

Judgment 41/2010

**P v P – Court of Appeal (Civil Appeal 419) –
15th December, 2010**

Matrimonial Causes (Guernsey) Law, 1939 – husband’s appeal from Royal Court decision as to ancillary relief – late disclosure by husband of deterioration in his financial position – held that the court was not under any obligation, of its own motion, to order an adjournment to enable the husband to adduce further evidence of his assets – obligation on the husband to give full and frank disclosure – appeal dismissed. (see Judgment 7/2010)

IN THE COURT OF APPEAL OF GUERNSEY

The 15th December, 2010 before Dame Heather Steel, DBE, presiding, Michael Cameron St John Birt, Esq., and Sir Hugh Bennett

P

(Appellant/Husband)

v

P

(Respondent/Wife)

In the appeal of the above Appellant from the decision of the Matrimonial Causes Division of the Royal Court dated 10th February, 2010;

THE COURT, having heard Advocates Pauline Allen and Penny Grainge for the respective parties thereon, this day GAVE JUDGMENT in the terms attached hereto and

- (i) DISMISSED the appeal; and
- (ii) ORDERED that the Appellant shall pay the costs of the Respondent on the standard recoverable basis, such costs to be taxed if not agreed.

K H TOUGH

Registrar of the Court of Appeal

Approved Judgment
15 December 2010

IN THE COURT OF APPEAL OF THE ISLAND
OF GUERNSEY

MATRIMONIAL DIVISION – APPEAL NO 419

13th & 15th December 2010

Before: Dame Heather Steel, DBE

Mr Michael Cameron St John Birt,

Bailiff of Jersey

Sir Hugh Bennett

Judges of Appeal

Between: David Donald CRANCH (Appellant/Husband)

v

Sally Catherine CRANCH (Respondent/Wife)

Advocate P A Allen appeared for the Appellant

Advocate P M Grainge appeared for the Respondent

This is the Judgment of the Court

Sir Hugh Bennett JA

1. The Appellant (“the husband”) appeals from the order of Sir de Vic Carey, Lieutenant Bailiff made in the Matrimonial Causes Division of the Royal Court on 10th February 2010 whereby he ordered that the [former matrimonial home] be vested in undivided shares as to 72% in favour of the Respondent (“the Wife”) and as to 28% in favour of the husband (making allowance for costs of sale). He ordered the property to be sold. Each party was to retain the

amounts of their bank accounts and their pensions. The husband was to retain his shares. The husband was ordered to pay the wife’s costs.

2. The ancillary relief hearing before the Lieutenant Bailiff occupied the day of 25th November 2009, when both parties gave evidence and were legally represented. Written submissions were thereafter made by both Advocates. On 22nd December 2009 the Lieutenant Bailiff handed down his judgment.
3. [The court summarised the course of the relationship and composition of the family.]
4. In early January 2007 the parties separated. Exactly a year later the wife filed her divorce petition. The husband defended it. At the hearing in front of the Lieutenant Bailiff on 25th March 2009, the wife offered to seek a divorce on the grounds of 2 years separation with consent. The husband refused without, according to the judgment of the Lieutenant Bailiff, giving any explanation. Thus the hearing went ahead. The Lieutenant Bailiff accepted the wife’s evidence and found that she had proved her allegations of unreasonable behaviour. At para 12 of his judgment, the Lieutenant Bailiff said:-

“It is plain that giving evidence of such matters (I interpolate – the husband’s behaviour during the marriage) to strangers in a courtroom was a real ordeal for the wife, and occasioned stress, which could have been avoided.”

5. On 7th March and 24th June 2008 the wife and the husband filed their Forms A, respectively. We gratefully adopt paras 6 and 7 of the judgment of the Lieutenant Bailiff which details the parties’ assets therein disclosed. They were:

“6. Former matrimonial home, [.....] (in husband’s sole name) agreed estimate
- £375,000.00

Bank Accounts:

<i>Wife’s Island [Cheque Account]</i>	-	£1,627.00
<i>Joint Account (operated by husband)</i>	-	£2,566.42
<i>Savings Account (in name of husband)</i>	-	£17,566.82
<i>Savings Account (in name of husband)</i>	-	£20,279.93
<i>Boat in joint names of husband and wife</i>	-	£20,000.00
<i>Portfolio of shares as at June 2008 (husband’s valuation)</i>		£117,279.40
TOTAL		£554,319.57

