

H v W (2013)

[2013] EWHC 4105 (Fam) : [2015] 2 FLR 161 : [2014] Fam Law 1519

20/12/2013

Barristers

Mark Johnstone

Court

Family Division

Practice Areas

Financial Remedies

Appeal in financial remedy proceedings against an award in favour of a wife which included 25% of the husband's future bonuses. Appeal allowed and cap imposed of £20,000 pa.

The appeal, brought by the husband, centred on the joint lives order requiring H to pay W maintenance in the sum of £3,750 pcm plus 25% of H's annual net bonuses (also joint lives).

At the date of the hearing H was 43 and W was 55. The total period of cohabitation had been 19 years. The single child of the marriage was now adult. H was the managing director of a bank, earning £250,000 gross plus a bonus of £225,000 in the year ending April 2011. In the year ending April 2012 H had earned £250,000 gross plus a bonus and cash deferral award of £195,750, in addition to £18,000 in shares. The husband gave gloomy predictions for his next bonus, but it turned out that H received (between judgment and appeal) approximately £200,000. W for her part had not worked for the last 15 years.

In giving judgment, DJ White considered that following a long marriage W was entitled to a "share" of H's full income, albeit that this should be curtailed to 25% going forward as she would be making no contribution. In a supplementary judgment, refusing permission to appeal, DJ White framed the award as maintenance to meet W's "basic" needs, with the share of H's bonuses going to a more generous interpretation.

In giving judgment, Eleanor King J was not satisfied that the district judge had fallen into error by "sharing" income, as opposed to utilising it to address needs. Given his inability to quantify H's bonus, he was driven to using a percentage to "top up" W's basic maintenance. Such an approach could not be said to be, in itself, wrong:

"In my judgment, where the family income is routinely made up of salary and bonus and the bonus represents such a significant proportion of the total that the Judge is driven to making a convention monthly order for a sum less than that which he would otherwise feel to be appropriate... he may well

provide for a part of the W's maintenance to be paid from the bonus. Such payment, given the intrinsic uncertainty of bonuses, can only be expressed in percentage terms." [Per Eleanor King J, §38]

Her Ladyship identified the proper approach as being to calculate two figures, one for ordinary expenditure and another for "additional, discretionary items which will vary from year to year and are not reflected in [the] annual budget". A monthly order could then be made for a fair sum to be paid from salary and the balance to be expressed as a percentage of bonus.

Her Ladyship did, however, consider that the learned district judge erred in failing to identify a figure to meet W's maximum reasonable maintenance entitlement and impose a cap:

"The inherent uncertainty of bonus payments provides, in part, the reason why the setting of a cap is essential in order to avoid the unintentional unfairness that which may arise as a consequence of a wholly unanticipated substantial bonus paid to the H."

Her Ladyship therefore allowed the appeal and exercised her discretion to impose a cap of £20,000 pa.

Permission

 **Family Law Week**