

Judgment 33/2004

**D v D – Royal Court (Divorce file
6248) – 15 July, 2004**

Matrimonial cause – wife’s application for vesting order and other financial relief – husband did not attend and unrepresented – grant of vesting order and ancillary relief.

IN THE ROYAL COURT OF GUERNSEY

Before Rosalyn Le Couteur Brelsford, Lieutenant-Bailiff.

No: 6248

On the 15th day of July, 2004.

Between

D

Petitioner

and

D

Respondent

In the matter of the revised application by the Petitioner, pursuant to the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended, dated 3rd June, 2004;

WHEREAS on the 6th and 8th July, 2004,

THE COURT having heard Advocate F. J. Haskins for the Petitioner and the non appearance of the Respondent RESERVED JUDGMENT;

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

1. *[THAT the former matrimonial home be vested in the Petitioner, subject to her assuming sole liability under two specified bonds.]*
2. THAT the Petitioner shall enter into exclusive possession and occupation of the property on the date of this Order.
3. THAT the remaining contents of the property shall become the sole and absolute property of the Petitioner.
4. THAT the Respondent shall pay nominal maintenance to the Petitioner in the sum of £1.00 per annum.
5. THAT the joint Bank Account shall be closed forthwith and the net proceeds shall become the sole and absolute property of the Petitioner.

6. THAT the Metro motor vehicle shall become the sole and absolute property of the Petitioner.
7. THAT the Mercedes motor vehicle shall become the sole and absolute property of the Respondent.
8. THAT the Respondent shall pay to the Petitioner a lump sum of £66,630.00 being one half of the amount needed to redeem the Barclays bond.
9. THAT any Order with regard to the Respondent's pensions shall be adjourned until full details of the pensions can be obtained by the Petitioner.
10. THAT the Respondent shall pay the Petitioner's recoverable costs in respect of the divorce proceedings and of this Application.

C. S. WEETMAN
Her Majesty's Deputy Greffier

Approved Text

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

BEFORE Rosalyn Le Couteur Brelsford, Lieutenant Bailiff

Between:

D

Petitioner

and

D

Respondent

Dates of Hearing: 6th and 8th July 2004
Date Judgment handed down: 15th July, 2004

Advocate for Petitioner: Advocate F.J. Haskins.
The Respondent did not attend nor was he represented.

IN THE MATTER of the Final Decree of Divorce granted on the 19th day of September 2003;

IN THE MATTER of the Petitioner's Application pursuant to the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended dated 15th January 2004; and

IN THE MATTER of the Petitioner's revised Application pursuant to the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939, as amended, dated 3rd June, 2004.

Service

1. On the 13th June, 2003, a Petition for divorce was filed by the Petitioner the facts relied upon being that the Respondent had behaved in such a way that the Petitioner could not reasonably be expected to live with him. Contained within the Prayer of this Petition was an application that, inter alia, the parties would use their best endeavours to sell the matrimonial home, [*situate in St Peter Port*], to enable payment of the outstanding monies due to the States of Guernsey and Barclays Bank Plc. The Respondent through his then advocate, Advocate Michael Riddiford of Babbé Le Pelley Tostevin entered an appearance with regard to ancillary matters on the 26th June, 2003, and gave as an

address for service 18-20 Smith Street, St. Peter Port being the offices of Advocate Riddiford.

2. On the 19th September, 2003, a Final Order of divorce was granted to the Petitioner.
3. On the 15th January, 2004, a further Application was filed by the Petitioner that inter alia the matrimonial home be vested in the Respondent's sole name in consideration of the Respondent assuming sole liability in respect of the said monies due to the States of Guernsey and Barclays Bank Plc. On the 28th January, 2004, Advocate Riddiford entered a further appearance on the Respondent's behalf stating that the Respondent wished to oppose the Application and again giving 18-20 Smith Street as the address to which communications should be sent.
4. On the 30th March, 2004, on Advocate Haskin's Application the Court directed that the Respondent should file his affidavit within 14 days i.e. by the 13th April, 2004, and set the case down for a hearing on the 3rd June. At the time the Court was not informed that in fact on the 29th March, 2004, Babbé Le Pelley Tostevin had received an e-mail from the Respondent instructing them to cease acting for him with immediate effect and indicating that he no longer wished their address i.e. 18-20 Smith Street to be his address for service in Guernsey.
5. On the 3rd June, 2004, the Petitioner's revised Application was filed at the Greffe.

This was as follows:-

- “1. *[That the former matrimonial home be vested in the Petitioner, subject to her assuming sole liability under the specified bonds.]*
2. That the remaining contents of the property shall become the sole and absolute property of the Petitioner.
3. That the joint Bank Account shall be closed forthwith and the net proceeds shall become the sole and absolute property of the Petitioner.
4. That the Metro motor vehicle shall become the sole and absolute property of the Petitioner.

5. That the Mercedes motor vehicle shall become the sole and absolute property of the Respondent.
6. That the Respondent shall pay to the Petitioner a lump sum of £150,000.00 or such other sum as the Court shall deem just.
7. That the Court shall make such Orders with regard to the Respondent's pensions as it deems just.
8. That save as aforesaid the Petitioner and the Respondent hereby renounce and surrender all rights or claims which they may have or at any time claim to receive against the other by way of maintenance, lump sum, secured pension or contributions for support whether arising under the Matrimonial Causes (Guernsey) Law, 1939, as amended, or otherwise.
9. That the Respondent shall pay the Petitioner a lump sum to cover the Divorce and the cost of his Application.

And/or such other Order(s) as the Court shall deem just."

