

In the Royal Court of Jersey  
MATRIMONIAL CAUSES DIVISION.

216A  
121/86

In the year 1988, the third day of November.

BEFORE Peter Douglas Harris, Greffier Substitute.

Between

H

Petitioner

AND

G

Respondent

Referring to the decree nisi pronounced in this cause on the 17th June, 1988;

Upon hearing the oral evidence of the petitioner and the respondent and of a witness called by the petitioner and upon hearing the parties through the intermediary of their advocates, it is ordered:-

- (by consent) 1. That C, 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 and it is directed that the respondent shall, from time to time and by prior arrangement between the parties, have access to the said child;
2. That the respondent do pay, or cause to be paid, to the petitioner, as from the date of this order, the sum of fifteen pounds per week towards the maintenance of the said child until she has reached the age of sixteen years, or until further order;
3. That, with effect from the 1st day of January, 1990, the amount of maintenance payable by the respondent for the benefit of the said child shall be increased to £22 per week;
4. That all payments of maintenance due between the 1st day of July, 1988, and the date of this order, be suspended;
5. That the former matrimonial home, in St. Helier, do within three months hereof, vest in the joint names of the petitioner and the respondent (subject only to the consent of the Housing Committee);
6. That the said property be not sold until the said child reaches the age of sixteen years and thereafter, on sale, the net proceeds thereof be divided equally between the petitioner and the respondent;

7. That the petitioner be responsible for the payment of the States' Loan, Parish Rates; insurances, interior maintenance, repairs, and re-decoration and upkeep of the garden together with one-half of all exterior repairs both structural and decorative;
8. That after five years the division of responsibility for repairs and re-decoration be reviewed;
9. That the contents of the house, except for certain personal items of the respondent, do remain in the possession of the petitioner;
10. That the respondent do pay the taxed costs of these proceedings.
11. That after the vesting of the said property into the joint names of the petitioner and the respondent, the petitioner shall have exclusive use of the said property.

*P. Mannon*

Greffier Substitute.

The parties were married in 1982 after a period of co-habitation. Both had been previously married. There is one child, issue of the present marriage, C now aged 5 years.

The conduct of the parties was not raised on ancillary matters except in so far as it could establish the facts of the financial situation of the parties. However it is appropriate at this stage to say that the wife obtained a decree of divorce on the ground of the husband's cruelty. The former matrimonial home is in the husband's sole name, he having bought out his first wife's share at the time of the previous divorce. The wife, prior to her marriage to the husband, lived in a flat. She brought items of furniture to the new house but otherwise did not contribute to the purchase of the house except that by taking out a loan for £2000 enabled certain debts, largely incurred by the husband, to be repaid.

During the whole of the marriage the parties were dogged by severe financial problems, although a perusal of the sundry bundles of documentation produced in evidence showed that the major financial problems grew rapidly from early in 1986. The husband's affidavit of means deposed to debts totalling some £17000. His assets comprised the matrimonial home with an equity of some £50000. The house is presently occupied by the wife with the child of the marriage; lodgers are taken to supplement the income. The husband now lives in a flat with a co-habitee.

The husband's ability to meet his creditors, so he alleged in evidence, rested solely on the sale of the matrimonial home and a division of the net proceeds. He claimed that the debts of some £17,000 were largely incurred in general household expenditure. It is quite clear that his wages did little more than meet standing orders for various debts and it is probably correct when he alleges that the costs of general day to day living was met by an ever extending use of credit card facilities. This obviously got out of hand as is evidenced by the number of threatening letters received by the husband in respect of excesses in credit limits.

The husband claimed that the wife should share in the repayment of the debts because they related to general household expenditure. I cannot accept that this is a just claim. The wife has run the home; having a young child has precluded her from working except for the period up to 2 months prior to the child's birth. The wife's complaint in her petition of a lack of housekeeping money was not in the end contested by the husband. Unfortunately therefore no clear picture emerges as to the destination of the major part of the credit card drawings.

The husband's solution in the present case is that the net proceeds of the sale be divided between the parties as to  $\frac{1}{2}$  to the wife and  $\frac{1}{2}$  to himself: if I am to accept the claim that the debts of £17,000 fall to be met before a division of the net proceeds takes place then the wife would be lucky if she received

£25,000; this would be insufficient for her to purchase a flat for herself and the child and probably too much for her to be considered for subsidised housing. I am quite clear in my own mind that the interest of the child of the family is the principle factor to be considered even at the expense of the husband's immediate needs, in other words needs far outweigh resources in importance. The child must have a roof over her head, at least until she leaves school; the wife has, by agreement, the care and control of the child. She must also have the ability to maintain the child by supplementing her income by taking lodgers, a source of income which would not be available if she were to move into the rented sector. The wife has offered to be responsible for the payment of the States' Loan.

I am wholly satisfied that the solution put forward by the wife is the proper one in all the circumstances of the case. The husband will be committed to paying off his creditors for a few years yet but he would in due course of time benefit from the property which almost inevitably will increase in value over the years before it has to be sold.

I order as follows:-

1. by consent, joint legal custody of the child with care and control to the wife;
2. the husband to pay maintenance for the child at £15 per week until the end of 1989 when it will increase to £22 per week.
3. all maintenance payments due to be paid by the husband from the 1st July, 1988, to the date of this order, to be suspended. (this will in fact wipe out the husband's debt of some £200 due in respect of maintenance payments).
4. The property to vest in the joint names of the parties (subject to the consent of the Housing Committee) and not to be sold until the child reaches age of 16. Thereafter on sale, the net proceeds of sale to be divided equally between the parties.
5. The wife to be responsible for payment of States' Loan; rates and insurances, interior maintenance, repairs and redecoration and upkeep of the garden plus half of exterior repairs both structural and decorative. The responsibility for these ancillary matters to be reviewed after five years.
6. The contents of the house, except for certain personal items of the husband, to remain in the possession of the wife.
6. respondent to pay the taxed costs of the proceedings.