

Judgment 64/2004

**I v I – Royal Court (Divorce file 6372) –
22 December, 2004**

Matrimonial law – application for ancillary relief – house and capital payment the crux of this case.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before John Russell Finch, Esquire – Lieutenant Bailiff.

On the 22nd day of December, 2004.

Between

I

Petitioner

v.

I

Respondent

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

WHEREAS on the 25th day of November, 2004, THE COURT having heard the Petitioner in person and Advocate P.A. Allen for the Respondent RESERVED JUDGMENT;

THE COURT THIS DAY issued Judgment in the terms attached hereto and ORDERED:-

- (a) Maintenance for each child until they reach the age of 18 or cease full time education which ever is the later of £55 per week, the maintenance being automatically increased but not decreased annually in accordance with the Guernsey Retail Prices Index, and
- (b) The Capital payment of £10,000 by the Petitioner to the Respondent within 6 weeks of the date of the judgment and a further £30,000 on or before 13th February, 2011 (subject to para 29 of this judgment), and

[In (c) and (d) the Court made orders relating to furniture and other personal items.]

And the Court reserved costs.

C. S. WEETMAN
Her Majesty's Deputy Greffier

The reasonable needs as to capital and income of both parties need to be considered, and will vary in every case. They will depend on a variety of factors, including age of the parties, the needs of the children of the family and the means available. It is clear from the decided cases that the most important requirement is to be housed. Where there are dependent children, the housing of the parent with their care must come first, even if this means that the other parent is not re-housed as he or she might wish. There is no presumption that capital should be redistributed, unless this is appropriate to do justice between the parties under the Section 25 guidelines – but this is subject to the final assessment referred to, based on *WHITE v WHITE* [2001] 1 AC 596. The court must also have regard to the possibility of self-sufficiency and a clean break; however a clean break should not be imposed unless it is apparent self-sufficiency will be achieved. Next, for the sake of completeness, pensions are not a separate form of assets, and must be looked at on the application of the Section 25 factors. One of the most important points to be considered is the decisions of the courts should not be applied too rigidly “without sufficiently recognising that each case involving a family has to be decided upon broad principles adapted to the facts of the individual case” (Butler-Sloss L.J. in the Court of Appeal decision on *WHITE v WHITE* [1998] 2 FLR 310, CA). In dealing with the present case I have taken all the Section 25 “check list” factors into account and have sought to apply them as appropriate in the light of the guidance set out in this paragraph.

19. One specific, indeed the most important question for resolution in the case is H’s application for the Guernsey equivalent of a *MESHER* order (*MESHER v MESHER* and *HALL* [1980] 1 All E.R 126, CA). It is accepted that W and the two children remain in the home, which is only subject to a small charge until the younger child attains eighteen and a half years. W should pay H £83,258.26 with interest on 13th February 2011. It should be remembered that the house was recently valued, on the average of three valuations, at £285,000. W’s case is that there should simply be one payment of £10,000 at the present time, with no other future liabilities.

21. It is the house and capital payment that are the crux of this case. In the words of Rayden on Divorce (para 21- 127):

“Whilst the order in MESHER has at first sight the appearance of fairness in that it provided the wife with a home and did not deprive the husband of his interest in the property, its application to the facts of other cases has led to a plethora of difficulties.”

Indeed the English Court of Appeal has voiced disapproval of the universal use of MESHER orders. This type of order simply stores up trouble for the future. (See MARTIN v MARTIN [1977] 3 All ER 762 and HANLON v HANLON [1978] 1 WLR 592). Families do not split up when the younger child finishes school and the family home may be needed for a much longer period. When the children have fled the nest the wife, of course, will still need somewhere to live. An order can put off the evil day and then force her out into an expensive Guernsey property market (as it is now, at least) to find other accommodation when she is least able and possibly emotionally vulnerable because the children are bigger and leading their own lives. There are cases where (to continue employing idiomatic phrases) “the chickens come home to roost” and both parties have problems with the available funds (see, e.g. CARSON v CARSON [1983] 1 WLR 285, CA). Although there may well be cases where a MESHER type Order would be suitable, in most cases an alternative form of order should be given anxious consideration.

22. These problems have given me cause for concern. I consider it very likely in the present case that both children will be educated until 21, possibly longer. [...] Accordingly the mother is going to be their chief anchor not only until they cease school, but for some time thereafter. One does not suddenly apply the axe when both children stop going to school, but consideration must be given to the individual circumstances of the case.