

**Judgment 61/2003**

**In re: Z  
Royal Court  
(Matrimonial Causes  
Division)  
16<sup>th</sup> December, 2003**

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**Matrimonial cause – pension rights of divorced women – Social Insurance (Guernsey) Law, 1978 as amended – cut off date of 31<sup>st</sup> December, 2003 – abridgment of 60 day period from the filing of the Petition.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

**MATRIMONIAL CAUSES DIVISION**

**IN THE MATTER OF AN APPLICATION BY MRS. Z**

BAILIFF’S JUDGMENT ON APPLICATION OF 16<sup>TH</sup> DECEMBER, 2003

Handed down on the 16<sup>th</sup> December, 2003. Final version approved 5<sup>th</sup> January 2004

Advocate for Applicant: D.G.Le Marquand

Friend of the Court: H.M.Procureur

1. The States of Guernsey at the behest of the Social Security Authority have adopted a Gender Equality Policy which has resulted in fundamental changes to the Social Insurance Law. One of these relates to married women who no longer are entitled to pay a reduced rate of contribution so long as their husband is contributing. In future both sexes will have to pay full contributions.
2. It has been part of the former system that where there is a divorce the divorced woman has been able to claim a full pension in respect of years where her contributions were made at the married woman’s reduced rate. As part of the new arrangements the States have resolved that there should be a cut-off date in respect of this benefit to the effect that only women who are divorced on or before the 31<sup>st</sup> of December, 2003, may claim the full pension for years where their contributions were reduced.
3. In Guernsey there are two delaying mechanisms which prevent instant divorces being obtained. The first of these was a mandatory requirement that 60 days should elapse between the filing of the petition and the grant of a provisional order. Until recently the

provision went further to stipulate that August and September did not count in the calculation of 60 days, but that was repealed on 10<sup>th</sup> July, 2001. The rules also provided that no abridgment should be allowed without the permission of the Procureur who originally fulfilled a role equivalent to that of Queens Proctor in England. That provision has changed to provide that leave was a matter entirely within the discretion of the Court.

4. Mrs. Z is a lady of 60 years of age. She married in 1963. She and her husband separated amicably in 1975 and sorted out their financial arrangements and those for their children who have long since been of full age without resort to the Court. It was only when Mrs. Z learnt of the impending changes to the Social Insurance Law that she moved to file for a divorce on the grounds of five years separation. As at today's date that Petition has been filed for some 23 days whereas the rules require if it is to be considered by the Court today a delay of 60 days from the filing of the Petition. Mrs. Z in her affidavit has explained how if her divorce cannot go through before the end of this year it will result in a considerably reduced pension being payable to her at the age of 65. Her expectations have been of the present pension level and she is ill-equipped to make other arrangements for her old age.
5. Mr. Z has consented to the application to abridge time. Mr. Le Marquand has argued that justice requires that I should abridge the time.
6. I was aware of this problem some weeks ago and at that stage it centred round not only the 60 day mandatory period for a divorce to remain filed but also the period between Provisional Order and Final Order which rightly or wrongly had been interpreted by the Court as being 5 weeks so as to deal with the issue of appeals. The latter problem was resolved by the Social Security Authority appraising advocates on the 4<sup>th</sup> November that they would accept that the new regime would not apply to those who had obtained a Provisional as opposed to a Final Order of Divorce by the end of 2003. The learned Procureur has kindly appeared as amicus to put arguments against Mr. Le Marquand's application and he has done this with extreme care and thoroughness and I am very grateful to him. He basically argues that it is wrong for time to be abridged for purely external reasons, and more importantly he has drawn the attention of the Court to the possible unfairness if an exception is made in Mrs. Z's case when other people have laboured under the impression that they were too late to file a petition and get it through by the end of this year. The law must be applied fairly and with even-handedness. I have, however, noted that the concession from the Social Security Authority was issued on the 4<sup>th</sup> November and whilst I appreciate that that might be interpreted as a certain acceptance by the Social Security Authority of the possible unfairness of sticking to the rigidity of the law, the day on which this concession was made would not have enabled anybody to get a petition filed and heard before the year end.

7. I have not found this an easy matter for resolution. I regard the circumstances of Mrs. Z's case as exceptional in that she and her husband have been separated for a great many years. I do not wish to penalise couples who decide not to use the services of advocates to regularise their matrimonial affairs. There are far too many people who rush into this Court quite unnecessarily.
8. I am, therefore, persuaded that notwithstanding the very helpful submissions of Her Majesty's Procureur urging caution upon me that I should accede to Mr. Le Marquand's request. I have not read the petition and other papers so the matter of making a Provisional Order will stand over until 31<sup>st</sup> December
9. As there may be other cases where people have been unaware of their right to seek an abridgment of the time, I have decided that there will be a special sitting of the Matrimonial Causes Court on Wednesday 31<sup>st</sup> December, 2003 at 10.30 a.m.
10. The Court will on that day consider:-
  1. Applications for Provision Orders where 60 days will have expired since the filing of a Petition.
  2. Application for abridgment in respect of Petitions filed prior to today where the Respondent has consented and the Court is satisfied that it should exercise its discretion in favour of the Applicant. Such application should be supported by a full affidavit from the Applicant explaining the circumstances of the Wife. No application can be considered if Rule 31 has not been complied with, namely that notice of the filing of the Petition in the vestibule of the Royal Court has been exhibited for a period of 7 consecutive days.