

C v C (2014)

AC9101365

25/11/2014

Barristers

Nicholas Fairbank

Court

Court of Appeal (Civil Division)

Practice Areas

Financial Remedies

Summary

The judge in financial remedy proceedings had done the best he could with the inadequate financial information provided by the parties, in particular the wife, who had never properly identified her needs or those of her children. She could not demonstrate that the judge's findings of fact were plainly wrong.

Facts

The appellant wife (W) appealed against a decision in financial remedy proceedings following her divorce from the respondent husband (H).

From the time H and W got married, W had not worked for financial reward. H was a general practitioner in partnership with his parents, and an NHS administrator, as well as being involved in a property business. H and W had three children who lived with W after their parents' separation. At the time of the separation, they were living in expensive rented accommodation and the children were at private school. W's case was that H was principally a property entrepreneur and had not disclosed the extent of his assets to the court. She claimed a lump sum of £2 million for a home plus school fees and periodical payments of £84,000 per year. H's position was that W's claim was not sustainable in relation to his means. He offered £10,000 per year in periodical payments. The judge found comprehensively against W. He found that H did not have the assets that she contended he did, and that her Form E, in which she had set out her and the children's needs, did not provide enough information to analyse. He ordered that W receive the £106,000 equity in the matrimonial property, which represented the only remaining asset of the marriage. The judge allowed H to keep his NHS pension, but ordered him to retain the liability for approximately £900,000 of debts that he and W had accrued in the marriage. H was also ordered to make periodic payments of £3,000 per month, which was half of his income.

W contended that the judge had not evaluated her needs or those of her children. She submitted that the judge should have found that H's parents would continue to support him to the degree they previously had, and that H could maximise his earnings.

Held

W's financial information before the court had been woefully inadequate. There was no structured budget, only a reliance on personal high-end spending. The instant court had refused to admit a revised statement of her needs, which comprehensively failed the test in *Ladd v Marshall*. H's evidence was little better, although he had conceded that the spending had to stop. W had never really identified her needs or those of the children. The court could not redistribute that which did not exist or was unlikely to exist. W had asserted at the start of the trial that H had earnings of £400,000, which she revised to £300,000 by the end. The judge could not rely on that. His treatment of W's needs was opaque, but that was because the information he had was so unclear. He could not invent a case; there was no material sufficient for him to draw inferences. It would have been better if both parties had properly completed their Form Es. The case that W had put on appeal was materially different from her case below. She had abandoned the extravagant claims. The instant court could not substitute its findings of fact unless the judge could be shown to be plainly wrong. W could not demonstrate that. Her suggestion that H could increase his earnings had not been tested by cross-examination, and was no more than a hypothesis. The judge had done what he could with the little assistance he had received from W.

The judge in financial remedy proceedings had done the best he could with the inadequate financial information provided by the parties, in particular the wife, who had never properly identified her needs or those of her children. She could not demonstrate that the judge's findings of fact were plainly wrong.

Permission

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