

SS v NS (2014)

[2014] EWHC 4183 (Fam)

10/12/2014

Barristers

Stephen Lyon

Court

Family Division

Practice Areas

Financial Remedies

Summary

The court gave guidance on the principles relevant to an application for spousal maintenance.

Facts

The applicant wife (W) applied for ancillary relief against the respondent husband (H).

W had lived with H since 2002. They had three children and had married in 2007, but separated in 2013. The children were privately educated. H had worked for a high profile bank, but had moved to a less challenging role in another bank after recovering from cancer. W had begun working part-time since the separation and was training as a Pilates instructor. The matrimonial assets were valued at over £3 million, and included unvested shares from H's employers. W commenced divorce proceedings and made a financial claim.

W submitted that she should receive spousal maintenance of £60,000 per annum for an extendable term of 27 years, and an additional 30 percent of the full value of H's net bonus, after school fees were deducted, for as long as H received a bonus.

Held

(1) The relevant principles in an application for spousal maintenance were: (a) an award was properly made where the evidence was that choices made during the marriage had generated future needs for an applicant. The duration of the marriage and the presence of children were pivotal factors; (b) an award should only be made by reference to needs, save in the most exceptional cases where it could be said that the sharing or compensation principle applied; (c) where the needs were not causally connected to the marriage, the award should generally be aimed at alleviating significant hardship; (d) the court had to consider a termination of spousal maintenance with a transition to independence as soon as it was just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of not undue hardship in transitioning to independence was acceptable; (e) if the choice between an extendable term and a joint lives order was finely balanced,

the statutory steer should militate in favour of the former; (f) the material standard of living was relevant to the quantum of spousal maintenance, but was not decisive. That standard should be carefully weighed against the desired objective of eventual independence; (g) the essential task was not merely to examine the individual items in the applicant's income budget, but also to look at the global total and ask if it represented a fair proportion of the respondent's available income that should go to support the applicant; (h) where the respondent's income comprised a base salary and a discretionary bonus, the applicant's award might be equivalently partitioned with the needs of strict necessity being met from the base salary and additional, discretionary items being met from the bonus on a capped percentage basis; (i) there was no criterion of exceptionality on an application to extend a term order. On such an application, the original order's implicit premise, that it was impossible for the payee to achieve independence, should be examined; (j) on an application to discharge a joint lives order, the original assumption that it was too difficult to predict eventual independence should be examined; (k) if the choice between an extendable and a non-extendable term was finely balanced, the decision should normally be in favour of the economically weaker party, Miller v Miller [2006] UKHL 24, [2006] 2 A.C. 618 and Purba v Purba [2000] 1 F.L.R. 444 followed, H v W (Cap on Wife's Share of Bonus Payments) [2013] EWHC 4105 (Fam), [2014] Fam. Law 445 and McFarlane v McFarlane [2009] EWHC 891 (Fam), [2009] 2 F.L.R. 1322 considered (see para.46 of judgment). (2) A core spousal maintenance of £30,000 per annum was to continue for an extendable term which expired when the youngest child turned 18. The term was extendable in the event that W, as the weaker economic party, fell on hard times which justified further support from H. H was to pay school fees and child support, the liquid pool of assets was to be divided, the matrimonial home sold, and the pension shared equally. H also had to pay 20 per cent of his net after-tax annual bonus until 2021. If any part of the bonus was deferred, the payment to W was to be equivalently deferred to the time when that part vested. The term was non-extendable as it would not be just for W to share in H's bonus after 2021 (paras 67-69).

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Permission

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