

**Judgment 3/2007**

**A v A – Magistrate’s Court (Domestic Proceedings) –  
8<sup>th</sup> February 2007**

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**Domestic proceedings – wife’s application for maintenance – full day set aside for contested hearing four months ahead - failure of Advocates to advise the Court that negotiations were in hand between the parties — application for further adjournment received on the eve of the date set – Greffe should be notified as soon as possible when there is a possibility of a settlement, to avoid waste of Court time**

**IN THE MAGISTRATES COURT OF THE ISLAND OF GUERNSEY**

**A v A**

**Perfected Judgment handed down by the Assistant-Magistrate**

1. I will refer to this matter as A v A and direct that nothing should be published which would lead to the identification of either party or their Advocates.
2. The application that this judgement refers to is an application before the Guernsey Magistrate’s Court. The matter was set down for a final hearing on the 8<sup>th</sup> February 2007, with a full day set aside to hear this matter. The substantive matter before the Court is an application by a wife in divorce proceedings for maintenance, and in addition there are pending matrimonial proceedings in the Royal Court, which I am told by the parties’ Advocates, are close to resolution.
3. The chronology of the application before the Magistrate’s Court is that the application in this Court was issued on the 12<sup>th</sup> July 2006, and the application was initially listed for a contested hearing relating to interim maintenance, which was in fact resolved by consent on the 19<sup>th</sup> October 2006. I refer to that Act of Court, which was prepared by the parties where the final paragraph thereof directed that that Order was to continue until a final hearing of the application, which both parties and the Court agreed would take place on the 8<sup>th</sup> February 2007.
4. As a consequence of the terms of the original order dated 19<sup>th</sup> October 2006 the Court set aside a full day for the final hearing on the 8<sup>th</sup> February 2007, Both parties and their Advocates have therefore known the date of the final hearing since 19<sup>th</sup> October 2006. Yesterday, the 7<sup>th</sup> February 2007 this Court received notification that there was likely to be a potential Consent Order. No indication or information was given to the Deputy Greffier as to the nature of the likely Consent Order. This morning, the 8<sup>th</sup> February 2007, one of the parties’ Advocates delivered an application by consent to the Greffe, seeking an order to the effect that the interim Consent Order granted on the 19<sup>th</sup> October 2006 remain in force until further review on the 8<sup>th</sup> May 2007, or earlier if the parties reach an

agreement before that date. This has had the consequence of wasting an entire day of this Court's hearing time. Further, neither of the parties was intending to attend and make the application in person, and it was only through the insistence of the Court that the parties' Advocates attended.

5. I am told that the parties went to mediation in December 2006, and I am told that a framework for a financial settlement was reached in mediation. I want to make it clear that settlement through mediation is to be applauded and to be encouraged. I am told that there is a complex Act of Court currently in draft form, and I accept without equivocation that the drafting of the Royal Court Act of Court has to take some time because of the nature and the complexity of this particular case. The parties hope that the Royal Court will approve the final Act of Court on or about the 22<sup>nd</sup> February 2007, and that there will be no need for any further Court hearings between these parties in either the Magistrate's Court or the Royal Court. Again I must stress that this Court encourages such a proactive approach as these two parties and their Advocates have taken in trying to settle this matter.
6. However, the parties and their Advocates omitted to consider the fact that a full day of hearing time had been set aside by this Court on the 8<sup>th</sup> February. I understand from the Respondent's Advocate that he asked his client some three for four days ago to give consent to the current interim maintenance order continuing until the matter was finally resolved and his client sensibly gave him instructions to agree that the terms of the Act of Court of 19<sup>th</sup> October 2006 should continue until further order or resolution of this matter by agreement.
7. The applicant wife has also agreed that the terms of the Act of Court of 19<sup>th</sup> October 2006 can continue at this time.
8. Hence the application before this Court this morning that the original interim maintenance order continue until, in essence, this matter is resolved, and if not resolved by agreement, the parties will return for a hearing before this Court on the 8<sup>th</sup> May 2007. A very sensible approach and I have no difficulty with it, except in one respect.
9. At no time did the Advocates, or indeed their clients, give thought to the fact of the time pressure upon the Magistrate's Court and indeed the Royal Court, of cases that need to be heard. In this case a whole day was wasted due to the fact the Advocates did not notify the Court in sufficient time that the day set aside to hear this matter was no longer required. I have come in today to hear a case that no longer exists and a day of hearing time has been lost. Even the earliest indication of settlement yesterday, was far too late to list any other matters.
10. I have considered whether to make an Order that the parties and/or their Advocates should pay the costs lost today for the Court hearing. I am not going to make that Order. I do accept that this was not wilful or deliberate on the part of these experienced Advocates. I understand that sometimes in busy Advocates' practices things fall through the gap, but I want to pass a message out to parties and to their Advocates that Court time is a very precious commodity; it cannot and must not be wasted. Where there is a possibility of a settlement we invite and

request that the Advocates notify the Court through the Greffe as soon as possible - and if there is need for a directions hearing then one will be listed if practicable at short notice. I accept that cases often settle at the door of the Court, and the reality is that those cases are sometimes unavoidable, but this was not the position in relation to this matter. In this case the parties could have avoided the waste of the Court's time if they had only thought ahead.

11. If the Court is made aware that there is a possibility of a case going short the Court may well be able to list or warn another case to fill the gap in the Court calendar. It is therefore important for the purposes of efficient listing that the Court is notified as soon as possible if it appears likely that Court time already allocated will not be required. This is a continuing responsibility on all Advocates in the case and not just that of the Applicant's Advocate.
12. In these circumstances I am going to grant the Order as sought by these parties, but I make it clear that I do so only because the Court has been left with no alternative. All Advocates must understand that Court time has to be taken into account. In addition, parties or their Advocates should not assume such late applications will be granted automatically or at all - if a late application is made for an adjournment then they should anticipate making the application in person and ensure their clients are ready and available to attend Court if the application for an adjournment is refused.
13. I suggest that this short Judgment, be transcribed and issued for the Bar to read and take its contents on board when dealing with matters listed before this Court.

C A McMillen  
Assistant-Magistrate