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S v S (2008)

[2008] 2 FLR 113; [2008] EWHC 519 (Fam)

19/03/2008

Barristers
Jane Rayson

Court
Family Division

Summary
A district judge had not overlooked the Matrimonial Causes Act 1973 s.25A in ordering, by way of ancillary relief, periodical payments on a joint life basis. While s.25A required the court to give careful consideration to the making of a term order, neither that section nor the observations in Miller v Miller (2006) UKHL 24, (2006) 2 AC 618 suggested that the court was required to depart from the overall requirement of fairness between the parties as reasonably perceived by the judge.

Facts
The appellant husband (H) appealed against an order resulting from an ancillary relief application made by the respondent wife (W). The parties had been married for 11 years and did not have children. H was an investment banker in London, earning between £193,000 and £343,000 per year. W had an earning capacity of around £15,000. During the marriage, the parties had split their time between a flat in London and a farm in Gloucestershire, where they kept horses. Horses had played a prominent part in W's life. Upon their divorce, it had been agreed that their assets of £2.8m, which included the sale proceeds of both properties and their pensions, should be split equally between them, so that their separate housing needs could be met, leaving W with a Duxbury fund for future income. It was accepted that the Duxbury fund was insufficient on its own. At a hearing before the district judge, H had expressed a desire to leave the city within 18 months and to move to the country and re-train for a different type of job. He had also expressed fears of redundancy. W had maintained that she needed to re-house herself in accommodation with enough land for her horses and sought a joint lives order, delivering periodical payments of £56,000 per year. H had argued that it was reasonable for W to put the horses out to livery and to buy a smaller property, thereby yielding a greater Duxbury income. He had offered periodical payments for five years. The district judge had found that H would probably leave London in three years and that as it was impossible to see further into the future, a joint lives order was the fairest outcome for both parties, leaving them to come back to court if their circumstances changed. He found that it was reasonable for W to continue to live in the way she had lived during the marriage for at least two to three years and ordered periodical payments of £50,000 on a joint lives basis. H submitted that the judge had failed to consider the Matrimonial Causes Act 1973 s.25A because in making a joint lives order rather than periodical payments for a term, he had allowed the structure of the periodical payments to be determined by his findings as to what it would be reasonable for W to earn. H maintained that resources

were not so plentiful to enable W the luxury of not working full time at the same time as spending the greater part of her capital fund on housing so as to fulfil her wish to accommodate her horses, which were an unjustified extravagance.

Held

HELD: Although the district judge had not referred to s.25A of the Act in terms, the overall context of the parties' dispute was the question of how far a clean break was feasible and whether a term or joint lives order was appropriate. His reasoning had been dictated by his view that he was unable to make a finding about when H would leave the City, which was critical to the likely level of H's future income. The district judge had been entitled to take that course if he regarded it as the fairest course, which he had stated that he did, as compared with the alternative of term periodical payments, which might result in unfairness to one or both parties. While s.25A required the court to give careful consideration to the making of a term order, neither that section, nor the observations of Baroness Hale in Miller v Miller (2006) UKHL 24, (2006) 2 AC 618, suggested that the court was required to depart from the overall requirement of fairness between the parties as reasonably perceived by the judge, Miller referred to. As long as H continued in his current role, the order would continue to be appropriate, but if H carried out his declared intention to move to the country, the judge had expressly recognised the need for a return to court. By giving W the means to retain her horses and the opportunity to enjoy them, the district judge had not promoted her standard of living at the expense of H, but had merely considered it fair, so long as H was able to finance it, that she continued to enjoy what had been such an important feature of their life together. If H was made redundant or acted upon his stated desire for an early retirement, then the horses would become an unjustifiable extravagance and W would be foolish not to start planning for her future immediately so that she could devise her own means of keeping the horses out of her own earning capacity if the level of H's income dropped.

Appeal dismissed

Permission

Lawtel