

Judgment 49/2004

**G v. G – Royal Court (Divorce File 6337) –
28 October, 2004**

Matrimonial Law – wife/petitioner’s application for maintenance and lump sum by way of ancillary relief.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

On the 28th day of October, 2004 before John Russell Finch, Esquire, Lieutenant Bailiff

Between:

G

Petitioner

and

G

Respondent

IN THE MATTER OF the Petitioner’s application of the 14th July, 2004, and the Respondent’s application of the 23rd July 2004, for ancillary relief;

WHEREAS on the 28th and 29th September and 1st October, 2004, the Lieutenant Bailiff, having heard Advocates P.T.R. Ferbrache and F.J. Haskins, Counsel for the Petitioner and Respondent respectively, reserved Judgment;

THE LIEUTENANT BAILIFF this day issued written Judgment in the terms attached hereto, and MADE AN ORDER:

1. that the Respondent shall pay to the Petitioner maintenance payments of £1,500.00 per calendar month, until the youngest child of the marriage commences its secondary education, and that such maintenance shall be automatically increased but not decreased annually from the date hereof by reference to any percentage increase in the Guernsey Official Index of Retail Prices and consumer services (or such successor

index) occurring during the previous twelve month period, the first payment to be made before the end of November 2004;

2. that the Respondent shall pay to the Petitioner a lump sum of £20,000.00, within 28 days of the date of this judgment, such period may be extended by agreement between the parties or upon application to the Court;

AND THE COURT reserved costs.

C. S. WEETMAN
Her Majesty's Deputy Greffier

Extract from Approved Text

Before: John Russell Finch, Esquire, Lieutenant Bailiff.

Between:

G

Petitioner

and

G

Respondent

In the matter of the Petitioner's Applications for Ancillary Orders

Dates of Hearing: 28th and 29th September and 1st October, 2004

Date of Judgment handed down: 28th October, 2004

Advocate P.T.R. Ferbrache for Petitioner

Advocate F.J. Haskins for Respondent

Lieutenant Bailiff Finch set out the Applicable Legal Principles as follows: -

11. The Matrimonial Causes Division of the Royal Court applies the principles set out in Section 25 of the Matrimonial Causes Act, 1973, as amended by the Matrimonial and Family Proceedings Act, 1984. It also applies the decided cases on these provisions, to the effect that, in all practical terms, they are binding. In particular, regard has got to be paid to the leading House of Lords case of WHITE v. WHITE [2001] IAC 596. It seems to me that a summary of the essential principles on which this court should act is as follows:

- i) applications for ancillary relief are governed by Section 25 of MCA, 1973, which is a self-contained code directing the Court's attention to certain specified factors;
- ii) however, the words of Thorpe L J in the Court of Appeal judgments in WHITE v. WHITE [1999] Fam 304 need to be borne constantly in mind:

"It has often been said, and cannot be too often repeated, that each case depends on its own unique facts, and those facts must determine which of the eight factors is to be given particular prominence in determination.";
- iii) no single section 25 factor is more important than the others. All fall to be considered, but there may be a "gravitational pull" towards one or more of the factors in a particular case;
- iv) there is neither "one-third rule" nor any other fixed arithmetical or fractional starting-point. Once the assets are divided (if at all) by reference to the section 25 factors there is no absolute proportion with which either party must be left;

- v) the reasonable needs as to capital and income of both parties must be considered. This will vary on the facts of each case and depends on the circumstances of the parties, the history and length of the marriage and responsibilities as to children;
- vi) housing for both parties and dependent children is a primary requirement;
- vii) the redistribution of capital is only appropriate if, in the facts of the case, it is necessary to do justice between the parties in the light of the section 27 factors;
- viii) once the court has formed a view by applying the relevant Section 25 factors it should compare this view with the result achieved on an equal division (WHITE v. WHITE). If the view does not coincide with equal division the court must give reasons, based on the section 25 criteria, why it should not be so;
- xi) the court must have regard to the possibility of self-sufficiency and a “clean break” in every case. A clean break should not be imposed where the evidence does not suggest that self-sufficiency will be achieved.