

4th February, 1988

29

IN THE ROYAL COURT OF THE ISLAND OF JERSEY  
MATRIMONIAL CAUSES DIVISION

Before: R. Vi J, Esq., Commissioner, Jurat Barker, & Jurat Le Boutillier.

BETWEEN:	L	<u>PETITIONER</u>
AND:	F	<u>RESPONDENT</u>
AND:	W	<u>CO-RESPONDENT</u>

Advocate R. A. Falle for the Petitioner

Advocate G. I. E. Gruchy for Respondent

S U M M O N S

We have considered the ancillary questions arising from a decision of the Court of the 15th January, 1988, in which the Court in an undefended suit exercised its discretion in favour of the wife, the Petitioner, and granted her a decree nisi on the ground of the husband's, the Respondent's, adultery with the Co-Respondent. The issues are raised by a Summons dated the 28th September, 1987, in which the wife seeks:-

1. THAT the wife and the husband jointly have custody of the two children of the marriage under the age of eighteen years namely:-
  - LE who was born in September 1969; and
  - MP who was born in June 1974 with care and control of the said children being vested in the wife.
2. THAT the former matrimonial home in St. Saviour be sold and that the net proceeds therefrom be paid to the wife absolutely.
3. THAT an equal division of the contents of the said former matrimonial home as are jointly owned by the wife and the husband take place.
4. THAT the husband be ordered to pay unto the wife such capital sum or sums as the Court shall consider just.
5. THAT the husband pay such maintenance in respect of the said children of the marriage as the Court shall consider just.
6. THAT the husband be ordered to pay such maintenance to the wife as the Court shall consider just.
7. THAT the Court make such other order as it may deem just for the proper and equitable distribution of the matrimonial property.
8. THAT the husband pay the wife's costs in all proceedings previous to the present summons of and ancillary to the presentation of the petition; item, the wife's costs of and ancillary to this present summons.

J  
J  
J  
J  
J

### CUSTODY

With regard to the two children, LE had attained the age of 18 years before the hearing. It was agreed between the parties that MP, who was born in June, 1974, should be in their joint custody and his care and control vested in the wife, and that the husband should pay for his maintenance, while he is in full time education, the sum of £3,000 per annum, payable monthly, and his educational fees. We so order. We add that decisions as to his education will be taken jointly by the wife and the husband. It was agreed that no difficulty was anticipated in arranging access.

### HOUSEHOLD EFFECTS

The husband expressed his willingness to allow the wife to take all the household effects in the matrimonial home, with the exception of articles which had belonged to his parents or grand-parents. This offer being accepted, we order that the husband may now remove his personal affects from the matrimonial home, at a time convenient to the wife, and that when the wife vacates the matrimonial home - a matter to which we later refer - she will leave behind such articles of furniture and household use as the husband obtained from his family.

The remaining heads of the summons dealt with the wife's claim in respect of the matrimonial home and generally for financial provision and, for the resolution of these matters, we heard evidence as to the history of the marriage and the means of the parties.

### THE HISTORY OF THE MARRIAGE

The parties were married in September, 1967. The husband's first wife had died in childbirth a year earlier, there being two children of that marriage, D, who had been adopted, and C, aged respectively seven years and one year at the time of the second marriage. The wife had been employed as a receptionist in the husband's car-hire business. She is now aged 41 years and the husband 60.

The wife stated that for some years the marriage was a happy one. There have been three children of the union, H, now aged 19, LE 18 and MP 13. The husband continued to be very active and involved in his business. The wife very soon had four children to look after, and later five. The family lived in comfortable homes, eventually in a large, handsome and well situated property, which was built and later extended to the joint design of the parties. Domestic help was always employed; a gardener and his wife. The husband was a kind father, and money was available for all needs. The husband was often away from home for short periods on business, in particular to Guernsey and England. This the wife understood and accepted. In 1976 or 1977, however, he began to visit the Far East, mainly Thailand and Hong Kong. She understood that these visits were for business purposes, and that he was having a motor boat built there. The boat was delivered in 1979, and the visits continued, as frequently as three or four times a year, and for three to six weeks at a time. Though the wife accepted that the visits were for business reasons, she says that she became increasingly unhappy at his continued and frequent absence, and found the responsibility of looking after five children, including two step-children one of whom was a teenager, a burden which she could not continue to carry. She tried to make her husband understand this, but says that he failed to do so, and in 1985 she told him that she could not continue with the situation as it was, and that she wanted a separation.

