

Judgment 37/2006 B v B – Royal Court (Matrimonial File 5606) – 3rd July 2006

Matrimonial Causes Law (Guernsey) 1939 – husband and wife both sought orders for costs

Lieutenant Bailiff Finch set out the legal principles as follows in paragraphs 72 – 77 of his Judgment

Legal Principles

72. I have the power to award recoverable costs or full or partial indemnity costs under the circumstances set out in Rule 48 of the Royal Court Civil Rules, 1989, under Rule 6(2) of the Matrimonial Causes (Costs and Fees) Ordinance, 2002. As in the case of *F v F* (2005) I propose to follow the valuable guidance in the English case of *GOJKOVIC v GOJKOVIC* (No. 2) [1991] 2 FLR CA (found in W’s bundle at Tab A4) from Butler-Sloss L J:

“However in the Family Division there still remains the necessity for some starting point. That starting point in my judgment is that costs prima facie follow the event but may be displaced much more easily and in circumstances which would not apply in other divisions of the High Court. One important example is that it is unusual to order costs in children cases. In applications for financial relief the applicant (usually the wife) has to make the application in order to obtain an order ... if the application is contested and the applicant succeeds ... if there is money available and no special factors, the applicant spouse is entitled to and likely to obtain an order for costs against the respondent”.

73. Later on in her judgment Butler-Sloss L J cited with approval the words of Oliver L J in *CUTTS v HEAD* [1984] Ch 290 at 306: -

“As a practical matter, a consciousness of a risk as to costs if reasonable offers are refused can only encourage settlement, whilst on the other hand, it is hard to imagine anything more calculated to encourage obstinacy and unreasonableness than the comfortable knowledge that a litigant can refuse with impunity whatever may be offered to him, even if it is as much as or more than anything to which he is entitled in the action”.

74. Butler-Sloss L J also made the point that: -

“But the starting point in a case where there has been an offer is that, prima facie, if the applicant receives no more or less than the offer made she /he is at risk not only of not being awarded costs, but also of paying the costs of the other party after communication of the offer and a reasonable time to consider it. That seems clear from the decided

cases and is in accord with the Supreme Court Rules and County Court Rules requiring the court to have regard to the offer”.

75. It is to be noted however, in family cases that other factors may alter that prima facie position. Butler-Sloss L J continued by observing: -

“The concept expounded by the Judge of no order for costs where both parties have been reasonable in their approach to the dispute is not, in my judgment, one of general application in the Family Division, save in children cases, and is certainly not one of general application in Calderbank offers”.

76. As in *F v F* I also find helpful guidance in another English case, *BUTCHER v WOLFE and WOLFE* [1999] 1 FLR 334.

77. The headnote (in part) states: -

“HELD – dismissing the appellant’s appeal on costs only –

(1) The Judge had made no error of principle in the exercise of his discretion. He had taken into account the Calderbank offer and the appellant’s reasons for refusing it, as he was entitled to do. He had been right to conclude that it was not reasonable for her to refuse the offer. She had not achieved anything by the litigation which could not have been achieved by accepting the offer made before the action commenced, and the Judge was entitled to make the costs order accordingly”.

I note this was not an ancillary relief case, but the principles seem to me to be of application in such cases, provided that the judgment of Butler-Sloss L J in *GOJKOVIC* is borne in mind, as I have done.