7. *Turning to income the husband receives four pensions totalling £18,411.33 (with a total CETV of £125,923). The wife is still working and is contributing to a Public Service Pension, which has a CETV at the present time of £27,771.04. The wife's income from her employment is currently £13,706.64 net.*”

6. On the 3rd June 2009 a FDR was held. Prior thereto, the wife provided updated financial information. The husband did not, despite requests made by Advocate Brown on behalf of the wife, to Advocate Ayres, then acting for the husband, in letters dated 12th May and 26th May. On 11th June the court made an order that each party provide updated disclosure of their finances. On 15th July there was yet a further request made to the husband to provide updated disclosure. None was provided by the husband. On 31st July, the wife provided her further updated disclosure.

7. At 4.14 pm on 24th November 2009, i.e. the day before the final hearing of the wife's application for ancillary relief, Mr Brown received an e-mail from Mr Ayres enclosing documentation, the substance of which was:-

- i) The [first] Savings Account showed a total of £1,614.75
- ii) The [second] Savings Account showed a total of £1,207.00
- iii) The portfolio of the husband's shares had apparently sunk in value to £43,183.66.

8. Thus the total of the parties' assets had decreased from £554,319.57 to £440,356.37, including a small amount on the boat, but excluding pensions. As was found by the Lieutenant Bailiff in para 8 of his judgment:

“I have noted that much of the apparent depletion of the husband's assets took place before 3rd June.”

9. From a reading of the transcript of 25th November 2009, this disclosure by the husband at the eleventh hour placed the wife and the court in a very difficult position. Mr Brown made clear to the court that the wife was not asking for an adjournment as she was absolutely desperate to get the matter sorted out – see F119 to F120B. Just after the cross-examination of the wife had begun, Mr Ayres told the Lieutenant Bailiff that the first time he had learned of the husband renting [his current home] was during the wife's examination-in-chief and said to the Lieutenant Bailiff at F157:-

“So I don’t have any of these documents. It may be Sir my client is keen to conclude matters today as well, but it may be that you of your own motion might ask [the husband] to file an affidavit containing this disclosure. I can’t make a submission because I’m not instructed to do so, but it may be that that’s something”

10. At no stage did Mr Ayres invite the court to adjourn the hearing. But the midday adjournment was extended to enable the husband to bring to court documentation as to the apparent change in his financial circumstances. These documents, which included a spreadsheet (compiled by the husband) of his shares and their alleged value, were put before the court. The husband’s evidence was then concluded.

11. Each party put in written submissions. The husband invited the court to accept that he had accounted for the reductions in his assets. He had spent £15,000 as a year’s rent in advance on [his current home]; he had bought a car for £9,025; he had spent £10,441 on repairs to the roof of the matrimonial home and £1,200 on a replacement boiler; and he had spent £7,225 on maintaining his [children]. As to the reduction in the value of his shares, £12,000 was attributable to the difference between disposals and acquisitions, and the remainder to the decline in their value on the AIM. It was submitted that the wife’s evidence that she required a housing fund of £250,000 to £300,000 was unrealistic, and further that she was capable of obtaining better paid work. He further submitted that there was no warrant for the wife to receive more than 50% of £441,000 i.e. £220,500.

12. The wife submitted that:

- i) The husband had never put forward any proposal as to what was the fair distribution of the assets.
- ii) He had only given updated disclosure the day before the hearing.
- iii) He could not give a satisfactory explanation of how his savings and his share values had reduced.
- iv) The spreadsheet he had prepared showing the decline in value of his shares was incompatible with entries in his bank statements and there was no report from a stockbroker showing the current value of his shares.
- v) The sums of £10,441 and £1,200 spent on the matrimonial home had been incurred without consulting the wife.
- vi) The husband had produced no evidence showing what jobs were available to the wife and thus what increase in her income was available.

- vii) The cottage should be sold with the wife receiving £300,000 from the net proceeds of sale with the balance going to the husband.

