

**[Anonymised version, and can be reported –
nothing can be published that would reveal
the identity of the child].**

**IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION**

Between:

A

Applicant

-AND-

R

Respondent

**Application for the variation of a
Maintenance Order
In respect of a child of their former marriage**

Application heard on: 7th June 2019

Decision handed down: 17th June 2019

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court

(Neither the Applicant, nor the Respondent were legally represented)

Cases referred to in Judgment:

A v A (2004) (Civil Appeal, No. 340);
The Ampthill Peerage Case [1976] 2 WLR 777;
B v B GLR 2005-6, Note 1;
C v C GLR 2007-8, Note 13;
R v R [1988] 1 FLR 89, CA

DECISION

Introduction

1. This is an application by a former wife (“A”) to vary a Consent Order of this Court dated 8th January, 2015, in which she was required to pay £320.00 per calendar month maintenance for the child of the marriage (now aged 8 years) for the normal duration (18 or ceasing to be in full time education or training), together with the customary RPI provision. There are very detailed shared residency agreements relating to the child dated 11th November, 2014 and 25th September, 2018, both by consent.
2. Although both parties were represented (by specialist family practitioners), at the time of the 2015 Consent Order, neither was legally represented at the present hearing. They fall

squarely in the ‘no-mans’ land’ of not being sufficiently poor to obtain legal aid and not being sufficiently rich to pay privately. Although a helpful bundle was prepared and the relevant Deputy Greffier assisted as far as he could in preparing the case, this meant that the Court had to take a more active rôle than if Advocates had been involved. It has to be made clear, especially if a recording of the case is heard, that I still adhere to the view of Frances Bacon that a much-talking judge is like “an ill-tuned cymbal”; but this was necessary here to ensure both parties put their cases fully. Both A and her former spouse (“R”) are educated and responsible people, who showed respect and courtesy throughout the proceedings and questioned each other (despite the inevitable tensions) civilly. This helped the Court in its task and is appreciated. As the issue concerns maintenance for a young child, the judgment is anonymised for that child’s protection. The only witnesses were A and R, who relied principally upon their written materials, including supporting documents, in the extensive court bundle.

Varying a Consent Order

3. Whilst trying to assist A in going through her evidence, I considered it necessary to explain the difficulties that present themselves when seeking to vary a Consent Order. R, to an extent, was aware of these and produced a copy of my decision in C v C GLR 2007-8 Note 13. I explained the basis of this to A and gave her time to consider it. The Note states:

“C v C

Royal Court (Finch, Lieut. Bailiff): August 23rd, 2007

Family Law – financial provision – variation – maintenance agreement

The variation of a consent order for financial provision after judicial separation should not follow lines radically different from those taken by the parties themselves in reaching agreement on the terms of the original order (Boylan v Boylan, [1988] 1 FLR 282, followed). The fact that they agreed that certain arrangements were reasonable as between themselves is strong evidence that they were in fact reasonable unless (a) the agreement was unfairly procured or made under a misapprehension, (b) circumstances have changed in some material respect, or (c) there is strong evidence to the effect that the terms of the agreement in fact operate unreasonably. In such cases, a variation will be made. Any variation will, however, have to consider whether one of the parties has organized his or her affairs on the basis of the original agreement, so as to make some possible variations unfair (A v A, C.A., Civil App. No. 340, April 21st, 2004, unreported, dicta of Sumption, JA. applied).

If the consent order involved provision for the maintenance of the children of the marriage, the court considering variation should always bear in mind that their welfare is the “first consideration.” Broadly speaking, a person having an obligation to provide reasonable maintenance for his children has a responsibility to order his financial affairs with due regard to meeting this obligation, and then to meeting his other reasonable financial obligations.

4. Upon examination, the 2015 Order was a very detailed document. There are 13 clauses dealing with the division and allocation of property, and child maintenance. It is signed by the Advocates and by the Bailiff. It had followed a Financial Dispute Resolution hearing (“FDR”) before Palmer, LB on 25th November, 2014, at which hearing both parties and their Advocates participated. A’s recollection of the relevant events was hazy; R’s was clearer. There appeared to be some confusion in A’s mind about the FDR, so I went over what this hearing entailed and what effect it had. A seemed to think it was a hearing which decided the matters in issue, rather than an informal attempt to thrash out the parties’ positions with a view to resolution. R pointed out the gap between the date of the FDR and the date of the Consent Order, and indicated that there had been much discussion of things between the

Advocates in order to reach the eventual settlement. A was inclined to fault her Advocate for the misunderstandings. In the Court bundle, it should be noted, is a letter from A's Advocate to her enclosing the Consent Order and dated 22nd January, 2015. A did not query any of this, on the evidence adduced, at or around this time. Upon considering what was set out in evidence I prefer R's account of the process after the FDR, which would accord with the regular practice of Advocates instructed in these matters. A's uncertainty can be explained by the strain and difficulty such cases can subject a party to, especially where there is a child involved, and no criticism is intended.

