

Judgment 50/2009

J v J - Royal Court (Divorce File 7206) – 30 November 2009

Matrimonial Cause – wife’s application for security for periodical payments of maintenance – English authorities considered – Court has unfettered discretion – not one of those rare situations where such security was necessary – no order made

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Matrimonial 7206

The 30th November 2009 before John Russell Finch Esq., Judge of the Royal Court

Between

J

Husband/Petitioner

and

J

Wife/Respondent

DECISION ON SECURITY OF MAINTENANCE

Advocate A N Brown appeared for the Husband/Petitioner

Advocate F J Haskins appeared for the Wife/Respondent

[After setting out the background of the application and the details of the parties, the Judge of the Royal Court set out his findings on the law and his conclusion in the following paragraphs 3 -7]

Cases and Texts referred to:

- 1) AGGETT v AGETT [1962] 1 All ER190
- 2) SHEARN v SHEARN [1931] P.1
- 3) Rayden & Jackson on Divorce and Family Matters Vol 1(1) para 16-116, page 16/90
- 4) Duckworth, Matrimonial Property and Finance, para 58, page B-243

JUDGMENT

1. _____

2. _____

3. I have not been referred to any Guernsey decisions on this question. The two English cases to which I can turn for assistance, are Shearn v Shearn [1931] P1 and Aggett v Aggett [1962] 1 All ER 190. Both of these are now of respectable antiquity and it is clear that nowadays orders for security of maintenance are distinctly uncommon, as the law has moved on. There are now lump sum payments that can be ordered as well as transfers of property, hence the lack of any recent or even proximate authority. A useful summary of the position is found in Rayden, at para 16.116, page 16/90, reproduced in H’s bundle at tab 5:

“Whether or not secured provision is a matter entirely within the discretion of the court. The court must take into account all the circumstances of the case, including the extent to which the effective freezing of the spouse’s assets, or part of them will hamper him or her in earning income and, as a further consideration, the likelihood that he or she will move outside the court’s jurisdiction so as to avoid making payments, or will remove assets out of the jurisdiction to like purpose, or will otherwise fail to honour his or her maintenance commitments”

4. Under the Consent Order, W will receive and retain capital assets to a value of £1,026,883, including a lump sum of £862,500. In addition, H has contributed to a trust fund for the benefit of the children, which now has a total of around £100,000. H is now retired and reliant on investment income.
5. The Court has an unfettered discretion and must arrive at a fair solution, balancing the interests of all parties concerned. Regard must be paid to the whole financial structure of the parties’ assets. In the words of Duckworth’s *Matrimonial Property and Finance*, para 58 at page B2-43, reproduced in H’s bundle at tab 6:

“The tenor of the older authorities is that secured provision will be awarded only where there is a realistic prospect of default. A modern restatement of principle would be to say that the Court will take a balanced approach to risk and use its array of powers to achieve the fairest outcome”.

Decision

6. The principal concern is H’s age. There is nothing before the Court to indicate a desire to quit the jurisdiction or avoid payment. Looking at the Consent Order, it seems by far the largest element is capital, rather than periodical payments. Substantial amounts have been paid as are available for the children, whose interests remain throughout a first consideration in this matter. In view of the terms of the Consent Order, I am not persuaded that it is fair to order security for the periodical payments. There is nothing on the facts that would flag this case up as being one of those rare situations where such protection is necessary. Putting it another way round, there is nothing unusual apart from the age disparity, which does not suffice as a reason for imposing the Order sought. The application on these facts therefore fails.

Costs

7. I am minded to make no Order and would propose to abandon that position only if cogent matters were brought to my attention that so far elude me. Fourteen days for such submissions in writing from the date this judgment is finalised.

J R FINCH