In 1986, in order to make it clear that she was serious, she told him she had seen a house which she thought would be suitable for her occupation. The house, in St. Clement, was in fact purchased by the husband as the wife requested, but she said she would not move until a formal separation had been signed.

Very soon after, in April 1986 she discovered that for some years the husband had had a relationship with the Co-Respondent, and later that year she instituted these proceedings. She has admitted that since 1983, including two holidays during 1983 and 1984, she has formed a relationship with another man, and that since that time she has committed adultery with him.

The husband is well known as one of the Island's most successful men of business. He inherited from his father a very small garage and by his own efforts and ability and, as he modestly put it, some good fortune, has built it into one of Jersey's largest business houses. He agreed that the last years of the marriage had not been happy. He did not think that either party was to blame. He travelled abroad widely, for pleasure rather than for business, had flown a private aircraft, and enjoyed using his motor-boat. He also had enjoyed entertaining. His wife would not come in the boat, and preferred to stay at home. Nor did she like entertaining. He had given up smoking, and his wife had not; he appreciated how difficult it was to give up smoking, but the atmosphere of smoke in the house worried him. In all, the matrimonial home had ceased to be an enjoyable place. They had come to live separate lives. He had thought they could have continued to do so, without breaking up the marriage or the home. In cross-examination he said that when first he had gone to the Far East it had been in connection with the boat and for other business. That other business had not, however, proved satisfactory, and he had withdrawn from it without profit to himself.

In Thailand, in 1979, he had formed an association with the Co-Respondent, and that association continued. He had assisted the Co-Respondent to purchase and develop property in Thailand. He had done it for her benefit, and not for his own. He had purchased a flat in Bournemouth for the Co-Respondent for £60,000 and had also established a Trust for her benefit during her life. When asked what amount of money was in the Trust, he was unwilling to say.

#### CAUSE OF BREAKDOWN OF MARRIAGE

The Court has had no hesitation in finding that the basic cause of the breakdown of the marriage was the husband's long lasting and continuing adulterous association with the Co-Respondent since 1979. His frequent absences in Thailand caused unhappiness and strain to his wife, even though she was not aware of what was going on. It is difficult to see how the atmosphere of the matrimonial home could have been otherwise than strained and unhappy when, for a period of years, the husband had been living a life of disloyalty and deceit.

We think it possible that the wife was indeed less ready to accompany her husband, less ready to entertain and, in general, less outgoing than she might have been; what is more important is that she has admitted to an adulterous association since 1983. This association seems only to have been known to the husband because of her request to the Court that discretion be exercised; no mention was made of it by the husband in his evidence. We consider that this association would not have been formed but for the strain imposed on the wife and, though it is conduct which we must take into account, was not in itself a significant cause of the breakdown.

#### THE MEANS OF THE PARTIES

The wife is not without means. She is an only child and as her father died at a relatively young age, she has inherited from grandparents. Her real property was valued by Mr. Peter Carlyle Le Gallais, an Estate Agent, who told us that his conservative valuation of her four properties was £546,000. This figure includes that of £305,000 for a reversionary interest in a property called LC, St. Saviour, the life interest of which is held by the wife's mother, who is 78 years of age; without the life interest, his valuation of that property would be £540,000. The wife has a similar reversionary interest in securities of a non-discounted value of £138,748.

In addition there are bank balances of £34,059, less overdraft of £18,453, and jewellery which the wife valued at £6,000. As to income, we were told that the gross rents amounted to £9,270 and bank interest to approximately £2,000. We were not told what was the investment income, nor, on the other hand, the interest on the overdraft, and these probably roughly equate. The husband had contributed £28,000 to the value of LC, by building two small houses on its land.

