

**Judgment 44/2005**

**C v C – Court of Appeal (Civil Appeal 350)  
- 20 July 2005**

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**Matrimonial Causes (Guernsey Law, 1939 – construction of Article 47 ‘contributions for support’ – held that the natural meaning of ‘support’ includes payments to discharge debts of the other party – matter remitted to the Royal Court.**

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY**

The 20th day of July, 2005 before The Honourable Michael Jacob Beloff Q.C., presiding,  
Dame Heather Steel, D.B.E. and The Right Honourable Sir Charles Mantell

C

Appellant/Respondent/Wife  
in the Royal Court

v.

C

Respondent/Petitioner/Husband/  
in the Royal Court

In the appeal by the above Appellant from  
the decision of the Royal Court on 20<sup>th</sup> July, 2004;

THE COURT, having, on 19<sup>th</sup> July, 2005,  
heard Advocates Mrs P A Allen and A J Ayres for the respective parties thereon, this day  
GAVE JUDGMENT in the attached terms, ALLOWED the appeal and REMITTED the  
matter back to the Royal Court for the Lieutenant Bailiff to exercise the power under Article  
47, which this Court has held he enjoys, to determine whether or not to order the Respondent  
to make periodic payments to assist the Appellant in the discharge of her debts;

AND THE COURT AWARDED costs to the  
Appellant on the standard recoverable basis.

K. H. TOUGH  
Registrar of the Court of Appeal

**OFFICIAL TRANSCRIPT**

**WEDNESDAY 20<sup>TH</sup> JULY 2005**

**IN THE COURT OF APPEAL**

**Before**

**The Hon Michael Beloff, QC; presiding  
Dame Heather Steel, DBE QC  
The Rt. Hon Sir Charles Mantell PC**

BELOFF, JA: This is the judgment of the Court

[1] This is an appeal against a decision of the Lieutenant Bailiff on 20<sup>th</sup> July 2004 (“the Decision”) dismissing the Appellant’s application for “*An order that there should be a more equitable distribution of the liabilities arising from the marriage, i.e. [the Respondent] be ordered to pay a lump sum or to make such periodic payment to [the Appellant] or such other person as [the Appellant] may, from time to time, where the Court shall direct, to ensure the repayment of the liabilities of the marriage*”.

[2] The Lieutenant Bailiff described the background to the case in the following uncontroversial manner-

- “1. *The parties were married on 13.11.92, there are no children of this union.*
2. *A final decree of divorce was granted to the Respondent on 7.11.00.*
3. *The Appellant is responsible for debts totalling £110,408.71 from the marriage. The Respondent has paid off £86,609.20 on joint debts and is paying off a further £31,856.00, totalling £118,475.00.*
4. *[the employments of the parties were set out].*
5. *It is accepted that there are no surplus assets available for distribution.”*

Whether or not the Respondent has any liability for the debts now owed by the Appellant which were incurred during the marriage is a salient issue in the appeal.

[3] It was agreed that resolution of the question as to whether, and if so, in what circumstances, the Court could make orders against the husband which would enable the wife to discharge debts or vica versa depended on the construction of Articles 46 and 47 of the 1939 Matrimonial Causes (Guernsey) Law.

[4] Article 46 entitled “Power of Court to Order Vesting or Division of Property” provides as sub-paragraph (1) insofar as material-

*“Where a decree of divorce or nullity of marriage or judicial separation has been granted, the Court may, if it thinks fit, as regards real and personal property in which each of the parties to the marriage has, notwithstanding*

*the provisions of Article 44 of this Law, an interest, present, prospective or conditional, direct that their interests in such property shall be vested solely in the one or other of the parties or shall be divided between them, order that one party shall pay to the other for his or her absolute benefit, such gross or periodic sum or both for any term not exceeding the life of a party in favour of whom the same is secured as the Court may direct, or may refrain from making any order as to payment or security.”*

[5] The Lieutenant Bailiff determined by reference to this provision-

*“In my judgment it is apparent that an interest in property under Article 46 applies to an asset. No third party can be involved when this Article is used. In other words I agree that Article 46(1) cannot apply to a liability. To say otherwise would do violence to what I take to be the plain and ordinary meaning of the statute.”*

[6] No appeal is made against this part of the Lieutenant Bailiff’s judgment which seems to us to be clearly correct.

[7] Article 47 entitled “Contributions for Support” provides at sub-paragraph (1)-

*“Where a decree for divorce, judicial separation, restitution of conjugal rights or nullity of marriage has been granted, the Court may, if it thinks fit, having regard to the circumstances of the case, including the financial position and conduct of the parties, order that one party shall pay or make provision for the other party during any term not exceeding the life of such other party for such annual or other periodic sum of money for or towards the support of such other party as the Court may deem reasonable, and that the party against whom such order is made shall secure the payments to be made under such an order in manner directed by the Court.”*

[8] The Lieutenant Bailiff determined by reference to this provision-

*“Article 47 refers to ‘contributions for support’. Money is paid under Article 47(1) ‘for or towards the support of the other party’. In my judgment that is provision from what would be (and is) commonly termed ‘maintenance’, which denotes the provision of necessities and convenience of life such as food, clothing, etc. (See, for example, Ackworth v. Ackworth 1943 p.21, 22). This must be the primary purpose of the order. I consider it significant to remind myself that the Grounds for the Appellant has indicated that her client has not made an application for maintenance per se, but has a low income so that is a possibility.*

