

149A.

In the Royal Court of Jersey
MATRIMONIAL CAUSES DIVISION.

229/86

In the year 1987, the 23rd day of September.

BEFORE Peter Douglas Harris, Greffier Substitute.

Between

W *Petitioner*

AND

P *Respondent*

Referring to the decree nisi pronounced in this cause on the 8th day of April, 1987;

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

1. by consent, that A _____, the child, issue of the marriage between the petitioner and the respondent, do, until further order of the Court, remain in the joint legal custody of the petitioner and the respondent whilst remaining under the care and control of the petitioner;
2. that the respondent do pay, or cause to be paid, to the petitioner, as from the date of this order:-
 - (a) the sum of one pound (£1.00) per annum towards the support of the petitioner during their joint lives or until further order; and
 - (b) the sum of twenty pounds (£20.00) per week towards the maintenance of the said child, until she has reached the age of 18 years or continues to receive full-time education, whichever is the later, or until further order;
3. that the former matrimonial home, _____ in St. Helier do, within two months hereof vest in the joint names of the petitioner and the respondent, the said property not to be sold until the said child reaches the age of twenty years or completes full-time education whichever is the later the petitioner to continue in sole occupation of the said property until it is sold;
4. that the sum of £4000 presently in a bank account for the benefit of the said child be vested in an account in the joint names of the advocates of the petitioner and the respondent for the benefit of the said child until she has reached the age of twenty years;
5. that, by consent, the cheque for £15,000 plus interest and interest accruing to this date, be paid to the respondent;
6. that, by consent, the Datsun Micra car do vest in the petitioner solely;

7. that the respondent do pay the costs, both recoverable and irrecoverable, incurred and to be incurred, on behalf of the petitioner in this cause.

P. J. Mann

Greffier Substitute.

In the Royal Court of Jersey
MATRIMONIAL CAUSES DIVISION.

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W v P

The parties were married in 1972 and there is one child issue of the marriage now aged 10. Throughout the marriage the husband has suffered a disability occasioned by an inability to refrain from heavy drinking. This problem manifested itself many times during the subsistence of the marriage involving a large number of admissions to St. Saviour's Hospital for treatment. Until 1985 the husband was in regular employment but since then and because of his disability he has been unemployed although in receipt of a disability pension and a pension from the States, his former employers.

The petition, on the grounds of cruelty, was not contested and indeed the allegations were admitted by the husband who only pleaded that such acts of cruelty were involuntary and occasioned by his disability. In so far as the outstanding ancillary matters are concerned the Court must nevertheless have regard to all the circumstances of the case including the conduct of the parties; the husband, however, made no allegations against his wife and therefore issues of conduct are, in my view, of somewhat less than ordinary significance.

The issue upon which the parties were not agreed was the division of the principal matrimonial asset, the house in St. Helier. This property is in the sole name of the husband who, with his sister, had jointly inherited it from his late mother. He subsequently was able to buy out his sister's share when the previous matrimonial home,

(a property he had originally bought as a result of a legacy from his late father) was sold..

The wife sought a transfer of the house in St Helier to her own name solely without compensation, pleading that she did not wish to rely on her husband for maintenance because of the uncertainty of his employment position. It was said on her behalf that a maintenance order was not appropriate in the particular circumstances of the case. However if the starting point in assessing a wife's entitlement to maintenance as propounded in *Wachtel v. Wachtel* is adopted in this case, the wife's present income already exceeds $\frac{1}{2}$ of the joint incomes and therefore her entitlement to any maintenance could be called into question. The same criterion does not, however, apply to the child's maintenance and, albeit the husband is only in receipt of a relatively small income, he is still liable for his daughter's maintenance which should not be capitalised either in practice or in theory..

I cannot accept that it is fair to deprive the husband entirely of his major asset. The wife has contributed in no small measure to the marriage, indeed she was, even when her husband was in full-time employment and the

family bread-winner, very much the mainstay of the family home. That in itself does not, however, entitle her to the sole benefit of a property valued, it was agreed, at approximately £95,000. Granted she must continue to provide a home for the child for at least another 7 or 8 years and, for that reason alone she needs a roof over her head. A move to a 2 bedroomed flat would not, in my view, be conducive to the child's welfare, possibly involving a change of school at a vital stage in her education let alone the trauma involved in moving to other premises and the effect on the child. For that reason I have rejected two out of the three solutions proposed by counsel - the outright transfer to the wife and an immediate order for sale with appropriate division of the proceeds. The fairest solution is without a doubt an order to vest the property in the joint names of the wife and the husband on condition that there be no sale until the child has reached the age of 20 or ceases full-time education, whichever is the later, the wife, in the meantime to remain in sole occupation of the property. Thereafter the house will be sold and the proceeds divided equally between the parties. Additionally the husband will pay maintenance for the child at the rate of £20.00 per week plus nominal maintenance for the wife of £1.00 per year. The Datsun Micra car will, as agreed, vest in the wife solely and the husband will retain the benefit of the £15,000 plus interest and interest accruing from the reimbursement of the mortgage loan. The £4000 in a bank account for the benefit of the child is to be vested in an account in the joint names of the advocates of the parties for the benefit of the child when she reaches the age of 20.

The respondent will pay the costs of the suit.

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