5. The other case on variation of consent orders was my decision in B v B, which is also now set out as reported at GLR 2005-6 Note 1:

"B v B"

Royal Court (Finch, Lieut. Bailiff): February 18th, 2005

Family Law – financial provision – variation

Guernsey follows the English Matrimonial Causes Act 1973. S.31(2) in relation to the variation of financial orders in matrimonial proceedings. Orders for periodical payments can be varied, but capital orders, such as lump sum and property adjustment orders, normally cannot. There are clear and obvious reasons for not varying a consent order (made with the express agreement of the parties); and such an order cannot normally be the subject of an appeal, but may be set aside for (a) the non-disclosure of some essential matter; (b) fraud or misrepresentation; (c) supervening events which invalidate the whole basis of the order: or (d) undue influence.

*For "supervening events" to be a valid reason for challenging a consent order, it is not enough that the facts appear different from the way they appeared at the time of the original order (e.g. **McGladdery v. McGladdery**. [1999] 2 FLR 1102), but rather that new events should very rapidly invalidate the fundamental basis of the original order – frequently within the first year – and without causing prejudice to third parties (**Barder v. Caluori**, [1988] A.C. 20, observations of Lord Brandon of Oakbrook applied). An application for variation made to the original court would also normally be available and governed by the same principles (**Robinson v. Robinson**, [1983] 4 FLR 102, observations of Ormrod, L.J. applied; **Fournier v. Fournier**, [1998] 2 FLR 990, observations of Lord Woolf, M.R. applied)."*

Further Discussion

6. The two cases cited are a very modest appendage to long-established principles in common-law jurisdictions. They were intended to be consistent with these principles, the rationale for which was set out by Lord Wilberforce in the Amphill Peerage Case [1976] 2 WLR 777:

"This principle of finality of determination is, of course, but one strand in a more general fabric, English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to re-open disputes." (My emphasis)

It is only in narrow circumstances that Family Courts will allow any review of Consent Orders. In C v C (supra) the Guernsey Court of Appeal case of A v A (2004) (Civil Appeal No. 340) was referred to, where guidance was given by Sumption J.A., particularly at paragraph 14 where it was stated that "*the fact that the parties themselves agreed certain arrangements as reasonable is strong evidence that they are indeed reasonable, at least as between the parties themselves ...*" (see paragraph 3 above). Secondly, "*in many cases, the Respondent to an application to vary will have organised his or her affairs on the basis of the*

agreement in a way which would make some variation unfair. The Court needs to be sensitive to this”.

7. In the present case there is no evidence to bear out any of the grounds summarized in C v C for setting-aside a Consent Order. In that case reference was made to children of the marriage. The present case concerns maintenance for such a child, and the English decision in R v R [1988] 1 FLR 89, CA is apposite. Broadly speaking, it was held, a person having an obligation to maintain children has an obligation to order their financial affairs with due regard to the responsibility to pay reasonable maintenance for them. The welfare of the child is the first matter on which the Court should direct itself.
8. This case is referred to because even if the very difficult bar that had to be crossed to look at a Consent Order was negotiated it would, on all the evidence, be difficult to justify a variation, noting the continued imbalance between the parties’ incomes. This view is based on what the parties said and a consideration of the detailed documentation put forward. Nevertheless, for the reasons given, it is not possible to attack the 2015 Order. As a matter of policy the law needs finality, re-opening orders once made should be very exceptional and is hard to achieve. The prospects of success are very limited. It is very rare indeed nowadays for judgments to carry Latin phrases but for once it will be done: “*Interest Reipublicae ut sit finis litium*” – In the interest of society as a whole, litigation must come to an end. In all the circumstances of this particular case, that is the correct resolution, based on the authorities.

Conclusion

9. For these reasons the application fails and is dismissed. In the circumstances all Court Fees paid and/or owing are remitted.

J R Finch O.B.E.
Judge of the Royal Court

17th June, 2019