

Hvorostovsky v Hvorostovsky (2009)

**[2009] 2 FLR 1574 : [2009] 3 FCR 650 : [2009] Fam Law 1019 :
(2009) 106(31) LSG 18 : (2009) 153(30) SJLB 28 : [2009] EWCA
Civ 791**

23/07/2009

Barristers

Private: Jonathan Cohen QC

Court

Court of Appeal

Practice Areas

Financial Remedies

Summary

Periodical payments were revised upwards on an application for a variation where the single factor of greatest significance was the husband's greatly increased income.

Facts

The appellant former wife (W) appealed against a decision fixing the amount of her periodical payments on her application for financial relief. The parties were married for some 12 years. They had married in Russia and later moved to London. There were twin boys of the marriage who were of school age. The respondent former husband (H) was a successful singer. Ancillary relief proceedings had been compromised. In that year H's gross earnings were £552,000. He agreed to provide W with a budget of £113,000 for herself and the children. That was to be paid offshore to avoid United Kingdom income tax. Some years after the agreement W sought an increase. H's gross earnings had increased to £1.86 million per annum. The judge fixed W's periodical payments at £120,000 with £12,500 to each of the twins. School fees and extras were agreed to be paid by H direct. Thus the net cost to H amounted to £170,000 per annum. Since that could only be met from income remitted to the UK it would attract UK income tax. The grossed-up amount needed to meet the order amounted to £285,000 per annum. H had since remarried and there were two children of the second marriage. In broad terms W's income for herself and the children under the settlement amounted to approximately 30 per cent of what the husband was then earning whilst the judge's order left her with approximately 20 per cent. W submitted that the judge, having found that W had moved to London to promote her husband's career and was incapacitated by her commitment to the children and by her lack of qualification and her poor English from developing her independent career, failed to reflect that relationship-related disadvantage in his award of compensation.

Held

HELD: (1) The judge's award was undoubtedly and unexpectedly low, given the number of points that he

recognised went in W's favour, and did not fall within the generous ambit of his discretion. There was a lack of clarity in the crucial paragraph of his judgment in which he announced his conclusion. In allowing W nothing but a modest uplift on her needs as he found them, he seemed to have implicitly rejected that part of W's case that he had earlier seemed to approve. The judge did not stand back from the figures to judge the overall proportionality of his conclusion. In the reported cases by which he directed himself the utility of a percentage comparison between the original order and the order on variation was commended, *Lauder v Lauder* (2007) EWHC 1227 (Fam), (2007) 2 FLR 802 and *B v P* (2008) EWHC 112 (Fam), (2008) 1 FLR 742 considered. If he had performed that exercise he would have adjusted the award upwards. Having regard to the need for proportionality, the wife's periodical payments should be increased to £140,000 per annum and the child orders to £15,000 per annum. (2) On an application for variation the court should not rely on the judicial concept of "reasonable requirements" as a determinative or limiting factor in cases where a payer had, or acquired, an ability to pay more than the payee's financial needs even when they were interpreted generously and called "reasonable requirements", and should exercise its discretion by applying the words of the statute, *White (Pamela) v White (Martin)* (2001) 1 AC 596 HL considered and *Cornick v Cornick (No3)* (2001) 2 FLR 1240 Fam Div approved. Just as an income fall justified an application for downward variation, so an income rise justified an upward variation. In neither case was the outcome bounded by the family's standard of living immediately before the breakdown. It was logical that a payee was not precluded from deriving benefit from an increase in the payer's fortunes even if that resulted in the payee enjoying a higher standard of living than she or he did during the marriage. In the instant case the endeavour to assert a relationship-related disadvantage was unnecessary. The case was a paradigm variation of an original division of capital and expected future income. The wife was a whole life dependant. The fundamental changes of circumstances that had to be weighed in the judgment were the changes in the wife's budgeted needs and the changes in the husband's circumstances, principally his hugely increased earnings and a newly acquired second family. The exercise had to be guided by the language of the statute. The single factor of greatest significance was the husband's greatly increased income.

Permission

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