

ROYAL COURT
(Matrimonial Causes Division)

16th September, 1993

119.

Before: P.R. Le Gras, Esq., Lieutenant Bailiff
and Jurats Hamon and Le Ruez

Between:

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Petitioner

And:

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Respondent

Appeal by the Respondent from the Decision of the Greffier Substitute of 29th July, 1993, refusing to order that:

- (1) the former matrimonial home be sold, and the proceeds of sale divided equally between the parties; and
- (2) the Respondent be awarded full indemnity costs against the Petitioner in respect of costs incurred in preparation for a trial on the issue of conduct.

Advocate R.J. Renouf for the Respondent.
Advocate A.D. Hoy for the Petitioner.

JUDGMENT

THE LIEUTENANT BAILIFF: This is an appeal against an Order of the Deputy Judicial Greffier (Matrimonial Causes Division) of 29th July, 1993, dealing with the disposition of the matrimonial assets, and this finding is of course limited to the summons which was before the Greffier.

The parties were married on 3rd July, 1965, and there is one child of the marriage who is now in her late twenties. The marriage broke up in August or September, 1990, and the parties are divorced. The husband has since married the co-respondent.

It was agreed before us that the former matrimonial home was the major matrimonial asset: the parties agree that it is fairly valued at £125,000. There is, however, a States loan of just over £18,000 due on the property which must, of course, be deducted from this figure. The property is jointly owned by the parties.

The husband seeks an order that the matrimonial home be sold and the net proceeds divided equally. The wife applied to have the matrimonial property transferred into her sole name.

The Deputy Judicial Greffier (Matrimonial Causes Division) made an Order in the following terms:-

"Referring to the decree nisi pronounced in this cause on 20th November, 1991, which decree was made absolute on 6th January, 1992;

And upon hearing the advocates of the petitioner and the respondent in relation to:-

1. *The petitioner's application that the former matrimonial home, ("the property") be transferred into her sole name;*
2. *The respondent's application for an order:-*
 - a) *that the property be sold and the proceeds of sale divided equally between the parties;*
 - b) *that whereas the petitioner, through her advocate, has withdrawn her allegations concerning the respondent's conduct during the marriage, he be awarded full indemnity cost against the petitioner in respect of costs incurred in preparation for a trial on the issue of conduct, the said preparation being in accordance with the direction of the Greffier Substitute given on 28th July, 1992.*

It is ordered in relation to clause 1 above, for reasons which the Court has reserved:-

1. *That subject to the consent of the States of Jersey Housing Committee, the respondent do transfer all his interest in the property to the petitioner;*
2. *That as from the date of transfer thereof, and subject to the consent of the States of Jersey Housing Committee, the property shall remain charged with a 'judicial hypothec' in the sum of £54,000.00 in favour of the respondent;*

3. That interest at the rate of 6% per annum be due on the said charge in favour of the respondent, or his estate in the event of his death;
4. That the said charge, plus interest accrued thereon, shall both become due and payable, only upon the happening of one of the following events, namely:-
 - a) the death of the petitioner;
 - b) the marriage of the petitioner;
 - c) the petitioner ceasing to occupy the house as her usual place of resident; or
 - d) the sale of the property in the life time of the petitioner.

In relation to clause 2(a) above, the respondent's application is dismissed.

In relation to clause 2(b) above, it is ordered that the petitioner do contribute the sum of £500 towards the costs incurred by the respondent in preparation for the said trial.

And as to the further costs incurred herein, the Court has reserved its position.

And in the event of the States of Jersey Housing Committee failing to consent to the provisions of clauses 1 and 2 of this order, the parties do have liberty to restore these applications to the list".

From this Order the husband now appeals.

Before dealing with the facts, we should say that both counsel asked the Court to deal with the application as a rehearing and not simply as an appeal.