The main asset of the husband consists of shares amounting to 72.86% of A Ltd. The Company owns a number of subsidiaries concerned in Jersey, Guernsey and Southampton with the sale, hire and repair of motor vehicles, and the financing of hire purchase and home loans. The accounts of the Company for the five years ending November 30th, 1986, were made available to the Court. Two accountants were called to express an opinion on the value of the shares in the event of a hypothetical sale - Mr. Stephen L. Linney, of Arthur Young and Associates, called by the wife, and Mr. D. H. C. Hill, of Coopers & Lybrand, called by the husband. No shares in the Company have ever been sold, and they are not quoted on the Stock Exchange. Both accountants adopted the method of multiplying the earnings per share by a number derived from comparison with other Companies (the price earnings ratio). As, however, Mr. Linney chose a ratio based on what he regarded as appropriate Companies quoted on the London Exchange (10 to 14) and Mr. Hill a ratio based on the sale in Jersey of shares in two of the few Companies in Jersey of comparable size (5 to 7) the minimum price suggested in one case was £7.4m and in the other £3.7m. We find this selection of a ratio too uncertain an exercise for our use. Moreover a sale of the Company is only hypothetical. F firmly stated that he had no intention of selling his interest in the Company, and we are glad that this is so for the good of the family as a whole. The firm was founded by his father, some of the children are now working in it, and hold shares in it, and the wish of all must be that it long so continues. In considering what the firm is worth to F, we looked first at its assets and then at its annual profits.

In the last set of accounts, the consolidated balance sheet (p.4) shows net capital assets of £4,171,721 as at November 30th 1986. This however includes real property at cost (p. 4). Mr. Le Gallais told us that he had, again conservatively, valued these properties, though without entering the premises and without visiting Guernsey. His valuations were not challenged. His total (a second property on the Esplanade recently purchased for £350,000 is excluded as the money used is included elsewhere) amounted to £4,970,000. This exceeds the value at cost as shown in the accounts (£1,419,605) by £3,550,395. Adding this sum to the net capital assets shown, we arrive at a figure of £7,722,116. Applying the percentage holding of the husband (72.86) to this figure, the stake of the husband in the capital of the Company is £5,626,333.

The profits of the Company during recent years, as shown in the consolidated Profit and Loss Account, after taxation, have been as follows:-

		£
For year ending November 30th	1982	- 370,159
- do -	1983	- 441,113
- do -	1984	- 644,761
- do -	1985	- 748,944
- do -	1986	- 719,682

The husband stated that part of the success of the Company was attributable to his habit of ploughing a large part of the profits back into the business; and that the practice of motor manufacturers letting cars to hire-car operators at very little cost had added substantially to the profits of recent years, but that this remarkable, though welcome, practice might not long continue.

The husband also has a holding in an investment Company, B Limited, the shares of which are divided between A Limited (43%) the husband (14%) and another person (43%). The last accounts show capital assets of £791,186 and an annual profit of £68,510. In both capital and income the husband has a share of approximately one half.

The husband also owns property in his own name, valued both by Mr. Le Gallais and by Mr. C. E. Jones, of Broadlands Estates Ltd., an estate agent called by the husband. There is little difference in the valuations and, taking that of Mr. Jones, which was the lower, the seven properties (including the matrimonial home) are valued at £1,140,000.

Other assets of the husband were shown as follows:-

Personal deposit with	£	Limited, a subsidiary of the holding Company, £161,161, yielding annual interest of £14,214, though this should be ignored as most has been later used for the purchase of one of the properties included among those personally owned.
Shares	£27,270	
Agricultural land	£36,000	
Boat	£10,000	
Personal Bank Accounts	£4,000	approx

In all, the husband's assets cannot amount, in our view, to less than £10m., and he agreed in giving evidence that his income during the last year was approximately £343,000 made up of:-

Salary	£	40,000
Directors fees		4,000
Dividend from B		3,000
Dividend Interest from A		278,300
Interest from E		18,000
		<u>£343,300</u>

### LEGAL PRINCIPLES

Before making an Order regarding the matrimonial home or other real property, or for financial provision, Articles 28 and 29 of the Matrimonial Causes (Jersey) Law, 1949 require the Court to have regard to "all the circumstances of the case including the conduct of the parties and to their actual and potential financial circumstances".

The application of this Law has been considered by this Court in a number of cases, and we have been referred to F v. W. & H JJ.1987, Overland v. Overland and Cunningham JJ.1980 p. 233, and A v B and C JJ.1979 p. 125. Also to the English cases Wachtel v. Wachtel 1973 1 AER p. 829, and Preston v. Preston 1981 CA p. 41. Mr. Gruchy asked us especially to consider the Preston and Overland cases, as these involved wealthy parties.

