

14th October, 1987

(Before the Bailiff, assisted by Jurats Lucas and Baker)

BETWEEN	C	PETITIONER
AND	G	RESPONDENT

*Advocate J. G. White for the Petitioner.  
Advocate R. J. Renouf for the Respondent.*

**BAILIFF:** The petitioner in this case was married to the respondent and that marriage was dissolved on the 23rd September, 1983. On the 18th November, 1983, an Order was made by the Greffier Substitut, after hearing the advocates who were then representing the petitioner and the respondent, that the respondent, that is to say the wife, should pay the sum of £480 a year towards the maintenance of F , the child of the marriage. Now, because at that time there was some doubt about the financial ability of the petitioner it was thought right and it was not objected to by either party, that the money be paid by the respondent into a trust fund in the joint names of the advocates, or the then advocates, of the petitioner and the respondent which was to be held in trust by them for F and to be paid to her when she reached twenty years, or, subject to a further Order of the Court, towards the cost of her maintenance should the petitioner find himself unable to contribute thereto. Before that Order was made the petitioner had filed an affidavit, but the respondent did not.

On 14th February, 1986, the wife, deciding and wishing to challenge that Order, filed an affidavit. The husband filed an affidavit in reply on the 2nd February, 1987. The wife filed a further affidavit on the 3rd March, 1987, and the Greffier Substitut made the Order on the 17th March, 1987, which is appealed today.

The Order in effect reduced the sum paid under the November Order of 1983 to £60 per annum and we are informed (and this is not denied) that from the time that Order was made, the sum of £5, which is the monthly amount, has in fact been paid into a bank account standing in the joint names of the present advocates of the husband and wife.

The Greffier Substitut also made a further Order to the effect that no later than the eighteenth day of April, 1988, the respondent should file a further affidavit of her means. He therefore had in mind that his Order, although he did not say so, could be reviewed next May.

According to the wife's affidavits she is a self-employed photo-setter and had set herself up in this business by means of borrowing. She borrowed £4,000 from a bank, guaranteed by a friend, and £2,000 from her father to meet an overdraft. But before this, and after the break up of her marriage, she had gone to England and eventually began to live with a co-habitee. That co-habitee purchased a property by means of a mortgage and he required a deposit of £3,000. The wife contributed £1,500 towards that deposit which she borrowed from her father. During the time she lived with this man, she contributed towards the outgoings of the house, the insurance and the mortgage and we are not clear, though there has been some suggestion to this effect made to us, that she could eventually be a successful participant in the equity of the property, but it is by no means accepted that this is so and we were informed that in fact she has been advised that the most she could claim was the £1,500 which she had contributed towards the deposit. She now lives in rented accommodation. Her latest affidavit discloses weekly expenses of about £140 and her latest earnings, I say latest, but in fact they are only mentioned as far back as December to January of this year, equal roughly that amount. Whether they have improved since then, we do not know.

Now, in looking at the matter, the Court has certain authorities which guide it. The first is of course that in an appeal of this nature the burden is on the appellant, that is to say, the husband and we derive that opinion from the case of Sansom -v- Sansom (1966) 2 All E.R. at page 396, but we have in addition to that English Judgment two Jersey Judgments which are helpful.

The first is that of Broad Street Investments (Jersey) Ltd -v- National Westminster Bank Plc & Others 1985/86 JLR at page 6 and for the purposes of this Judgment I propose to read a short passage from page 9. In that case there was an appeal against the refusal of the Judicial Greffier to exercise his discretion under Rule 6/19 of the Royal Court Rules, 1982, to refer for the determination by the Royal Court before the trial, a question raised by the defendants in their pleadings. And at page 9 as I have said of that Judgment the Court says this at line thirteen:

"Both counsel recognised that this Court was hearing an appeal against the exercise of the Greffier's discretion, although the way in which we should approach such an appeal was not argued before us. Our view is (and we are referring only to Rule 6/19) [and I can see no reason to distinguish this case from that one in principle] that our duty now is to exercise our own discretion but that although we are not fettered by the previous exercise of discretion by the Greffier, we should of course give it due weight".

There was further referred to us by counsel, Mr White, for the husband, the unreported Court of Appeal case of Cameron -v- Archdale. The Judgment in that case was delivered by Sir Alun Davis the President of the Court of Appeal at that sitting on the 12th July, 1983, and I cite from page 5:

"It is agreed by both parties that the discretion of this Court is unfettered, that if necessary, capital assets can be regarded as a legitimate financial resource for making a maintenance assessment in a case such as this. We have to have regard and do so, to all the information made available to us at the present hearing including information which was not available to the Royal Court when it arrived at its decision and we see no reason why we should not consider such matters as have now been made available to us at this hearing and which may not necessarily have been available at the hearing before the Judicial Greffier".

