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ROYAL COURT
(Matrimonial Causes Division)

17,

2nd February, 1994

Before: The Deputy Bailiff, and
Jurats Coutanche and Gruchy

Between:

R

Petitioner

And:

V

Respondent

Application by the Respondent in accordance with the provisions of Article 32 of the Matrimonial Causes (Jersey) Law, 1949, to vary the maintenance Order made by the Greffier Substitute on 3rd December, 1992.

Application by the Petitioner for maintenance payments to be made by Bankers' Order into the Petitioner's Bank Account.

Advocate P.C. Harris for the Petitioner.
Advocate A.P. Roscouat for the Respondent.

JUDGMENT

THE DEPUTY BAILIFF: On 22nd July, 1985, the Court pronounced a decree nisi in this cause and the decree was made absolute on 17th September, 1985.

The Court ordered the Respondent to pay maintenance to the Petitioner for herself and for the two minor children of the marriage, C, born in 1980, and D, born in 1982, until each of them had reached the age of 16 years, or until further Order. It appears that very little of this maintenance was in fact paid.

On 3rd December, 1992, the matter came before the Greffier Substitute who made an Order by consent that the Respondent should pay maintenance for the Petitioner at the rate of £10 per week during their joint lives, or until further Order, and should pay maintenance for each of the children of the marriage, C and D, at the rate of £15 per week each until each of the children had reached the age of 16 years or until further Order.

That does not appear to the Court to be a satisfactory explanation for stopping the payment of maintenance altogether.

We note with regret that the Respondent appears to have no relationship with either of the children of his first marriage but that is obviously not a matter for us. What is a matter for us is that the Respondent has a continuing obligation to maintain his first family.

We were referred to a further passage from Jackson's Matrimonial Finance and Taxation, paragraph 43, p.106, which we have found helpful:

"Remarriage by a person against whom an order for periodical payments has been made does not terminate the order or of itself entitle that party to a reduction in the amount ordered. The matter is often considered from the point of view, in a sense, of the second spouse, the after-taken wife. On general principle, a spouse must on marriage be presumed to take the other spouse subject to all existing encumbrances, whether known or not; for example, there may be a charge upon property, or an ailment which impairs earning capacity or an obligation to support the wife or child of a prior dissolved marriage. The position as to the after-taken wife, from the point of view of the husband's financial responsibility to her (and the children of their family), weighed against his responsibility to his former wife and the children of that family, is often

'One of very great difficulty.... The law being as it is, it is quite impossible for the courts to ignore the just claims of the first wife because the man has taken on himself other obligations, although the courts have to take into account those obligations, as involving a reduction in the capacity of the man to pay for the upkeep of his first wife [and child]'.

Remarriage means that the husband has assumed new financial burdens and responsibilities, and pro tanto his means decrease; prima facie there is a decrease in the available resources out of which he can make provision for his former wife and family; but, bearing in mind this consideration the court will try to give the former wife and children such orders as will protect their standard of living: it is 'bearing in mind this consideration', not 'subject to it'.

In some cases the husband's income may increase after his remarriage, and he may attribute this increase to the domestic, social or business gifts of his new wife: that might well be a matter to be taken into account. It may be that the new wife has an income of her own, and this likewise must to some extent be taken into account. The second wife's

application should have regard. The change in circumstances may not be personal: it may be something affecting the community as a whole, such as a change in tax provisions, or an increase in the cost of living".

That passage appears to have been adopted in Manning -v- Le Normand (29th January, 1990) Jersey Unreported, where the Court also cited a dictum from Taylor -v- Taylor née Hayter (9th January, 1987) C.A., where it was said:

"In considering an application for the variation of an order for financial provision, the court is not confined to considering changes in the means of the parties since the original order was made but is required to look at their actual means at the time the case is before it and to approach the question of the fixing of the level of payments de novo"

Affidavits from the Petitioner and from the Respondent were placed before us and we also heard evidence viva voce.

It appears that the Petitioner earns £155 per week and receives Family Allowance of £53.42 per week, making a total of £208.42 per week. Her daughter D also receives a Disability Allowance of £133.58 per month, but we disregard that in making our calculations. It appears to us that the legislature has made special provision for the extra expenses incurred in looking after disabled people - D was born deaf - and that it would not be right to take that into account as if it were part of the Petitioner's income.

The Respondent earns £201 per week. He remarried in August, 1991, and his second wife earns £178.68 per week. She is obliged, however, to pay a child minder £90 per week while she goes out to work. The joint weekly income, after deduction of the payment to the child minder, is therefore £289.68.

