

ROYAL COURT
(Matrimonial Causes Division)

90A.

15th May, 1995.

Before: The Deputy Judicial Greffier
(Matrimonial Causes Division)

Between:	A	Petitioner
And:	B	Respondent

Application for further and better particulars of an affidavit of means - discovery - request for further information.

Advocate R.G.S. Fielding for the Petitioner.
Advocate A.P. Roscouet for the Respondent.

JUDGMENT

THE DEPUTY JUDICIAL GREFFIER: The background to this application is as follows:-

- 5 1. Since divorce proceedings commenced in 1990, there have been numerous applications with regard to access to be granted to the husband to the two boys C and D.
- 10 2. Proceedings with regard to the children culminated in an order of the Royal Court made in accordance with Article 53 of the Children (Jersey) Law, 1969 committing the care of the children to the Education Committee, but with a recommendation that the children remain *pro tem* in the actual care of the wife. (for the purposes of this judgment, I refer to the parties as 'husband' and 'wife' although a decree nisi of divorce was made absolute on 12th July, 1991, and 'the wife' has in fact remarried).
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3. All applications in relation to ancillary matters (including applications by the father and mother respectively to reduce or to increase maintenance payments by the father in respect of the children and including a lump sum application by the father) were referred to the Royal Court by order made on 23rd November, 1994.
4. The Royal Court's decision described in paragraph 2 has had repercussions in that the mother is still actively seeking maintenance payments in respect of the children from the husband, who unilaterally ceased maintenance payments over a year ago.
5. The wife has sued for maintenance in the Petty Debts Court and the action has been placed 'en preuve'.
6. The husband's case is that he has been unable to press his claims to reduce maintenance and for a lump sum because of the wilful refusal of the wife to give full and final disclosure of her assets, income and liabilities.
7. The present application before the Court applies for particulars to be provided to an affidavit of means filed by her on 23rd February, 1995.

I have to say at the outset that it is essential for the wife to provide the court with further information about her finances. Without further information, she runs the risk that the Court will infer from the schedule of her property transactions provided by the husband's advocate that she has more available cash than may, in fact, be the case.

It is clear that her various affidavits filed on 18th March 1987, 6th November, 1989, 18th December, 1992 and finally on 23rd February, 1995 do not give an adequate picture of income and cashflow. In fact it is all too easy to infer that income from the capital from properties sold, if invested, would provide a very adequate income for the wife's new husband and the 2 boys.

The schedule to which I have referred gives a total value of property sales (including rentes) since 1984 of £442,531.62 and a total value of purchases of £102,000.00.

What I guess to be the truth is that the wife lives somewhat hand to mouth, does not have proper advice on investments and principally lives off the capital. If that is the truth, it will have to be explained to the Court.

The wife's advocate explained to me that he had no proper instructions specifically on this application, but he submitted that this was a very wide application, a 'fishing expedition' going beyond the request merely for further particulars, and that

some of the specific requests were too vague to be of any assistance to the Court or the husband. In any event there were other means, for example Interrogatories and Discovery to obtain further information.

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I am satisfied that the making of an order for Further and Better Particulars is not an option open to me because an affidavit is not a 'pleading' within the meaning of Rule 21 of the Matrimonial Causes (General) (Jersey) Rules, 1979, which reads:-

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'21.-(1) Any party may by letter require any other party to furnish particulars of any allegation or other matter pleaded and, if such other party fails to furnish such particulars within a reasonable time, the party requiring the particulars may apply for an order that particulars be given.

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(2) All particulars, whether given in pursuance of an order or otherwise, shall be filed within twenty-four hours of being furnished to the party requiring them.'

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The UK Rules upon which our Matrimonial Causes Rules were modelled were the Matrimonial Causes Rules 1977, Rule 26 of which reads:-

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'Particulars'

26.-(1) A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded, and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

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(2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

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(3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the time file a copy of them.'

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I have no doubt that the ability to apply to the Court for particulars described here refers only to petitions, answers or replies filed in pursuance of a matrimonial cause, i.e. divorce proceedings, not in pursuance of ancillary matters. I also have no doubt that the expression 'allegation or other matter pleaded' does not include the contents of an affidavit of means.

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It was suggested by the wife's advocate that the 'armoury' of steps which the husband could take to obtain further information included the delivery of Interrogatories.

5 Rule 23 reads:- *'Interrogatories.*

10 *23-(1) A party to a matrimonial cause may, by leave, deliver interrogatories in writing for the examination of an opposite party.'*

Note the expression: 'a party to a matrimonial cause...'

15 In the 'definitions' section at the beginning of the Jersey Rules, the expression 'matrimonial cause' means 'any action for divorce, nullity of marriage, judicial separation or restitution of conjugal rights'.

20 It is interesting that the expression 'matter' includes 'every proceeding in the Court not in a cause' and when one looks at the rules concerning Discovery and Inspection of Documents, Rule 23A, it is stated:-

25 *'23A(1) The Court may order any party to a matrimonial cause or matter to furnish any opposite party with a list of documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and to verify such list by affidavit.*

30 Further under Rule 23A(5):-

35 *'the Court may order any party to a matrimonial cause or matter in whose pleadings or affidavits reference is made to any document to produce that document for the inspection of any other party and to permit him to take copies thereof.'* (The underlining is mine.)