6. Notice of this Application was served at 18-20 Smith Street. As requested by the Court the summons contained the following warning:-

"FURTHER TAKE NOTICE that if you fail to appear at this time and on this day namely 11.00am on 6th July 2004 the Court may then make the Orders sought in the revised application dated 3rd June 2004 attached hereto, (together with a copy of the Petitioner's further affidavit in support of this revised Application dated 3rd June 2004) without further notice to you."

7. The Respondent did not appear personally on the 6th July nor did he contact Advocate Riddiford or his firm. However, Advocate Riddiford has confirmed on oath
 - (a) that he was satisfied that the Respondent had known that he had to file an affidavit by the 16th March but that the Respondent had informed him that he could not because his mother was ill;
 - (b) that the Respondent was aware of the hearing date on 30th March;
 - (c) that although the Respondent had intimated on the 29th March, 2004, that he no longer wanted Advocate Riddiford or his firm to act for him, that Advocate Riddiford had explained to him that 18-20 Smith Street would

remain as his address for service unless he chose a new one which he had not done;

- (d) that he had informed the Respondent that if the Respondent took no action it was open to the Court to make such Order as the Court saw fit;
- (e) that although he was no longer acting for the Respondent he had forwarded all documentation received at 18-20 Smith Street to the Respondent by e-mail to the address he had always used to communicate with him and none had been returned undelivered;
- (f) that he had left messages on the Respondent's answer-phone.

8. On the evidence before me I have no reason to believe that the Respondent is unaware of the present application, and what would seem to be the Respondent's deliberate ignoring of the Court proceedings should not be allowed to jeopardise the Petitioner's position. In any event pursuant to Rule 10 of the Matrimonial Causes Rules 18-20 Smith Street was the Respondent's address for service when the present proceedings were served and the Respondent has seen fit not to furnish any other address for service within Guernsey.

CONCLUSION

9. This is a difficult case in that I have not had the opportunity to hear the Respondent's argument but I am satisfied that there is an urgent need to deal with at least the question of the matrimonial home. [The house.....]. The Petitioner stated on oath that the Respondent had informed her that the purpose of [a bank loan of £150,000] was to clear the States Housing Bond and to enable the Respondent to invest in the purchase of second-hand life policies in respect of his business. She therefore agreed to the Bond with Barclays and the money was then transferred it would seem into the Respondent's

sole account. The Petitioner subsequently discovered that the States Housing Bond had not been cleared and she has no idea what has happened to the £150,000. The Respondent continued, however, to pay the mortgage repayments until June, 2003, when he left the Island since when he has paid only £150 to the Petitioner to cover the mortgage repayments and or other debts.

10. There would seem to be little equity in the former matrimonial home especially as the Petitioner has been able to afford to pay only the States Housing Bond at the rate of £73.31 per month. The Petitioner earns £940 per month and her total weekly expenditure amounts to £330.94 which has been exacerbated by the fact that she has now moved into a flat pending the necessary sale of the matrimonial home and the fact that the Respondent has stayed in the matrimonial home on his infrequent visits to the Island. Her only other income is £60 per week board and lodging paid to her by her son.

11. The Petitioner stated in evidence that she did not want the former matrimonial home nor could she cope with the responsibility thereof but needs to clear the debt. On the 6th July the amount needed to redeem Barclays Bond stood at £133,258.95 and to redeem the States of Guernsey loan £39,562.68. The only firm offer on the house so far has been £185,000 (although it was marketed first for £235,000 and then £200,000). The sale for £185,000 has been unable to proceed however due to lack of finance on the part of the proposed purchasers. The Petitioner gave as her opinion that even if a purchaser were to be found the property would not fetch more than £185,000. On these figures and once estate agents fees and other expenses have been paid the remaining equity could be as low as £9,000. I therefore propose to vest the property in the sole name of the Petitioner so she can proceed to sell the property as soon as possible so no further debt will be incurred. Any remaining monies can be used by the Petitioner to pay off

her other debts such as that to her sister of £4,909.70 and to help towards her son's expenses.

12. The Petitioner is also inter alia seeking a lump sum of £150,000 from the Respondent arising out of her allegation that the Respondent misled her over the reasons for taking out the additional Bond for £150,000 in December, 2001. The Petitioner has no idea what the Respondent has done with the sum of £150,000 and unfortunately the Respondent has seen fit not to give any information to the Court. What is clear is that the Respondent did continue to pay the mortgages on the matrimonial home until he left in May, 2003, since when the Petitioner has paid the States Housing loan but has been unable to meet the payments to Barclays Bank Plc. As this was a joint loan I therefore order that the Respondent pays to the Petitioner one-half of the amount needed to redeem the Barclays Bond, namely £66,630 on or before the 15th September, 2004.
13. The Petitioner is seeking in paragraph 8 an Order that both parties renounce and surrender all rights or claims which they may have at any time in the future against each other with regard to maintenance, lump sum, secured pension or contributions for support whether arising under the Matrimonial Causes (Guernsey) Law, 1939 as amended or otherwise. (I presume pension should read provision.) Obviously on the facts before the Court it would seem that this is an obvious case for there to be a clean break. However, in view of the fact that the Respondent has seen fit not to partake in these proceedings and therefore the Court is not aware of any further assets he might have, I shall make an Order that the Respondent pays to the Petitioner as maintenance the sum of £1 per year which will enable the Petitioner to return to Court if she deems it necessary.
14. With regard to the rest of the Application I shall adjourn the Application contained in paragraph 7 until full details of these pensions can be obtained and I grant in their entirety the Orders sought in paragraphs 2, 3, 4 and 5 of the Application.

15. With regard to costs, in view of the Respondent's failure to provide any details regarding his finances or to co-operate in any way I order that the Respondent pay the Petitioner's recoverable costs to cover both the divorce proceedings and the cost of this Application.