Miss Roscouet, on behalf of the Respondent, asks us to reduce the maintenance to £5 per week for the Petitioner and £10 per week for each of the children, making a total of £25 per week. She also asks that the arrears which now amount to £3,840 be paid off at the rate of £5 per month.

We interpose to state that the Respondent paid £50 per week fairly regularly with effect from the Order of 3rd December, 1992, until 26th April, 1993, since when he has paid nothing. He explained that he had stopped paying maintenance because his wife had stopped work just prior to the birth of their child. He had not resumed payment because of the additional expense of his young son, and because that had made things very difficult.

So far as the arrears of maintenance which had accrued were concerned it was ordered that the Respondent should pay them at the rate of £10 per week. The Respondent was also ordered to pay arrears of maintenance due for the month of November, 1992, at a reduced rate in the form of a lump sum of £20. We should add that the Greffier Substitute exercised his power to reduce retrospectively the amount of maintenance payable for the period from August, 1985, to October, 1992, to the very great advantage of the Respondent. Indeed the arrears thus fell from some £19,000 to £1,580.

On 15th October, 1993, the Petitioner applied for an Order that the maintenance payable by the Respondent should be paid by Standing Order into the Petitioner's bank account with the National Westminster Bank.

On 19th November, 1993, the Respondent applied to reduce further the amount of maintenance payable; and pursuant to Rule 52 of the Matrimonial Causes (General) (Jersey) Rules, 1979, as amended the Greffier Substitute referred the application to this Court for a decision.

We have in fact found it convenient to deal with both applications this afternoon.

The power to vary orders is set out in Article 32 of the Matrimonial Causes (Jersey) Law, 1949, as amended. Paragraph (2) of the Article reads as follows:

"In exercising the powers conferred by this Article, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage".

Counsel referred us to extracts from Jackson's Matrimonial Finance and Taxation (5th Ed'n): pp.106-9, 136-43. Paragraph 70 at p.137 reads:

"The modern approach is that the court has to consider all the circumstances of the case, and the court is not hide-bound by the existence of a previous order: the court must look at the matter de novo and make an order that is reasonable in the current circumstances. The usual basis on which a variation of an order for periodical payments is founded is that there has been a material change in the circumstances of one or both the parties. On application for revision, the court, as it was put in one case, has 'regard to all the circumstances of the case in the same manner as if those circumstances had existed at the date of the original order'. The basis and intended effect of the original order are relevant factors to which the court on a variation

(or mistress's) income cannot be taken into account as part of the husband's income available for distribution to the former wife and children. It can and should be taken into account when undertaking the "net-effect" calculation so as to determine the residual incomes of the respective households after payment of a hypothetical order by the husband. The court will assume that the second wife will make a proper contribution from her income to the outgoings of the husband's household".

The birth of a child to the Respondent and to his second wife is of course a new circumstance and a new financial burden for the Respondent. On the other hand it was a burden which they willingly accepted in the knowledge of the Respondent's existing obligations to his first family. It is also a fact that as children grow older they become more expensive to maintain. The Petitioner is not seeking any variation of the figure agreed in 1992, which was indeed the same figure as that fixed in 1985.

We have calculated that the difference between the gross incomes of the two households, taking into consideration the payment to the child minder, is £352 per month. Dividing that in half produces a figure of £176 which is very close to the £40 per week current maintenance.

Having given the matter careful consideration we see no reason to disturb the Order made by the Greffier Substitute on 3rd December, 1992. It may be that the Respondent will have to make economies. How those economies are made is naturally a matter for the Respondent and his wife. So far as the Court is concerned, however, a second car seems to us a luxury which the Respondent can probably not afford.

We therefore dismiss the Respondent's application.

So far as the Petitioner's application is concerned we think that, particularly in view of the history of non-payment of maintenance, the amount ordered to be paid should be paid by Standing Order. We therefore order that the maintenance payable by the Respondent to the Petitioner should be paid by Standing Order. In the name of the Petitioner at National Westminster Bank PLC. The first payment of £50 will be made on Friday, 11th February, 1994, and thereafter on the Friday of each week and we order the Respondent to make the necessary arrangements.

There will be no order as to costs.

Authorities

Jackson's Matrimonial Finance and Taxation (5th Ed'n): pp.106-9,
136-43.

Re the Representation of de Sousa (1985-86) J.L.R. 379.

Manning -v- Le Normand (29th January, 1990) Jersey Unreported.