

P v P (2013)

[2013] EWHC 4105 (Fam)

20/12/2013

Court

High Court (Family Division)

The appellant husband (H) appealed against part of an order made in financial remedy proceedings following divorce. H, aged 55 at the date of the instant hearing, was the managing director of a bank. The respondent wife (W), aged 43, had been a legal secretary but had not worked for 15 years. The parties had cohabited since 1992 and married in 1997. H and W had separated in 2011. There was one child of the marriage, born in 1993, who lived with W. In the financial years to April 2011 and April 2012, H had a gross annual income of £250,000 and had received discretionary bonuses of approximately £225,000 each year. The order provided for W to receive periodical payments of £3,750 per month and a sum equal to 25 per cent of H's annual bonus. A sale of the former matrimonial home was in progress and was likely to result in W receiving £454,000 and H £50,000 pursuant to the terms of the order. The District Judge imposing the order had noted that W's claimed monthly budget of £6,352 was based on the costs of the substantial matrimonial home and set a budget of £4,250 per month, attributing to her an earning capacity of £500 per month. H appealed against the periodical payments order and against the order providing for the payment to W of 25 per cent of his annual bonus. H submitted that the District Judge had approached the case on a "sharing" rather than a "needs" basis, and that the continuation of a share of bonuses after the end of the marriage could only be ordered as part of a needs assessment.

The District Judge had undoubtedly regarded H's bonus payments as an integral part of his periodical payments order. On a proper reading of the order, it was intended to be made wholly in terms of maintenance requirements and not in relation to a continuing "share" of H's bonus separately from maintenance. Had there been more income and less bonus, the basic maintenance award would have been higher. As it was, the District Judge had made a fair order for maintenance which met W's basic needs. As he had been unable to quantify the level of bonus in a way which would have allowed him to specify a figure with which to "top up" the basic maintenance figure, he had had to use a percentage. It could not be said that such an approach was wrong, [AR v AR \(Treatment of Inherited Wealth\) \[2011\] EWHC 2717 \(Fam\), \[2012\] 2 F.L.R. 1](http://www.lawtel.com/MyLawtel/Documents/AC0130302) considered. However, the District Judge had erred in failing to identify a figure which would represent W's maximum reasonable maintenance entitlement taking into account all the circumstances of the case, namely a cap. Where the bonus represented such a significant part of the total income, the proper approach would have been to calculate a total figure for maintenance which covered W's ordinary expenditure together with a sum to provide for additional, discretionary items not reflected in her annual budget. The court should then make a monthly order to be paid for from salary with the balance to be expressed as a percentage

of the net bonus up to a stated maximum each year. Such orders could not be calculated with arithmetical precision because of the inherent uncertainty of bonus payments. The appeal therefore succeeded to the extent that the District Judge had failed to set a cap beyond which H would not have to pay W 25 per cent of his net bonus. A fair cap was set at £20,000 per annum (see paras 30, 32, 34, 38-40, 42, 47 of judgment).
Appeal allowed in part

When ordering maintenance payments following a divorce in a case where the husband's income comprised both salary and a substantial bonus, the proper approach was to make an order which met the wife's basic needs out of salary and then to use a percentage of the bonus to "top up" that figure. However, to take account of the inherent uncertainty of bonus payments, it was necessary to set a cap beyond which a percentage of the bonus would not have to be paid.

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