followed this line, in *A v A (Supra)*. It is those general principles that I consider I have to apply in the present application.

10. On the facts it is impossible to say that H's circumstances have worsened to the extent that a Consent Order should be varied. H's financial evidence was somewhat confused and I cannot make any finding that his situation has deteriorated to an appreciable extent. It was the nub of Advocate Merrien's submissions that H in reality wishes to increase his expenditure funded by a reduction in maintenance, and, on the evidence this is a rational proposition. When one stands back and considers the Consent Order it is apparent that, at first glance, it provides for a reasonable and hardly excessive amount towards the upkeep of two small boys, whose interests are the first consideration of the Court.

11. Accordingly, I start with the consideration that the Consent Order was properly made, and, as stated H was legally advised at the time. I do not adopt an approach which differs radically from that of the parties in assessing quantum of maintenance *(Boylan v Boylan (Supra)* and conclude that the facts do not show such a change in circumstances as to enable me to vary the agreed Order; nor are the terms of this Order *"unreasonable"* on what I have heard.

12. H also sought to delete the automatic RPI component of the Order. Had he been legally advised, I am confident that he would have realized that such a provision (now, of course, pretty universal) would be to the parties' advantage, in order to avoid tedious and expense-consuming variations by the Court. I see no reason to dispense with this aspect of the Order (Clause 3 at A2 of the Bundle).

13. H has failed to demonstrate that the Consent Order should be varied and I therefore dismiss his application. Costs are reserved.

J R Finch

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