6 pages.

ROYAL COURT
(Matrimonial Causes Division)

45

30th March, 1993

Before: The Bailiff, and
Jurats Myles and Herbert

BETWEEN C **PETITIONER**

AND N **RESPONDENT**

Advocate M. M. G. Voisin for Petitioner
Advocate G. R. Boxall for Respondent

JUDGMENT

THE BAILIFF: The petitioner and the respondent were married on the 18th September, 1971. The respondent left the matrimonial home on the 1st March, 1989. On the 16th September, 1992 the petitioner obtained a decree nisi from the respondent. That decree was made absolute on the 25th November, 1992. During their marriage they had two sons now aged 18 and 17, who live with the petitioner. The elder boy is undertaking architectural training and the younger boy is still at school. The parties also acquired some land and the dwelling house, and some outbuildings. The main property, outbuildings and fields were bought originally in the petitioner's sole name but in 1987, at the request of the respondent, the petitioner (against his lawyer's advice) transferred these into the parties' joint names. Thereafter subsequent purchases were bought in their joint names.

The petitioner now asks the Court to order under Article 28 (1)(a) of the Matrimonial Causes (Jersey) Law, 1949, the transfer to him of the respondent's half share in the property, outbuildings and lands. The respondent is prepared to do so but asks that the Court orders under Article 29 (1)(b) of the 1949 Law that the petitioner should pay £75,000 to her. During the

hearing the petitioner made an offer of £40,000 subject to certain conditions. That offer was refused by the respondent, as was an earlier offer of £50,000. Both counsel said that the conduct of the parties was not a matter for the Court to examine, although Article 28 (1)(a) of the Matrimonial Causes Law provides that it may do so. That Article is as follows:-

> ***"(a) that one party to the marriage transfer to the other part to the marriage, or to any child or children of the marriage, or to such person as may be specified in the order for the benefit of such child or children, any propery whether real or personal to which the first mentioned party is entitled;"***

There is no dispute between the parties in the following matters:-

1. Upon the transfer to the petitioner by the respondent of her half share in the property and the lands he will take over the whole of the debts.

2. Every effort should be made to allow the petitioner to continue as a grower, not only for his benefit but also, in due course, for the children.

3. The respondent assisted the petitioner in building up and running a working farm. (The plaintiff said, in fact, that in the early days she could not have been more supportive.)

4. The law as to the division of matrimonial assets.

We deal first with the law.

There has been a number of cases in the Royal Court, namely, from which the following principles may be drawn.

1. Where the matrimonial assets consist of a house and a business combined, the Court should not take into account any sum agreed to be lent by the Agriculture and Fisheries Committee, Billot v. Perchard & Chambers, (1977), J.J. 33.

2. The sum awarded should not be such as to force the sale of the matrimonial home and the business nor compel the raising of a mortgage, which the petitioner could not fund properly. Furthermore, the order should not be such that the business of the petitioner would be crippled, Faiers v. Winter (8th June, 1987) Jersey Unreported.

3. The proper approach to an order is to take the wife's reasonable requirements and balance these against the husband's ability to pay, Potter v. Potter (1982) 3 All E.R. 321.

4. The order may make provision for deferred payments, O'Connor v. Gosling (1974), J.J. 179, and Dunford v. Dunford (1980) 1 All E.R. 122 at 124(h).

5. No particular percentage is appropriate. All the proper circumstances must be taken into account, and whilst, even if it is right to start with a concept of equality, that does not mean that an order must, of necessity, provide for the wife, (the defendant) to receive 50% of the net assets, Ostroumoff v. Martland & Sims-Hilditch (1979) J.J. 125. In that case the Court referred to P. v. P. (1978) 3 All E.R. 70, and a passage of Ormrod L J who cited, with approval, some passages of the judgment of Scarman L J in Calderbank v. Calderbank. It may be apposite to repeat them in the circumstances of this case. The two passages are:-

"At the end of the day after a very careful judgment the judge came to a fair and sensible decision, and, speaking for myself, I rejoice that it should be made abundantly plain that the husbands and wives come to the judgement seat in matters of money and property on a basis of complete equality. That complete equality may, and often will, have to give way to the particular circumstances of their married life".

I wish to stress the following words:

"It does not follow that, because they come to the judgment seat on the basis of complete equality, justice required an equal division of the assets. The proportion of the division is dependent on the circumstances. The assets have to be divided or financial provision made according to the guidelines set out in s.25. Every case will be different and no case may be decided except on its particular facts".

