

**Judgment 31/2009**

**F v F – Royal Court (Divorce File 5479) – 29 June 2009**

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**Matrimonial Causes (Guernsey) Law, 1939 – Wife’s application for wage arrest to recover arrears of maintenance for child of the marriage – Husband’s application for remission of arrears and reduction in maintenance – legal principles to be applied**

**Approved Text  
29 June 2009**

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

**Between:**

**F**

**and**

**F**

**The Petitioner**

**The Respondent**

**Date of hearing: 22<sup>nd</sup> May, 2009  
Judgment handed down on: 29<sup>th</sup> June 2009**

**Before: John Russell FINCH Esq., Lieutenant-Bailiff**

**Advocate for the Petitioner: C M Fooks  
The Respondent appeared in person.**

**Texts referred to:**

Rayden on Divorce, 18<sup>th</sup> Edition, Volume 1(1) paras 18.19 and 18.21

**Cases referred to:**

N v N [1993] 2 FLR 868

B v C (ENFORCEMENT:ARREARS) [1995] 1 FLR 467

**After summarising the factual evidence, Lieutenant Bailiff J B Finch set out the applicable legal principles in paragraph 11 of his judgment: -**

## Legal Principles

11. I consider that the applicable legal principles in this type of case can be summarised as follows:

- (i) the Court considers the application to vary on the basis of the means of the parties as they stand at the time when the case is before it, and approaches the matter as if it were assessing the payments *de novo* (Rayden, 18<sup>th</sup> Edition, Vol 1(1), para 18.21);
- (ii) the Court should consider not only the descending income of one party, but also any ascending income of the other and take into account any increase or decrease in responsibilities or liabilities on the part of each party, including obligations to a new family (ibid and cases cited in note 5);
- (iii) whilst the Court deprecated the notion that a husband and father could evade his financial responsibilities, it would have regard to reality; there was life after divorce and a payer was entitled to order his affairs in such a way as to balance his responsibilities to his existing family with his proper aspirations for a new future (ibid);
- (iv) financial mismanagement by the payer may be one of the relevant circumstances to which the Court is required to have regard (ibid);
- (v) where there is a child of the family who has not attained the age of 18, the Court must consider the welfare of such a child first before any other relevant matter and the welfare of such a child will be the most important consideration. More important than any other single factor, but it will not be paramount in the sense that it can be overridden by a combination of other relevant and applicable factors (ibid, para 18.19, quoting Roch LJ in *N v N [1993] 2 FLR 868 at 882*); and
- (vi) the general rule is that arrears are not enforced if more than one year old (ibid, para 18.29). In *B v C (ENFORCEMENT:ARREAS) [1995] 1FLR 467*, the starting-point was taken that arrears over a year old were not enforced unless there were special circumstances; the proper approach of the Court is to decide how it should exercise its discretion to enforce, rather than how it should exercise its discretion to remit (note 2, ibid).

These principles are distilled from English cases and practice, which in this area of family law are followed in Guernsey, as is the basic so-called “*Section 25 check-list*” on the underlying criteria to adopt.