

DE v AB [2010]

[2011] EWHC 3792 (Fam)

30/11/2010

Barristers

Mark Johnstone

Court

Family Division

Practice Areas

Private Children Law

Summary

Appeal by father against an award under Schedule 1 to the Children Act 1989. Appeal partially successful.

Facts

C's parents had a brief relationship and separated prior to her birth. Her mother (M) had been employed prior to pregnancy with a basic salary of £70,000 plus bonus. On the back of one particularly good year, she took out a mortgage of £570,000 to purchase a property. By the time of the hearing before the district judge, significant arrears had arisen, with the mortgage now extended to 10 times her deemed earning capacity (£60,000), and costing £30,000 pa. The property had equity of approximately £98,000, but M also had debts of about £111,000. The district judge was clear that M needed to sell the property. M sought a lump sum at trial of £177,000 to cover her living expenses and costs.

C's father (F) worked in a financial company which he had started with two partners. He had been assessed by the CSA as earning £28,000 pa, but the district judge had considered this inaccurate and assessed his earnings at £100,000 pa. He assessed F's liquid assets at £358,000, which represented his equity in a property worth £1.2m. F offered a lump sum of £5,000 plus payments towards nannies' and school fees.

The district judge ordered that F pay £85,000, and ordered that F provide a trust fund of £250,000 to assist with C's housing on usual terms that the money resulted to F. He assessed M's mortgage capacity at £150,000, which would provide a total housing sum of £400,000.

On appeal, F submitted that the award of £85,000 was unfair, made without analysis, and failed to consider the impact on the father who was left with no available capital. He further submitted that it was not fair to order him to provide a housing fund. He offered a payment of £40,000.

Held

Baron J noted that a trial judge has a broad discretion and is not required to carry out a detailed

accountancy exercise, but considered that this judge been plainly wrong to fail to provide any analysis to explain how the figure of £85,000 (which she considered unfairly left F with effectively no capital) had been reached. She awarded M £40,000. She further determined that the trial judge had been justified in ordering the provision of a housing fund of £250,000 from F's equity of £358,000, and that such order was unappealable. In criticising the positions and attitudes of both parties, she made no order as to costs.

Permission

Family Law Week 