

ROYAL COURT
(Matrimonial Causes Division)

3rd August, 1993

103.

Before: The Bailiff, and
Jurats Blampied and Gruchy

Between:

R

Petitioner

And:

W

Respondent

Appeals, under Rule 15/2 of the Royal Court Rules 1992, by the
Petitioner and the Respondent from the Judgment of the Deputy
Judicial Greffier (Matrimonial Causes Division) of 24th June, 1993.

Advocate N.M.C. Santos-Costa for the Petitioner.
Advocate J. Melia for the Respondent.

THE BAILIFF: This is an appeal and cross-appeal against the decision
of the Deputy Judicial Greffier (Matrimonial Causes Division) of
24th June, 1993, in respect of certain ancillary matters between
the parties.

The two matters in dispute are the house and maintenance for
the children and to a lesser extent for the wife.

The matter is complicated by reason of the simple fact that
the wife has had a child by the co-respondent, and in addition to
that, the two children of the marriage are very small, aged four
and two.

The wife wishes to remain in the matrimonial home, which is
jointly owned, and for which the husband provided the down payment
from personal finances from his family; and the equity of which is
in the region of £32,000. The husband likewise wishes to remain

in the home. Neither wish the home to be sold, which in fact was the Order of the Deputy Greffier.

We are satisfied that the Deputy Greffier reviewed the difficulties of the choices he had before he came to his decision. On the one hand it is desirable, always bearing in mind that the interests of the children are paramount in cases of this sort, for there to be a stable home for them and it is difficult of course to distinguish between the children of the marriage and the other child, because if the children of the marriage have a stable home, that other child will be with them, and it is desirable as far as possible that all children, whether born in or out of wedlock, should have a stable a home as society can provide for them.

However, the basic responsibility for children rests with the parents, and as long as there are children of a marriage, it is difficult to have what is called a "clean break" in respect of ancillary matters which, as far as Jersey is concerned, does not yet form part of our statutory arrangements, although it may come in due course.

If the wife kept the house, then clearly she would have a home for some years, because she wants to keep it until the children are either 16 or have finished full-time education, which could be as long as 20 years, if not more, having regard to their tender years. It is, as I say, desirable for her to provide a stable home in surroundings they are accustomed to. Equally, if the husband kept the home, it would be somewhere where they would go in familiar surroundings when he exercised staying access rights, because in relation to access the parties so far appear to be in agreement.

As for the second possibility - the husband keeping the home - the inevitable result would be that the wife would have to find another property. It is obvious from the means of the parties that she could not afford to buy one and would have to rent one. We were told by Mrs. Melia, for the wife, that the figure is somewhere between £500 and £600 per month for a suitable property.

In addition to her keeping the home, the wife has asked that we should order the husband to pay to her something in the region of £12,000 per annum. The husband, on the basis that he keeps the home, has made an offer to the Court: an increase of £10 per child above the amount in the Order of the Deputy Greffier to £60 per child; that is to say for S and J and £30 for the wife. In addition he would pay her a lump sum of £20,000 which he would raise by further borrowing on the property. He would therefore be responsible thereafter for maintaining the property because it would be his. If he borrowed that £20,000 the equity in the property would be reduced to something like £12,000 which is a very small amount having regard to today's standards.

One has to consider the potential earning ability of each party which this Court has always done. So far as the wife is concerned, we were told that she could receive something like £90 from the children's benefit, but that of course depends on the amount of maintenance she would get from the husband and it is on a sliding scale and we have not been given that scale. She would get, she says, a small figure of £10 per week from the Natural Birth Society, and she would hope to earn possibly £100 per week from her secretarial work.

The figure which has been suggested by the husband, taking everything into account, is that she would in fact have an income from the various sources of something like £20,000. We do not think this is feasible at all. We think that the figure that she is likely to have from her own resources is more like £8,000 to £10,000 and certainly not in the region of £20,000. If she were to have that amount, it would enable her to find a property and she would then need from her husband sufficient money to live and support the children; and we have approached it in that light.

Having said that, we have to ask ourselves whether it is practical or realistic for either party to keep the house at this stage. The husband's suggestion means that he would keep it outright and there would be no sale at a future date. The wife's suggestion is that there would be a sale at some time in the distant future.

We think, because of the animosity which exists between the parties, and understandably so, in relation to the co-respondent, that whilst there cannot be a "clean break" - for the reasons we have already given that with children there never can be - it is the joint responsibility of the parents to keep and care for them during their growing up years, nevertheless we think that the Greffier was right in his choice of what should be done and we are going to confirm his Order and dismiss both appeals, but we are going to vary his Order.

Having regard to the affidavit of the husband and the means of the wife as mentioned to us by Mrs. Melia, and looking at her affidavit, we think it is right to vary the Greffier's Order in three respects. The amount for each child will be raised to £75 per child; and the amount for the wife will remain. The husband will pay the school fees for the nursery school for J but we understand that will not be necessary after some two years when both S and J will attend States non-fee paying schools. The house sale will be postponed until 31st March, 1994, and in the meantime, the husband will continue to pay the mortgage outgoings and other matters mentioned in paragraph (4) of the Greffier's Order.

Under the circumstances of the decision of the Court we do not think, unless counsel have anything to say, that it would be appropriate to make any particular order for costs.

Authorities

Pinson -v- Pinson (5th June, 1991) Jersey Unreported.

Fagan -v- Le Marchand (22nd January, 1988) Jersey Unreported.

Taylor -v- Hayter (9th January, 1987) Jersey Unreported C.of.A.;
(1987-1988) JLR N.14.

Scott -v- Scott (1978) 3 All ER 65 C.A.

C -v- N (30th March, 1993) Jersey Unreported.