13. The essential findings of the Lieutenant Bailiff can be summarised as follows:-

- i) If the husband's downward revision of his wealth was to be taken "*at face value*", an equal division would give the wife about £220,000 which "*....would not provide the wife with a fund for housing which would buy the kind of property she seeks.*" (para 19)
- ii) The husband's evidence that he could live in the part of the matrimonial home where the garage is situated "*....should (not) be taken as a serious alternative in the circumstances. The wife should have two bedrooms, so her [the children] one of whom has a medical problem can stay with her. Ideally the husband should have the same, but that may not be possible as he is possibly going to have to rent and it looks as if his income may not be able to support renting a property with the qualities he now enjoys at [his current home]*".
- iii) A figure of £267,500 would just be adequate to meet the wife's housing needs of a very modest apartment in an urban area. (para 29)
- iv) As to the alleged devaluation in his shares, (see para 20) that the information produced at the hearing by the husband:-

"Is neither complete nor comprehensible, relying as it does, on papers wholly generated by the husband."

Although the stock market may have declined since June 2008:

"In the absence of any satisfactory analysis of the portfolio, with a history of how each holding fared I cannot make any sensible assessment of how much the fall in value is attributable to the husband taking money out for his own purposes or suffering unavoidable losses in the market collapse."

In para 21 the Lieutenant Bailiff noted that the alleged fall of his shares was not broadly compatible with the decline in FTSE index for the same period. Thus in all the circumstances “*including the totally unsatisfactory disclosure that has been made*” the Lieutenant Bailiff was not minded to give the husband “*any substantial credit*” for the alleged market fall.

- v) The cost of repairs to the roof and the boiler were reasonable.
- vi) As to the expenditure on the rent for[his current home] and a car, whilst these payments had been made he found that the husband:

“had chosen to use capital for what is a wasting item of expenditure, rent and likewise for a new car, which again is a wasting asset.these are his choices and he must not expect that the wife’s share of the matrimonial assets should be depreciated to take account of this expenditure.”
- vii) As to the £7,225 spent on his [children], this was disclosed “*so late that no proper inquiry could be carried out on the incidence of these charges*” and “*I am only prepared to debit the wife’s notional share to capital with a small part of it*”.
- viii) He was not persuaded on the limited evidence which the husband produced at the last minute that he “*should be giving him credit for the bulk of the money that has disappeared*”.
- ix) Thus, he decided to deduct from the figure of £554,319, £20,000 to take account of the repairs to the house and the decline in the value of his boat “*plus a small amount to cover the other losses and expenses (including part of the parental contributions) suffered by the husband without conceding that any of this can be properly laid at the door of the wife*”. We infer from his reference to the deduction of £20,000 from “*the husband’s original figures*” and to the value of the wife’s half share of £267,500, that he found that all the assets to be worth about £535,000.
- x) Basing himself principally on the dicta in para 15 of the judgment of Mr Richard Anelay QC sitting as a Deputy High Court Judge in L v L [2008] 1 FLR 142 he was not persuaded to depart from the principle of equal sharing (see para 29).
- xi) The mechanics of raising the sum of £267,500 was to give the wife a 72% interest in the matrimonial home. The husband would keep all his assets and the wife was to transfer all her interest in the boat to the husband.

