

H v T

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ourt of Jersey.

IMONIAL CAUSES DIVISION.

Order varied on

appant dated

2nd January 1986

ar 1985 , the fourth day of June

las Harris, Greffier Substitute.

Between

H

Petitioner

AND

T

Respondent

Upon hearing the advocates of the petitioner and the respondent it is ordered:-

(1) That paragraphs 2,3 and 6 of the order of the Court dated 22nd day of February, 1982, be varied as follows, that is to say:-

"2. That the respondent do pay or cause to be paid to the petitioner, as from the 25th day of February, 1985:-

(a) the sum of one hundred and sixty-nine pounds (£169.00) per month towards the support of the petitioner during their joint lives or until further order; and

(b) the sum of one hundred and four pounds (£104.00) each per month towards the maintenance of C and HJ , two of the children, issue of the marriage between the petitioner and the respondent, until each of them has reached the age of sixteen years or ceases full-time education, whichever is the later, or until further order;"

"3. That the respondent do pay the school fees and medical and dental expenses incurred in respect of the said children;"

"6. That the respondent do pay the interest and principal due on the mortgages charged against the said property together with the rates, insurances, essential repairs and reasonable re-decoration thereof, both internal and external."

(2) that the costs of and incidental to this application be paid by the respondent.

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P. J. Harrison
267 Greffier Substitute.

H -v- T

The parties to this application were divorced in 1982. Ancillary matters were dealt with in an order of 22nd February, 1982. The orders included provision for maintenance of the wife and the three children. The matrimonial home remains in the joint ownership of the parties but the respondent continues to be responsible for most outgoings thereon.

The petitioner now comes forward with an application for a very substantial increase in the level of maintenance payments.

In accordance with the principles laid down in *Lewis v. Lewis* [1977] 3 All E.R. 541] it is necessary to consider all the circumstances of the case and look at the matter de novo. Counsel for the respondent in the present case argued that because of the extent of the variation sought the application should be regarded as an appeal against the original order. Under the old approach in such applications it was said that the jurisdiction is not prima facie a jurisdiction to refix de novo the amount of maintenance. As in all such cases it is necessary for the Court to achieve justice between the parties with a minimum of technicalities and maximum flexibility.

Having stated the principles of approach to the problem it is now necessary to look more closely at the facts and in particular the commitment of the petitioner to the upkeep of the home for the children and also the commitment of the respondent towards the children and the petitioner. Basically these commitments have not altered much in the three years since the order of February, 1982. The orders for maintenance of that time were not appealed against and therefore it must be assumed that they were considered adequate for these purposes. It now appears that the petitioner has had to subsidise household and general expenditure on the children by drawing on the £9000 she received from the respondent by way of lump sum payment. This is now largely exhausted with the consequence that the petitioner has to rely more heavily on the current maintenance payments. The petitioner's claim to spending some £1100 per month needs careful scrutiny and it is obvious that there is considerable scope for economies in that direction. She has no responsibility for any rent or for external maintenance or rates. These, together with the substantial mortgage charges, school fees and medical expenses for the children, have been and are being discharged by the respondent over and above the maintenance payments. The petitioner and the children have a secure roof over their heads for at least another six years. It may well be that the respondent's present life-style ruffles the petitioner but again the parties are divorced and if the respondent chooses to live the way he does it is not reasonable for the petitioner to complain. Considering what benefits do accrue to the family I am not satisfied that the family is in any way suffering because of the respondent's life-style.

The profits from the company beneficially owned by the respondent are only relevant in so far as the respondent materially benefits therefrom. Plainly

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his outgoings exceed his declared income and therefore the company profits must be used to meet the excess. The respondent's debt to the company is, in practice, only one on paper and so it can be largely ignored. However, that said, we come back to the principle that any award should not have the effect of crippling the payer and, in my view, the effect of granting the petitioner's application in full would do just that and therefore it must be unreasonable and in any case would probably militate against the interests of the children and the petitioner.

It is reasonable however that, to compensate for the increase in costs over the last three years, the petitioner and the children should receive increased maintenance. The respondent offered a costs of living increase - roughly 16% over the period in question. In certain circumstances this might be regarded as a justifiable increase, if only by way of compromise. However I do not propose to order an increase directly related to the Cost of Living Index. At the time of the order of February, 1982, there were three children yet at home; the eldest has now left or at least is in employment and has contributed to her upkeep. In all the circumstances the increases should be up to the maximum allowed for Small Maintenance Payments; therefore the petitioner will receive £169.00 per month and each of the two younger children £104.00 per month, making a total of £373.00 per month, paid gross as from 25th February, 1985. The respondent will also, in addition, be responsible for the children's dental expenses and both internal and external essential repairs and reasonable re-decoration of the house. He will also pay the taxed costs of the hearing.

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