There are considerable debts secured on the property and the fields and these now total £235,510. Additionally the petitioner has debts of £56,673 incurred in his own name following the withdrawal of the joint facilities to the parties by the banks in 1991. The petitioner is aged 45, is unskilled in any other trade, and depends wholly on the farm for his livelihood. He looks after the two boys, as we have said, the elder of whom pays him a weekly amount of £15. The petitioner's annual household expenses amount to about £15,000. The respondent is employed [redacted] and earns approximately £23,000 per annum. She lives with a man and pays the rent of

£10,400 for the shared property. He in turn contributes towards the household expenses. She has about £3,000 in a bank account which she regards as a reserve for emergencies.

When the respondent left the petitioner she was willing to transfer her half share in the joint property to the petitioner without receiving any money. Later in 1990 she changed her mind and after discussing matters with the agricultural advisor to the Agriculture and Fisheries Committee, she increased his recommendation of £60,000 (as being the proper amount which could be secured on the property by a further States' loan), to £75,000 to allow for some negotiation. In 1991 the petitioner put in two applications for a further agricultural loan of £75,000 to pay off the respondent. That offer was confirmed in a letter of 7th November, 1991, from Advocate Voisin to Advocate Boxall. Some suggestions as to funding the loan were put forward to the Agricultural Loans Board by Mr. C. Treble, ADAS, Agricultural Adviser, who unfortunately has left the Island and, therefore, has not been available to be examined on oath. That first application was refused on 11th October, 1991, but the petitioner tried again, and on 27th November, 1991 he was notified that his application had been successful. The further loan would be secured on all the land previously charged. The petitioner said that after he had received the letter granting the application he took further advice and decided he could not afford to take on more debts and therefore did not take out the loan. Through Advocate Voisin he offered the £50,000 package (which we have mentioned) in a letter of 2nd December, 1991.

Although the area owned by the plaintiff under cultivation (ignoring some 3 vergees of scrubland) amounts to 72 vergees, the petitioner and the respondent had agreed at one stage to sell a field in St. Martin for £60,000. The plaintiff says that the respondent has prevented this; she has denied doing so. The petitioner has handed that field over for the use of the prospective purchaser. He is left therefore with some 60 vergees in the joint ownership, for him to run, plus rented land. He said, in evidence, that to pay off some of the debts and to make a contribution to the respondent he would have to sell more land in addition to field and the result would be to reduce his holding to an uneconomic unit. The respondent replied by suggesting that the petitioner could find further land to rent near or at least within a reasonable distance of the property. The petitioner denied this and moreover said that such a course would not give him security of tenure, although, as we have noted, he leases land at present.

The petitioner called Mr. T. G. A'Court who has had great experience valuing farm property. The respondent called Mr. D. M. Hunter an experienced valuer but who admitted that his firm had not had the same experience as Mr. A'Court in valuing agricultural holdings. Mr. A'Court valued the property and the various

lands as a unit at £415,000. Mr. Hunter valued the same unit and lands at £584,000. In his scheme for the agricultural loan in April 1991 Mr. Treble put a value on the farm and land of £475,000, but he was not available, as we have said, to give evidence or be cross-examined. Mr. Hunter suggested his value should be accepted because he had compared his valuation with a number of sales of land at an average price of £5,250 per vergee. Mr. A'Court doubted the figures produced by Mr. Hunter because some of the sales were either by purchasers with adjacent land or family transactions. He put the average price of a vergee between £4,000 and £5,000. Mr. P. L. St. George, the accountant for the petitioner, prepared an assessment of the net value of the equity in the farm based on Mr. A'Court's valuation. That came to around £182,000, to which should be added £5,000 from a bank account which the accountant had not included earlier in the accounts. We think that whilst Mr. A'Court's valuation is on the low side Mr. Hunter's is far too high. It should be remembered that there are 2 farming restrictions imposed by the Island Development Committee which cover the main property and adjacent fields. They are as follows :-