14. Advocate Allen, who appeared for the husband before us, in helpful and succinct submissions, argued that the information about the ‘decline’ in the value of the husband’s shares was not sufficient to provide a sound basis for the Lieutenant Bailiff to reach a fair conclusion. The Lieutenant Bailiff should, of his own motion, have adjourned the hearing to enable the husband to provide the court at a later hearing, with relevant documentation and evidence and should have ordered the husband to pay the costs thrown away. It was submitted that the court is obliged to determine what are the parties’ assets and it cannot carry out its duty and thus arrive at a fair conclusion in the absence of sufficient evidence. If therefore the court was doubtful about the sufficiency of the husband’s oral and documentary evidence as to his shares and the alleged significant decline in value, it could not arrive at a conclusion which was fair to both parties. Mrs Allen submitted that put simply, the court did not have enough information, and thus it was plainly wrong for the Lieutenant Bailiff not to have adjourned the hearing.
15. Mrs Allen realistically submitted that the appeal succeeded or failed on this central ground. She further accepted that notwithstanding that at crucial points during the hearing, the Lieutenant Bailiff made clear that he was troubled by the husband’s evidence about his shares and thus might not be able to accept his evidence in this matter, the husband never applied for an adjournment.
16. In our judgment this ground of appeal fails, despite Mrs Allen’s careful submissions. Mrs Allen candidly accepted that the effect of the submissions is that, where a party, in this case the husband, makes financial disclosure at the eleventh hour with the consequence that the court is placed in a position where it is asked to reach its conclusion on the insufficient evidence disclosed, the court ought to adjourn the case, in order to permit the husband to adduce further evidence of his assets, notwithstanding that the husband did not apply for an adjournment. We cannot accept that in such circumstances the court is under any such obligation. It was incumbent upon the husband to disclose his up to date assets sufficiently far in advance of the hearing to enable the wife to investigate and/or challenge an alleged significant decline in value of his shares. If, as in this case, he did not do so, he can have no complaint if this court, as it did, concludes that it cannot rely on his evidence. The husband was the author of his own misfortune. He had been on notice since 12th May 2009 to make updated disclosure. He ignored the court’s order of 11th June 2009. He produced his disclosure at the last possible moment. In such circumstances we unhesitatingly conclude that the Lieutenant Bailiff was under no duty to adjourn the hearing of his own motion. In any event whether or not to adjourn a hearing is a matter of discretion, par excellence, for the court at first instance. The Court of Appeal can only interfere with the exercise of discretion if it is plainly wrong. Far from being plainly wrong, in our judgment, the Lieutenant Bailiff

was absolutely right to reject a veiled suggestion of Advocate Ayres to adjourn the hearing of his own motion.

17. The second ground of appeal is that Mr Ayres failed to pass on to his client the various requests made on behalf of the wife for updated disclosure since a letter to him from Mr Ayres of 24th June 2009. Mr Ayres ought to have realised that the case was going badly against the husband and should have advised his client to ask for an adjournment.
18. The evidence, as disclosed by the transcript, of the husband was that he knew that he had an ongoing obligation to give full and frank disclosure, that he had received Mr Ayres' letter of 24th June which requested that he give updated disclosure, that he did not read it, that he was not advised about the order of 11th June 2009, and that he responded to an e-mail of Mr Ayres on 24th November requesting disclosure, which he gave. Accordingly, the Lieutenant Bailiff ought to have adjourned the case if there were grounds for believing that Mr Ayres might have disadvantaged the husband's case.
19. We cannot accept these submissions. At para 16 of his judgment, the Lieutenant Bailiff said:-

“16. It is well established that parties to ancillary relief proceedings are under a duty to provide ongoing disclosure of any material changes in their financial position. Despite requests from Mr Brown, on behalf of the wife (apparently relayed on by Mr Ayres to the husband – see e-mail of 24 November 2009), the husband failed to provide this information to Mr Ayres until the day before the hearing before me. The husband denied seeing either the request for information or the offer obtained in Mr Brown's comprehensive letter of 2nd July. I can see no excuse for the husband's behaviour in this regard.”

20. In our judgment, the husband knew full well of his continuing obligations to disclose his assets. If, as he asserted, his assets had dropped considerably from 2008 by in large measure June 2009, one might have thought that he would be anxious for the court and his wife to know at the earliest opportunity of his apparently significant change in fortune. The fact (if true) that he did not read Mr Ayres' letter of 24th June is his misfortune. At the very least upon receipt of that letter in June 2009, he was on notice to produce updated disclosure. He did not do so. He cannot blame his then Advocate. In any event what may or may not have passed between the husband and his then Advocate is not a ground of appeal in the circumstances of this case.
21. The third ground of appeal is that the Lieutenant Bailiff should not have divided the assets in the way that he did and that he should have accepted that the capital fund available in November 2009 had greatly reduced because of the decline in the value of the husband's

shareholdings. The essence of the husband's complaint is that after the midday adjournment, he produced a schedule of his shareholdings (his spreadsheet) showing the values as at May 2008 and as at November 2009. According to his evidence at F199 et seq the husband compiled the spreadsheet with the prices of the shares taken off sites on the internet. The husband submitted that the Lieutenant Bailiff ought to have accepted his evidence. Furthermore, it is submitted that a comparison of the fall in the FTSE index with that of the husband's shareholdings, was inadequate, that he was not taking money out for his own purposes, and that it was wrong for the Lieutenant Bailiff to have found that the husband's investments were foolhardy at the time of ancillary relief proceedings.