40 But Rule 23 (Interrogatories) excludes the expression 'or matter' and allows only 'a party to a matrimonial cause' to apply. So the rule could not apply here, and Interrogatories are not appropriate to obtain further information for the purpose of an application for ancillary relief. Like an order for particulars an order for the service of Interrogatories will only be given in respect of divorce pleadings.

45 It is interesting that the UK Matrimonial Causes Rules contained a section entitled 'Ancillary Relief' which includes Rule 77:-

50 *'Investigation by registrar of application for ancillary relief.*

77.- (1) On or after the filing of a notice in Form 11 or 13 an appointment shall be fixed for the hearing of the application by the registrar.

5 (2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

10 (3) Notice of the appointment, unless given in Form 11 or 13 (as the case may be) shall be given by the registrar to every party to the application.

15 (4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply
20 to the registrar for directions.

25 (5) At the hearing of an application for ancillary relief the registrar shall, subject to rules 78, 79, 80 and 81, investigate the allegations made in support of and in answer to the application, and may take evidence orally and may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined and order the discovery and production of any document or require
30 further affidavits.

35 (6) The registrar may at any stage of the proceedings give directions as to the filing and service of pleadings as to the further conduct of the proceedings.

40 (7) Where any party to such an application intends on the day appointed for the hearing to apply only for directions, he shall file and serve on every other party a notice to that effect.'

This section was entirely omitted from the Jersey Matrimonial Causes Rules which appear otherwise, generally speaking, to be based on the English Rules.

45 Perhaps it is, therefore, speculative to look forward and see what has replaced Rule 77 in the UK.

The new section is 2.62 of the Family Proceedings Rules, 1991, reads as follows:-

50 '2.62 Investigation by district judge of application for ancillary relief.

(1) On or after the filing of a notice in Form M11 or M13 an appointment shall be fixed for the hearing of the application by the district judge.

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(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief

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(3) Notice of the appointment, unless given in Form M11 or M13 (as the case may be), shall be given by the proper officer to every party to the application.

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(4) At the hearing of an application for ancillary relief the district judge shall, subject to rules 2.64, 2.65 and 10.10 investigate the allegations made in support of and in answer to the application, and may take evidence orally and may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined and order the discovery and production of any document or require further affidavits.

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(5) The district judge may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

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(6) Where any party to such an application intends on the day appointed for the hearing to apply for directions, he shall file and serve on every party a notice to that effect.

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(7) Any party may apply to the court for an order that any person do attend an appointment (a 'production appointment') before the court and produce any documents to be specified or described in the order, the production of which appears to the Court to be necessary for disposing fairly of the application for ancillary relief or for saving costs.

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(8) No person shall be compelled by an order under paragraph (7) to produce a document at a production appointment which he could not be compelled to produce at the hearing of the application for ancillary relief.

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(9) The Court shall permit any person attending a production appointment pursuant to an order under paragraph (7) above to be represented at the appointment.'

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And there is an entirely new section 2.63:-

'2.63 Request for further information etc.

Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the district judge for directions.'

To summarise what I have said so far:-

1. It is not in accordance with the rules to request Further and Better Particulars of an affidavit of means.
2. Interrogatories do not apply to ancillary matters.
3. Discovery does apply.
4. English rules provide for an investigative process by the District Judge who may order the production of documents and has wide power regarding the attendance of witnesses, the discovery of documents and the filing of further affidavits.
5. English rules further provide for the sending of a questionnaire to an opposite party requesting further information.

In the present situation, I have concluded that upon request for further particulars I have power to direct the wife to file a further affidavit which shall include substantially the information requested by the husband's lawyer. I have power to direct the discovery of bank statements, tax returns and other documents which are alluded to in the wife's affidavit, and even if they were not, it is a direction I am empowered to make under Rule 3(5) on application by summons.

To conclude, I would say that despite the omission from the Jersey Rules of large chunks of the English Rules, our rules were originally based upon the English system. There is nothing whatever to prevent practitioners in the Island adopting the practice of sending questionnaires for the completion of an opposing party. I can only see the system saving time and costs.

I see the present English system as totally consistent with Article 33 of the Matrimonial Causes (Jersey) Law, which gives the Court a general power to verify assets and liabilities of parties to a dispute on ancillary matters. Time will show whether other features of the English Rules can be adopted by practice, e.g. the idea of a "Production Appointment".

Upon failure of any party to produce information requested by a questionnaire, application can be made to the Greffier for directions, and an application for costs incurred by reason of failure to complete the questionnaire.

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By way of last word, in the present case it is essential that ancillary matters are finalised soon. The uncertainty after so long (decree absolute was in 1991) is not fair on the parties. It must be in the wife's interest to come clean about her assets and income. Unless the Court has the details she runs the risk that the Court may deal with the maintenance dispute and the husband's lump sum application on the assumption that she has sizeable assets and income derived from property sales.

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It is incumbent on her to show otherwise.

Authorities

Matrimonial Causes (General) (Jersey) Rules, 1979: Rules 3(5), 21, 23, 23A.

Matrimonial Causes (Jersey) Law, 1949 (as amended): Article 33.

Matrimonial Causes Rules, 1977: Rules 26, 77.

Family Proceedings Rules, 1991: Rules 2.62, 2.63.