There seems, curiously, to have been no consistent approach by the Court on this point. On occasion, (for example in Richecoeur -v- Godfray (7th September, 1987) Jersey Unreported) the Court dealt with the appeal on the transcript and it may well have done so in Fagan -v- Le Marchand (22nd January, 1988) Jersey Unreported. However, in Kay -v- Murphy (24th June, 1991) Jersey Unreported the Court appears to have heard the evidence *de novo*, although there the hearing would appear to have been wider than it was before the Greffier. The question does not appear to have been argued.

In this case, there is no transcript of the evidence which was before the Greffier and given the circumstances, we have formed the view that, in the instant case, it is right and proper and justice requires that we should hear the evidence placed before us by counsel.

Before we turn to it, we should record that the parties agreed that conduct as between the parties was not a factor which should be taken into account by the Court.

The husband was called to give evidence. He has a salary of £21,400 per annum and receives directors fees of £250 and a bonus, on occasion, of £500. He has now married the co-respondent who is a secretary and earns some £15,000 per annum. He has a lease on a cottage at £6,600 per annum and estimates his debts as being about £12,000, plus £5,000 due to his advocate, making some £17,000 in all. His car, now some years old, is on lease. He has a good and secure job.

His interest in the house is, he affirmed, his only substantial asset. The house belonged to his parents and he was brought up there. In 1984, he and the petitioner bought it jointly from his parents for £40,200.

£5,000 was provided by his father, to whom he sold a boat, and £35,000 raised on a States loan. This money was paid to his parents but they, on his account, had given back most of it to the parties who have spent it, or a great deal of it, on the house. This was not disputed by the petitioner.

The respondent has a brother who has received, he told us, an advance of £10,000 from their parents and the respondent estimates that his father may be worth some £30,000. His parents have no real property and rent a flat in which the parties had previously lived before they bought the matrimonial home.

The respondent's health appeared to be adequate for him to hold down his job. He was not looking, he told us, to buy another house.

The petitioner, in her evidence, told the Court that she was working at two jobs that brought her in, net, (that is after deduction of her Insular Insurance Contribution) just under £7,500 per annum.

In addition she has had, from time to time, lodgers, although she has none at present. When there they pay her £45 per week and provide her with company.

At present, on account of arrears, she pays £423 per month to the Housing Committee for the States loan, though this will soon reduce to £333 per month, or approximately £4,000 per annum.

She would like to work longer hours, and once the proceedings are over, hoped to do so. She has been working quite long hours for upwards of 15 years. She had, she said, hardly had time off work except for illnesses such as colds.

Money from a sale did not interest her. She liked her home and did not want to move from it.

The petitioner called Dr. J.D. Swann, who told us that she had been a patient of his practice since the early 1970's.

She had, he said, suffered anxiety depressive symptoms over the years.

She had been seen by his partner, Dr. Bevans, in 1978 and again in 1980 and 1981 when he was so worried about her that he sent her to a psychiatrist. She did not, however, attend.

In 1990 she had had further symptoms of anxiety and it was clear that Dr. Swann, who has clearly been a very conscientious and caring medical adviser, had been concerned about her.

On one occasion in October, 1990, she had attempted suicide, but we were not clear from his evidence whether this was a truly serious attempt.

He made it quite clear that in his view she is a delicate person emotionally, easily upset by the various stresses of life. In 1990-92, she needed a lot of support, although since 1993 she has much improved. She had, he stated, ceased working for about four months after the marriage broke down. Her positive attitude over the last year has surprised him.

If asked to leave her house it would, he thought, cause her mental anguish. She had not the capacity to cope with ordinary everyday things on her own. She found new relationships difficult.

She needed a calm and supportive environment. With a pattern of behaviour going back over the years, one could predict major problems.

Pressed on the previous visits Dr. Swann stated that the notes indicated that there were 6 visits in 1980/81 and that the referral to the psychiatrist indicates that the symptoms were of some severity. In his view they constituted a history.

He stated, however, that between 1981-1990, no medication was given and that the petitioner came in only once every 2 years for various routine checks which had nothing to do with an anxiety state.

Both counsel were agreed as to the guidelines which apply to a case such as this.

Counsel for both parties referred us to a series of cases. However, each case, in our view, must, within the guidelines, turn on its own facts, and within them, we must exercise our discretion.

