

F (The Wife) v G (The Husband)

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	12 June 2013
Neutral Citation:	[2013] JRC 110
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Text

[2013] JRC 110

ROYAL COURT

(Family)

Before:

W. J. Bailhache, **Q.C., Deputy**Bailiff, **and**Jurats Morgan**and**Kerley.

Between
F (the wife)
Petitioner
and
G (the husband)
Respondent

The Petitioner appeared in person on her own behalf.

The Respondent attended on his own behalf via telephone link.**Authorities**

F -v- G (Matrimonial) [\[2012\] JRC 215](#) .

Matrimonial — application by the respondent for a variation to the maintenance agreement due to a change of circumstances.

Bailiff

THE DEPUTY

- 1 This is an application by the respondent to reduce to zero the maintenance, which is payable in respect of the two children of the marriage, as from 1st July and also to have the maintenance which has been paid for the period from March to the end of June reduced so that, in effect, the petitioner will owe a sum of money to the respondent.
- 2 The application was first considered by us on 22nd March when it was adjourned to today's date in order that the respondent could have the opportunity of applying for British Citizenship or Polish Citizenship or seeking some other form of visa so that his employment status could be clarified for us. When the decision was given in March to adjourn to today's date the Court said this, our approach to fixing the maintenance for the children was that the respondent had agreed at the time of the original hearing to pay £300 per month per child; that the respondent is an able man who should be able to get employment if he puts his mind to it, and the Court thought that he would be able to get employment, and that as the W Trust assets were a source available to him, that was the W Trust could tide him over until he got that employment. That was the approach which the Court took when reaching its decision in October/November last year.
- 3 If I now just revert briefly to the position in November last year and the Court's judgment which was delivered on 16th November. At paragraph 15 we said this:—

“In the circumstances the respondent elected to give evidence and rely on his affidavits, which he did. He said in evidence that the sum of £600 by way of maintenance was offered, as part of his open position, having regard to his current income. If his circumstances improved, he would want to pay more. He intended to pay £600 per month whether he could afford to do so or not. He thought that the petitioner had access to funds, and that it would therefore be right to share the cost of their daughter's school fees.”

- 4 We have to say that we think that the decision to award £300 per month per child in

November last year was a reasonable, indeed very reasonable, decision. £75 per week for children of this age will not take them very far. Insofar as the W Trust assets are concerned, we have reviewed paragraphs 39–44 of the judgment of 16th November and we just repeat what is in paragraph 41:–

“The structure of these arrangements leaves us in no doubt whatsoever that the assets of the W Trust are resources available to the respondent.

The fact that the Trust was established some six days after the service of the divorce petition may or may not be a coincidence, but it has no bearing upon our finding.”

- 5 So as we have indicated, we expected the Trust to tide the respondent over until he obtained employment on the basis that it was and, as far as we are concerned is, a resource available to him and if it is a resource available to the respondent then it is a resource available to him to pay maintenance for his children. Now the respondent asserted before us that he had not been able to find employment, he had left the Island because he was required to do so and, although he had now received a visa which allowed him to return, part of the problem in returning was that he had to make appropriate declarations of solvency to the immigration authorities before doing so. He has no anticipated permanent, or indeed, temporary income at the moment; he wanted to put together a nest egg of some £7,000 which would help him to make the relevant declaration to the immigration authorities. He contended that his chances of finding appropriate employment were very much damaged by the publication of the judgment on the Jersey Law Website which was therefore available on a Google search on the internet. He also contended that he had a number of legal and other debts and that the petitioner had substantial assets available to her in the form of various trusts. In so far as the trusts for the petitioner are concerned, we have had regard to the K Trust which the Court had regard to in November last year, we see no reason to change the position in relation to the other trusts which were the subject of that judgment, and we have proceeded on the basis that that judgment remains the applicable position.
- 6 What we have left then is an application by the respondent to vary maintenance sums in circumstances where he has to show a change of circumstances. We accept that we would have expected the respondent to have obtained some employment before now and we think it is a great shame that perhaps his energies have been more focused on the divorce and on the matrimonial proceedings than on obtaining other employment. Nonetheless, that change of circumstance, the fact that we would have expected him to have obtained employment before now, is not a sufficiently significant change of circumstance for us to vary the original maintenance order that was made only in November last year, and indeed, made as a result of his own offer at that time. One of the reasons, and perhaps the most substantial reason for that, is that we did think at the time that the W Trust was a resource available to him and we consider that it still is and in those circumstances the fact that employment has not been obtained is not the overriding factor which it might otherwise be.
- 7 Accordingly we are not prepared to order that there should be any variation in the

maintenance which is payable and we certainly are not prepared to remit any maintenance that was due and has in fact been paid for the period from March to June this year. As a result the applications are dismissed. No costs are awarded and you have one month in which to appeal.