> *"That the new accommodation is to be retained as a part of the corpus fundi of the field and may not be sold separately therefrom without the prior written approval of the Island Development Committee.*
>
> *That the occupation of the dwelling shall be limited to persons employed or last employed, wholly or mainly in agriculture in the vicinity, and a dependant of such person residing with him or a widow, or widower, of such person."*

and were imposed when Mr. Cadoret built the house and outbuildings in 1976. The number of persons falling within the qualification we have just cited is, according to Mr. A'Court, no more than 5% of possible buyers. There is, therefore, a limited market for the holding. Accordingly, the method of valuing the home, barn, and immediate fields separately, and adding in the other fields as done by Mr. Hunter, is not, we think, the best method of doing so, since the farming unit must be taken as a whole. We propose to take the value of the farm and fields as being nearer to that of Mr. Treble and we place it at £450,000. No part of the parties' lands, except a field in Grouville of 7.31.00 vergees is at best more than reasonable agricultural land. Whilst the respondent has suggested that the increase in the debts since she left could be attributed to some form of neglect by the petitioner, there was no evidence of this, and we are satisfied that he is a careful and experienced grower. Unfortunately, we had no audited trading figures produced for 1992 but although the petitioner said he had had a good potato season, quite contrary to the trend last year, his accountant said that from the 1992 figures submitted to him by other clients the outlook was not good for that year. In 1990 the plaintiff made a small profit of £2,525 and in 1991 a loss of

£10,699. Taken with the figure of £15,000 he has sworn is the annual household expenses, that means during 1990 and 1991 he experienced some capital loss on the holding. The petitioner estimated his receipts from the sale of crops for 1992 (and during 1993) as £5,653.32.

In their closing speeches, both counsel submitted the proper order the Court should make.

Mr. Voisin said that the respondent should be given a charge of £40,000 on the home, the outbuildings, and fields.

There was sufficient equity in such a proposal to safeguard the respondent's charge after the present amounts secured on the property and the attendant fields. The sum of £40,000 would become payable on his death.

Mr. Boxall submitted a scheme, which, he said, would allow Mr. Cadoret to sell fields, and the Grouville field, leaving him with a net figure of £93,500, after repayment of the charges and fees. This added to the available cash and his life policy, would total £106,262. Mr. Cadoret would then have total borrowings remaining of £171,715, which deducted from the Hunter valuation would leave him with a net capital asset of £265,785. The total area of fields and the Grouville field, amounts to just over 19 vergees. We accept what Mr. Cadoret told us about the amount of land he needed to have an economic unit and we could not accept that, taking that amount away from his present holding, as well as field and thus reducing it to some 45 vergees, that he would still have a sufficient nucleus of land to allow him to continue to farm the unit. It would be unreasonable to expect him to do so. Accordingly, we felt unable to accept Mr. Boxall's scheme.

Finally, in reaching our decision we took into account a passage, cited with approval by the Royal Court in Urquhart v. Wallace, (1974), J.J. 119 at 132 where the Court referred to the overriding principle in respect of interpreting the equivalent legislation in the United Kingdom. At page 842 of Wacthel v. Wacthel, (1973), 1 All E.R. 829, Lord Denning M R, said this:-

> ***"In all these cases it is necessary at the end to view the situation broadly and to see if the proposals meet the justice of the case"***

We therefore order that the petitioner pays to the respondent a lump sum of £40,000, under the following conditions:-

1. The respondent will transfer all her interest in the property and land to the petitioner.

2. The petitioner release the respondent of all the joint debts.

3. The sum of £10,000 will be paid to the respondent within six months of the hearing and the delivery of our decision, namely the 25th February, 1993.

4. £30,000 will be secured by an *hypothèque judiciare* on the house, shed and fields of which £15,000 shall be paid not later than five years after the registration of a bond, and £15,000 at the expiration of 10 years.

5. In the event of the death of the petitioner, or the sale of the secured land, that is to say fields, the house and the outbuildings on any part thereof, the whole shall be repayable on demand.

6. During such time as any of the amounts outstanding remain unpaid, the amounts shall bear interest at 6% per annum.

The costs of transfer of the property and appurtenances into the sole name of the Petitioner shall be paid by the Petitioner; and the Petitioner shall contribute £500 towards the Respondent's costs of and incidental to this hearing.

Authorities

Matrimonial Causes (Jersey) Law, 1949: Article 28, 29.

Ingham -v- Quérée & Naffati (1969) J.J. 1213.

Urquhart -v- Wallace (1974) J.J. 119.

O'Connor -v- Gosling (1974) J.J. 179.

Billot -v- Perchard & Chambers (1977) J.J. 33.

Faiers -v- Winter (8th June, 1987) Jersey Unreported.

Mentel -v- Mentel (1975) 6 Family Law 53: 119 Sol. Jo. 808, C.A.

Martin -v- Martin (1977) 3 All E.R. 762.

Dunford -v- Dunford (1980) 1 All E.R. 122.

Potter -v- Potter (1982) 3 All E.R. 321.

Malzard -v- Malzard (1985-86) J.L.R. N.11.

Ostroumoff -v- Martland & Sims-Hilditch (1979) J.J. 125.

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