*The word ‘support’ seems to me to relate to payment for the daily exigencies of life such as fuel, food, clothing, etc. This goes back to the old case and I have looked and I apologise for the antiquity of the case, but it is what I found R. v Gravesend 5E & B 459 that is Ellis and Blackburn’s reports. It is cited in Stroud’s Judicial Dictionary under ‘support’. It follows that although it is perfectly possible to make some provision for ongoing liabilities in an order, the primary purpose must accord with the meaning of the words in the Law. Accordingly I consider and it also follows that the application as presently framed, seeks to cover a situation which should properly be within the ambit of a civil trial in the Royal Court, not under the guise of Articles 46 and 47 of the Law of 1939. I cannot stretch the plain meaning and intended the statute...” he meant, we presume, intendment of the statute “... to cover the situation faced in this application, nor would I consider it desirable to do so.”*

[9] Both parties agreed that in so determining the Lieutenant Bailiff fell into error. Since, however, his ruling, unless and until overruled, disables him from proceeding further in this matter, we are obliged, if we see fit, to set aside that determination. Counsel for both parties gave us short but helpful submissions to persuade us to do so.

[10] We respectfully agree with Counsel that the Lieutenant Bailiff gave an unduly restrictive interpretation of Article 47 for the following reasons-

- (i) Periodic payments to discharge debts of another party is in its ordinary and natural meaning conducive to that other party's support.
- (ii) There is no warrant in statute or other law for construing 'support' in the narrower way adopted by the Lieutenant Bailiff.
- (iii) Article 51 of the 1939 Law specifically directs the Court to ascertain the liabilities of the parties for the purpose of deciding what, if any, order to make under Part VIII of that Law. 'Liability' includes a contractual commitment to a third party.
- (iv) Section 25(2)(b) of the English Matrimonial Causes Act 1973 requires the Court, when exercising its powers under

Part II of that Act, to have regard to the 'financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future'. Manifestly, this includes debts. It would be peculiar if Guernsey Law in this matter excluded such considerations.

- (v) English authorities on the meaning of 'maintenance' in the matrimonial context, encouraged by analogy a broader construction of 'support'. See inter alia Re Dennis (Deceased) [1981] 2 All ER 140, where Browne-Wilkinson J, as he then was, said in describing the nature of maintenance payments that he was not suggesting-

*"that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance."*

See further Espinosa v. Burke [1999] 1 FLR 747, a decision of the English Court of Appeal and A v. A (Maintenance) Pending Suit 2001, 1 FLR, a decision of Holman, J.

- (vi) The authority on which the Lieutenant Bailiff relied, R. v. Gravesend was a decision about who was liable, under a contract between the Borough of Gravesend and the County of Kent, to maintain prisoners who were held in the County gaol awaiting trial. Its legal and factual context was quite different from that of the present case.
- (vii) It would be wrong to conclude that the payment of the Appellant's debts was solely for the support of third parties. As a matter of commonsense such payment would support the Appellant by, amongst other things, removing the threat of enforcement and/or execution; improving her financial standing and enhancing her own career prospects; and enabling her to devote a greater percentage of her own income towards meeting her day-to-day needs.

(viii) Commonsense also suggests that the Court should have power to make the orders sought; otherwise it would or might not be able to do justice in an inherently difficult situation.

[11] Because of his approach to the issue of jurisdiction, the Lieutenant Bailiff declined to “go through the complex Section 25 check list procedure at this stage. The question is how far, if at all, the matter can proceed. I can only go into such an exercise if I rule in favour of the Appellant at this preliminary juncture.” As he ruled against the Appellant on the threshold point he did not gratuitously go through that exercise.

[12] Accordingly, in our view, and in the light of our ruling the matter must revert to the Lieutenant Bailiff to exercise the power under Article 47, which we have held he enjoys, to determine whether or not to order the Respondent to make periodic payments to assist the Appellant in the discharge of her debts.

[13] In so doing, the Lieutenant Bailiff will naturally bear in mind that pursuant to Article 47 any sums he orders must be reasonable, and that in determining what, if any, sums should be paid by the Respondent, he must take into account all of the circumstances of the case, including those specified in the Article. It will be for him to decide in light of the so-called Section 25 check list, any relevant jurisprudence, what importance he attaches to the factors referred to in a letter from the Respondent’s to the Appellant’s Advocate, dated 15<sup>th</sup> July 2005, namely-

*“the circumstances in which the liabilities arose, the extent to which they were for the parties’ joint benefit, whether (as alleged) the Respondent was responsible for incurring any of the liabilities and, having regard to his other financial commitments and the extent to which he has already met joint indebtedness, whether it is reasonable to make an order.”*

[14] Some concern was expressed at the Bar as to whether, given that, as we were informed, certain persons claiming to be creditors of the Appellant have instituted proceedings in the local civil courts against her, there might not be a risk that different views would be judicially expressed in those Courts and in the Matrimonial Causes Division of the Royal Court as to who in fact was liable for any such debts, i.e. the Appellant or the Respondent or both. In our limited state of knowledge we cannot pronounce on the reality of such risk, but, no doubt, if agreement cannot be reached between interested persons, appropriate orders can be made by the Lieutenant Bailiff or the Civil Court to avoid its unnecessary occurrence. It is obvious that the Appellant cannot claim support in respect of debts which are not hers. Beyond that we need make no observation.

For those reasons we allow the appeal.

I, Suzanne Margaret O’Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O’Neill  
Thursday 4<sup>th</sup> August 2005