And I continue: "We adopt the same approach as that in the case of Lewis -v- Lewis reported in 1977 3 A.E.R. at p.992, namely, that in considering an application for variation the Court is not confined to looking at changes in the means of the parties since the original Order was made. It is required

to look at the actual means of the parties as they stand at the time the case is before it and to approach the matter as if it were fixing the payments 'de novo'."

And that in fact is what we have done in an effort to deal with this appeal."

I have mentioned the question of the trust fund and it was argued that the Greffier Substitut was correct in reducing the figure payable by the wife because, in fact, the husband had not suggested to the Greffier Substitut, that he was unable to manage without recourse to the trust fund. We do not think that that was a good ground for reducing the sum. We think that the total assets of the parties should have been considered and as regards the wife, and indeed this covers the husband as well, the Greffier Substitut should have looked at the potential earnings of each party.

Now, we have said that the wife is working as a self-employed person but we have no evidence in her latest affidavit except a submission by her counsel today, that she has considered taking employment in London, because there is nothing available in the present area where she resides, but that the cost of travelling to London would off-set the benefit of obtaining employment. As I say, the Court has had no affidavit and no figures put before it to support what is really a supposition.

It was put to us by Mr White that her decision to become self-employed and to borrow what for her, in the financial position in which she was, was and is clearly a substantial sum, or sums, was a case of not getting her priorities right, to the extent that by doing that she has prevented herself from making a fair and proper contribution towards the cost of F , even though it is paid into the trust fund. We think Mr White is right. And for the opinion which we have expressed that we should take into account the potential earnings of each party we have had referred to us and we have noted them accordingly, two cases, that of Klucinski -v- Klucinski PDA 13th February, 1953 at page 683 and the case of M -v- M (1979) Law Society's Gazette 27 February 1980.

We think that it could be open to the wife to consider whether she ought not to become employed as an employee so that she can make a proper contribution, and in any case the figure of £480 per annum, less than £10 per week, does not seem to us particularly onerous today.

Taking all the matters into consideration and arriving the best we can, we think that the learned Greffier Substitut erred in reducing the amount and we restore it to what it was in November, 1983. The appeal is therefore allowed.

Now, we think that it could be open to the wife to consider whether she ought not to become employed as an employee so that she can make a proper contribution, and in any case the figure of £480 per annum, less than £10 per week, does not seem to us particularly onerous today.

Therefore, taking all the matters into consideration and arriving the best we can, we think that the learned Greffier Substitut erred in reducing the amount and we restore it to what it was in November, 1983. The appeal is therefore allowed.

Authorities referred to in the judgment :-

Sanson -v- Sanson (1966) 2AER 396

Broad Street Investments (Jersey) Ltd -v- National Westminster  
Bank plc et al (1985/86) JLR 6

Cameron -v- Archdale (1983) UR10

Lewis -v- Lewis (1977) 3AER 992

Klucinski -v- Klucinski PDA 13<sup>th</sup> February, 1953 at p 683

M -v- M (1979) Law Society Gazette - 27<sup>th</sup> February, 1980

Other authorities referred to :-

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- ~~(1) Sansom -v- Sansom (1966) 2 All E.R. 396.~~
- ~~(2) Broad Street Investments (Jersey) Ltd -v- National Westminster Bank Plc & Others 1985-86 JLR 6.~~
- (3) Re Jose I. C. de Sousa (1986) Unreported judgment 16.
- (4) Ostroumoff -v- Martland (1979) J.J. 125.
- (5) James -v- Patterson (1980) J.J. 125.
- (6) Parsons -v- Solicitor General (1971) J.J. 1745.
- ~~(7) Articles 25, 28 and 32 of the Matrimonial Causes Law.~~

(P.T.O.)

IN THE ROYAL COURT OF THE ISLAND OF JERSEY  
(Matrimonial Causes Division)

BETWEEN

C

PETITIONER

AND

G

RESPONDENT

I N D E X

~~FRONT: AFFIDAVITS OF MEANS~~

~~A: Article 25 Matrimonial Causes (Jersey) Law 1949.~~

B: Re L (1979) 9 Family Law 152

C: Croft -v- Moy (1971) 4 M.C. 392

D: Cann -v- Cann (1977) W.L.R. 938

~~E: Cameron v Archdale (1983) U.R. 10~~

~~F: Lewis v Lewis (1977) 3A.E.R. 992~~

G. Roberts -v- Roberts (1968) 3 A.E.R. 479

H. Payne -v- Payne (1968) 1 A.E.R. 1113

I. Cockburn -v- Cockburn (1957) 3 A.E.R. 260

J. Porter -v- Porter (1972) 117 Sol. Jo. 34