

**Judgment 39/2009**

**F v F – Royal Court (Divorce File 6887) – 19 August 2009**

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**Matrimonial Causes (Guernsey) Law, 1939 – husband’s application to reduce existing orders for maintenance of his former wife and their children – limited circumstances in which consent orders could subsequently be varied – evidential insufficiency – husband’s application failed**

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

**Divorce 6887**

**Between**

**F**

**Petitioner/Wife**

**-v-**

**F**

**Respondent/Husband**

**Date of hearing: 6<sup>th</sup> August 2009**

**Judgment handed down: 19<sup>th</sup> August 2009**

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

**Advocate for the Petitioner: S Mallett  
The Respondent appeared in person**

**Cases referred to:**

- 1) *Boylan v Boylan [1988] 1 FLR 282*
- 2) *A v A (Civil Appeal 340 of 2004)*
- 3) *Roots v Roots [1987] Fam Law 387*
- 4) *C v C [2007 – 08] GLR. Note 13*
- 5) *Maskell v Maskell [2001] EWCA Civ 858*

**After setting out the factual evidence, Lieutenant Bailiff Finch set out the applicable legal principles and his conclusions in paragraphs 8 – 11 and 13 – 14 of his judgment: -**

**Legal Points**

8. Counsel for W submitted at the end of H’s evidence, that the matter should proceed no further. The Consent Order was freely entered into and, put simply, H had chosen

to dissipate a considerable amount of money on ultimately unprofitable speculations after the Order was agreed. That was his choice and there had been plenty of money available to meet the terms of the Order. Consent Orders should not be varied along radically different lines from those taken by the parties themselves when they made the agreement.

9. It seems to me that the appropriate course to adopt is that I set out in C v C [2007–2008] GLR Note 13 which endeavoured to follow the Guernsey Court of Appeal case of A v A (2004) and the dicta of Sumption JA. As a general principle public policy requires finality in litigation, so orders, particularly Consent Orders, should not be materially varied unless there is a good reason to do so. A change in a party's financial circumstances which has taken place since the Order was made would not normally give rise to a case for re-opening matters. The GLR note of that decision sets out the approach followed:

“[2007-08 GLR Note 13]  
C v C

**Royal Court (Finch, Lieut. Bailiff): August 23<sup>rd</sup> 2007**

***Family Law-financial provision-variation-maintenance agreement***

*The variation of a consent order for financial provision after judicial separation should not follow lines radically different from those taken by the parties themselves in reaching agreement on the terms of the original order (Boylan v Boylan, [1988] 1 FLR 282, followed). The fact that they agreed that certain arrangements were reasonable as between themselves is strong evidence that they were in fact reasonable unless (a) the agreement was unfairly procured or made under a misapprehension, (b) circumstances have changed in some material respect, or (c) there is strong evidence to the effect that the terms of the agreement in fact operate unreasonably. In such cases, a variation will be made. Any variation will, however, have to consider whether one of the parties has organized his or her affairs on the basis of the original agreement, so as to make some possible variations unfair (A v A, C.A., Civil App. No. 340, April 21<sup>st</sup>, 2004, unreported, dicta of Sumption, J.A. applied).*

*If the consent order involved provision for the maintenance of the children of the marriage, the court considering variation should always bear in mind that their welfare is the “first consideration”. Broadly speaking, a person having an obligation to provide reasonable maintenance for his children has a responsibility to order his financial affairs with due regard to meeting this obligation, and then to meeting his other reasonable financial obligations.”*

10. Upon considering H's evidence, I find his unfortunate redundancy just over a year from the date of the Order (March 2007), may well not have been on the radar when H agreed to its terms. However, a case was not re-opened, it is noted, when a husband became unemployed within two months of the original Order. Maskell v Maskell [2001] EWCA Civ. 858. Redundancy is not something that can be regarded totally out of the realms of foreseeability [.....].
11. The position of the children is not merely something additional to this application, as was stated in C v C, their welfare is a “first consideration” and H is obliged to order

his financial affairs in a way which meets this. Despite his explanations, I find that his failure to pay their medical insurance shows a lack of understanding of their priorities.

12. \_\_\_\_\_

### **Conclusion**

13. Starting with the consideration that the Consent Order was properly made and with the benefit of specialist legal advice, I do not adopt an approach which differs radically from that of the parties themselves in assessing the quantum of maintenance. The facts do not show such a change of circumstances as to enable me to vary the agreed order, and that is so without calling upon W to give evidence. Upon looking at the Order it is not in any way unreasonable in its terms or extent. Unusually, on the facts of the case as given, there is no case for W to respond to and H's application therefore fails on the grounds of evidential insufficiency.

### **Costs**

14. These should follow the event and W is prima facie entitled to her recoverable costs, subject to any written submissions by either party, within seven working days of the final date of this judgment. [On 19 August 2009, having considered written observations by H, the Lieutenant Bailiff ordered that H pay W's recoverable costs.]

**J R Finch**