In Preston, the wife, in different ways, had made a substantial contribution to the successful business of the husband, as well as looking after the home; in the present case, the wife looked after the home, but the business was a great success before the marriage, and she made no direct contribution to it thereafter. The husband's conduct, in Preston's case, was the cause of the breakdown. His assets were £2.3m, and the wife's £50,000.

The Judge ordered a lump sum payment of £600,000. Judges in the Court of Appeal thought this sum too high but, by a majority, decided that it was not so excessive as to warrant interference. In the Overland case, where the adultery of the husband appeared to be the cause of the breakdown, he was found to have assets of £1,390,000, and the Court found that he was likely to be able to raise other considerable capital assets. He was ordered to transfer his half share in one of the matrimonial homes and to make a lump sum payment of £150,000.

A relevant principle which emerges from these cases is that while a mathematical approach, e.g. one third part as a starting point, is sometimes useful, in cases such as these where there are very substantial means, the greater the means of the parties, the less is any mathematical formula of any assistance. And in the present case the wife can be described as well-to-do in her own right, and the husband as extremely wealthy.

The wife being married, as we have said, to a very wealthy man, she has enjoyed a comfortable life, though a busy one, and has lived in a large prestigious house, with domestic assistance and no financial problems whatsoever. Moreover, she is twenty years younger than her husband and as his widow could expect to be entitled to at least a third of the personal estate (including his interest in A and B) and a dower on his real property personally owned. This enjoyment and these expectations have been brought to an end, as we have found, primarily by the husband's misconduct. We consider that sufficient provision should be made for the wife to enjoy life to the same standard, and to do so without any financial worry. We must of course take account of her present means and expectations, which are not at all on the same scale as those of her husband, but which nevertheless amount in capital value, as we have noted, to approximately £700,000.

#### A HOME FOR THE PETITIONER

The wife having said that she no longer wishes to live in the matrimonial home beyond this coming summer, during which she would like the youngest child to enjoy its pool and other amenities, there is no question of making any order for the sale or transfer of that property. We order merely that she have its enjoyment until the 31st October, 1988, unless she wishes to leave it earlier. Save for structural repairs, she will be responsible for its proper maintenance during that period. There is, of course, the St Clement property, bought by the husband at the request of the wife. We cannot, however, reasonably direct that this must be her future residence. When she asked that this be bought for her use, she had not yet discovered her husband's association with the Co-Respondent, and we accept Advocate Falle's submission that she is entitled to occupy, with MP, a comfortable home, with garden, and sufficient rooms for the other children and guests to come to stay with her. We consider that she should have the sum of £300,000 for this purpose. Both Counsel have asked that financial provision also take the form of a lump sum payment which will therefore include this sum of £300,000, and both suggested what the correct lump sum should be. Advocate Falle said that "the sum of £1m came easily to mind". Advocate Gruchy thought that the sum of £250,000 to £300,000 would be fair.

Taking all the circumstances into account, we order that the husband pay to the wife the lump sum of £800,000, of which £400,000 is to be paid within one month and the balance of £400,000 within three months.

Advocate Falle asked that we order that interest be paid on the lump sums until payment. We are aware that such an order has been made in some cases. We also note, however, that in Preston the Court of Appeal rescinded such an order. Their major reason for doing so was that it was not authorised by the English statute. Nor, we note, would such an order be authorised by the Matrimonial Causes (Jersey) Law, 1949. The point was not argued before us, and we merely note it.

It suffices to say in this case that the timing of the instalments, and the financial position of the wife, make any requirements for the payment of interest unnecessary.

The costs of the wife in respect of all stages of the divorce proceedings will be paid by the husband. There was some discussion as to whether these costs should be taxed or be on a wider basis. We agree with the judgment of the Deputy Bailiff in the case of Mitchell v. Dido Investments Ltd. (JJ No.69 of 1987) in which he finds that taxed costs should be the rule unless there are very exceptional reasons for a wider order. We do not see any such circumstances in this case, and the costs will therefore be taxed.

fin  
eo  
s  
d

2nd February, 1988

fin  
eo

d

