

Judgment 56/2005

**J v. J – Royal Court (Divorce file 6389) –
27 October, 2005**

Matrimonial cause – Petitioner/Wife’s application for vesting order and maintenance – welfare of the minor children an important but not overwhelming consideration – modest income of the parties – clean break appropriate – matrimonial home to be vested in the wife – net value £200,000, to be split equally between the parties – payable to husband when youngest child reaches 18 years of age – to be secured as a charge.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before Richard John Collas, Esquire, Deputy Bailiff.

On the 27th day of October, 2005.

Between

J

Petitioner/Wife

and

J

Respondent/Husband

In the matter of the application dated 13th June, 2005 by the Petitioner, under the provisions of Parts VII and VIII of the Matrimonial Causes (Guernsey) Law, 1939 , as amended;

WHEREAS on the 21st day of September 2005, THE COURT having heard Advocates F. J. Haskins and P. A. Allen for the Petitioner and Respondent respectively RESERVED JUDGMENT;

THE COURT this day issued Judgment in the terms attached hereto.

C. S. RODGER
Her Majesty’s Deputy Greffier

The Deputy Bailiff set out his conclusions in paragraphs 31 to 49 of his judgment, as follows: -

Conclusions

31. I am mindful of the welfare of the two children being an important but not overwhelming consideration. I have to consider the appropriateness of a clean break. I must also bear in mind all the circumstances of the case in particular those highlighted in section 25 of the Matrimonial Causes Act 1973 which have been accepted as providing guidance to the Royal Court although the Act is not binding.
32. The difficulty in this case is that there are two parties with modest income and a substantial matrimonial home which they could barely afford when they were together but was purchased for its potential to offer a profit on a sale after renovation.
33. [The Lieutenant Bailiff considered the housing circumstances of the parties.]
34. I attach great importance to the matrimonial home as the family home. Even though the arrangements may be inconvenient, they are what the children have grown accustomed to since the marriage broke up and I consider it is in their interests to retain the home for the time being.
35. The Petitioner has worked hard to preserve the family home. The Respondent for his part has worked very hard to maintain a good relationship with each of his children during a time of considerable adversity. However, having regard to the bitterness, mistrust and ill feelings that exist between the parties and their inability to communicate directly with each other I do not consider it would be practicable to re-vest the property in undivided shares. I therefore conclude that the appropriate order is to vest the matrimonial home in the sole name of the Petitioner with a secured charge in favour of the Respondent.
36. I next have to consider the amount to be secured. The net value of the property is approximately £200,000 and the starting point is to assume an equal split.
37. There are a number of factors that might suggest the Petitioner should receive a higher proportion than the Respondent. Firstly, I find that both parties have equal earning capacity but the Petitioner presently has to restrict her working hours in order to support the children. In due course she will be able to work more hours and the difference in their earning potential will disappear.
38. Secondly, as the principal carer of the children, the Petitioner must occupy a larger property than the Respondent. If the Petitioner was to sell the house early, as she would be able to do, she could expect to have to pay a higher rent than the Respondent.
39. While she remains in the matrimonial home the Petitioner will have to be responsible for its repairs and maintenance but fortunately both parties accept that it is in reasonably good condition as a result of the improvement works that have been carried out.
40. I consider that it is appropriate to achieve a clean break between the parties. Having regard to all the circumstances, including the Respondent's modest income and relatively high outgoings in particular the rent he pays, it is not appropriate that the Respondent should have to pay periodic maintenance to the Petitioner in respect of herself.

41. Having very carefully reflected upon all the circumstances I have reached the conclusion that there should be an apportionment on the basis of equality and I therefore order that the Respondent shall have a charge secured over the property for £100,000 subject to a discount in the event of early repayment.
42. The date for payment of the amount secured shall be the younger child's 18th birthday but payment shall be postponed to 1st August 2015 if on the date of her 18th birthday that child is still occupying the former matrimonial home and is undergoing full-time education at an educational establishment in this Island.
43. The amount secured shall be liable to early repayment on the happening of any of the following:
 - (a) the Petitioner's remarriage;
 - (b) the Petitioner co-habiting for a period in excess of 12 months (a length of time proposed by Adv Allen in the course of her submissions). I wish to stress strongly that the Respondent is not to use this provision as an excuse to make enquiries of the children as to their mother's personal circumstances;
 - (c) if the Petitioner ceases to reside at the property;
 - (d) if both the children cease to be ordinarily resident at the property;
 - (e) if the property is sold; and
 - (f) on the death of the Petitioner.
44. I am willing to hear counsel further if either of them wish to suggest that there should be early repayment in circumstances other those proposed above or in relation to the precise wording of the Act of Court to give effect to this Order. If either of them wish to address me they are to notify the Deputy-Greffier within 14 days of the issue of this judgment.
45. In the event of early repayment the amount to be paid is to be discounted at the rate of 4% per annum simple interest. In other words, if it is repaid on 26th November 2005 (nine years early) it will be discounted by 36% so that the amount payable would then be £64,000. I am satisfied that would be a fair apportionment of the net proceeds of sale as it would leave the Petitioner with approximately £136,000. The Respondent would have £64,000 and no obligation to pay maintenance in respect of the Petitioner.
46. The maximum amount the Respondent will receive is £100,000. I make no provision for that to increase in line either with property prices or retail prices. It is impossible to predict future inflation but it seems likely that we will not see house prices rise as dramatically in the future as they have risen in the recent past. In effect the Petitioner will have the interest free use of the Respondent's investment in the family home. I do not consider that to be unfair because the principal purpose is to enable the Petitioner to continue to retain the family home for the benefit of their two children and also because the Respondent is not in a position to pay periodic maintenance to the Petitioner in respect of herself.
47. I have considered whether the Petitioner will be able to re-house herself when the money is repaid and, inevitably, the house is sold. Again it is difficult to predict the future but unless there is an unexpected reduction in the value of the property the Petitioner will almost certainly have more money available than the Respondent.

48. Regarding maintenance for the children, the Respondent is no longer required to pay the two amounts he was paying previously totalling £93.50 per month. I note that his claimed expenditure needs exceed his income but he does have an obligation to support his two children. On his behalf, Adv Allen invited me to calculate the maintenance by reference to 20% of his net income and taking account of his housing costs. I have found his net income to be £329 per week. 20% of that figure is £65.80 but I accept that his housing costs are on the high side and consequently I order him to pay £30 per week per child increasing annually in line with the States of Guernsey Index of Retail Prices (or its equivalent). Maintenance shall continue to be payable in respect of each child until he or she shall attain the age of 16 years or, if later, cease full time education.
49. As stated above I now invite counsel, if they wish to do so, to address me on the precise terms of the Order relating to the repayment of the secured sum. I will also hear Counsel as to costs if there is any application from either of them.