22. In our judgment the reasoning of the Lieutenant Bailiff is sound. The husband, by his very late disclosure, sought to present the alleged fall in value as a *fait accompli*. It was for him to establish that his shares had genuinely slumped in value. He chose to produce a spreadsheet, on the very day of the hearing, which allegedly showed the prices of each shareholding over the period of June 2008 to November 2009, but without producing any documents to verify that what he had put into his schedules was accurate. He produced no expert valuation. In our judgment, in the circumstances of the case the Lieutenant Bailiff had every reason to doubt, at the least, the accuracy of the husband's evidence.
23. The fourth ground of appeal is that the Lieutenant Bailiff, having stated that he was not minded to depart from the principle of equality, nevertheless did so. He took the assets at £440,000 yet awarded the wife £267,500.
24. In our judgment this point is misconceived. The Lieutenant Bailiff did not find the assets to be £440,000, because he did not accept that the husband had established that his shares had diminished in value. It is plain from the Lieutenant Bailiff's reference at para 29 of his judgment to the "*value of the wife's half share*" as £267,500 that he took the assets at £535,000. 72% of the value of the Cottage equated to £267,500 (after notional sale costs are deducted).
25. The fifth ground is that the Lieutenant Bailiff did not give sufficient consideration to the disparity in the parties' ages when considering their housing needs. The husband was retired and could not generate more income. The husband had little opportunity to re-house himself whereas the wife was awarded sufficient assets to do so. The wife, on the other hand, had another 15 years of working life left. She could increase her income by taking a better paid job and take out a mortgage.
26. In our judgment, the Lieutenant Bailiff was well aware of the disparity in ages, pensions and working situation of both parties. The husband had retired at 70 earning c £70,000 pa. He

was looking for work and he was not going to be fussy about what job he did (F187). As for the wife, she gave evidence about her employment. She rejected his suggestion that she could get a job in the financial services sector since she had no requisite skills. The husband produced no evidence of the sort of jobs he had in mind. The husband suggested that she should take a second job. At para 31 of his judgment, the Lieutenant Bailiff rejected that assertion. It was within his discretion to do so.

27. The sixth and final ground of appeal is that the Lieutenant Bailiff erred in giving too much weight to the need of the wife to have a two-bedroom property for the needs of the [youngest child]. The fact that [the child] was at university living away from the wife and the husband demonstrated that despite its disability, [that child] could live away from [its] parents. It was thus not essential for the wife to have a two-bedroom property if there were insufficient assets to provide for that.

28. The critical paras of the Lieutenant Bailiff’s judgment in this regard are paras 12 and 27. At para 12 he said:-

“12. Here, I am not faced with a claim that the wife needs protection as carer of the children, as the children are now all over 21, albeit they are still around and not, in the case of the youngest at least, wholly self-supporting. Ideally, both parties would like a situation where the children can come and stay with either parent, but as we shall see, this may not be possible.”

At para 27, he said:-

“27.The wife should have two bedrooms, so [the children] one whom has a medical problem can stay with her. Ideally the husband should have the same, but that may not be possible as he is probably going to have to rent and it looks as if his income may not be able to support renting a property with the qualities he now enjoys at [his current home].”

29. In our judgment, the Lieutenant Bailiff wanted both parties to be able to have [the youngest child] to stay, particularly given [its] disability. The fact that the husband might not be able to provide such accommodation, albeit that [his current home] had a bedroom available for [that child], did not mean that the wife should be deprived of the opportunity to have [that child] to stay. In any event it lies ill in the husband’s mouth to put forward this submission,

particularly so in the light of his evidence at F163 E, where he set out his case for accommodation he needed which included the needs of his [children].

30. In conclusion, we are grateful to Advocates Allen and Grainge for their compact and lucid submissions. Having considered all the matters which they have put forward we are of the view that for the reasons which we have expressed, the appeal must be dismissed. The husband must pay the wife's costs of the appeal to be taxed if not agreed.