Here there are no children to take into account, and there is clearly no ground for any penal order.

We approach this case on the basis that so far as we can, we must do justice to both parties.

Both parties have worked very hard over the years, and there has clearly been a very substantial contribution by the respondent's parents.

On any account, this must mean that little more is to come from them to the respondent and that at the least a considerable part of his inheritance has been ploughed into the matrimonial home.

The house is nearly 60 years old, and from the reports of the agents is clearly in need of repairs.

The order made by the Greffier has, in our view, serious defects. The respondent has no security for the interest payments ordered. It is impossible to forecast what proportion of the proceeds of the property may in due course be received by him.

Equally, the petitioner may be in the position of receiving no capital at all on a sale. The necessary repairs to an ageing building are problematical, and she has no very considerable income to meet them.

In addition, in a case where conduct is not to be taken into account the husband, albeit that he is better off with a steady job, is effectively to be deprived of any share in the matrimonial assets.

Despite his present income we note that he is still considerably in debt.

In his Judgment the Deputy Judicial Greffier found the conclusion that the house be sold and the proceeds divided was almost irresistible.

He was able to resist it because he took the view that the petitioner with her health problems would find difficulty in making a move and that a sale would tip the balance unfairly in favour of the respondent.

We disagree. We have heard the petitioner give her evidence, and although we appreciate that her earning capacity is fairly

limited and although we accept that she is sincerely attached to her home, we have come to the conclusion that she will be able to cope with a move and that she can continue to hold steady jobs as she has done for some years; and although these factors have considerable weight they are not sufficient to outweigh the respondent's interests.

In addition, attached though she may be to her home, we consider it in her interest that it should be sold now and that she should be placed in possession of a capital sum without the burdens and obligations imposed by the ownership of property. We find it inconceivable that she should not be able to find suitable accommodation following a sale.

We have no doubt but that the property should be sold and the proceeds divided.

As to the proportions, despite the present disparity between the parties' incomes, we have, weighing up the totality of the evidence before us, come to the decision in the exercise of our discretion that the correct order in this case is for an equal division of the net proceeds between the parties.

Clearly there must be time for a good price to be obtained and it would be unfair to require the petitioner to remove urgently.

We therefore order:

- a) That the matrimonial home be sold and that the sale should take place by 30th June, 1994, with liberty, however, for either side to apply regarding the date.
- b) That the Petitioner render up vacant possession of the former matrimonial home at the time of passing contract.
- c) That the nett proceeds of sale of the former matrimonial home (after deduction of the States Loan indebtedness, estate agents commission and legal fees) be divided between the Petitioner and the Respondent in equal shares.
- d) That pending the sale of the matrimonial home, the Petitioner pay the monthly States Loan instalments as they fall due and make up arrears presently accrued.
- e) That the Viscount be authorised to pass contract on behalf of either party in the event of his/her refusal to join in a sale of the former matrimonial home.

The Respondent asks for various other orders, but these do not appear to have been before the Greffier and we make no order thereon. In the first instance, they will, in the absence of agreement, be remitted to him.

Authorities

- Whitwham -v- Bashford (27th July, 1989) Jersey Unreported.
- Gallichan (née Turmel) -v- Gallichan (12th September, 1991) Jersey Unreported.
- Rakusen, Hunt, and Bridge: "Distribution of Matrimonial Assets on Divorce" (3rd Ed'n: 1989): p.p.48, 102-128, 148-149.
- Broad St. Investments (Jersey) Ltd. & Ors. -v- National Westminster Bank, PLC & Ors. (1985-86) JLR 6.
- Laugee -v- Laugee (née Joshi) (1990) JLR 236.
- Heseltine & Ors. -v- Egglshaw & Ors. (1989) JLR 1.
- Gilson -v- Gilson (25th April, 1991) Jersey Unreported.
- Richecoeur -v- Godfray (7th September, 1987) Jersey Unreported.
- Kay -v- Murphy (24th January, 1991) Jersey Unreported.
- Fagan -v- Le Marchand (22nd January, 1988) Jersey Unreported.