



Spousal maintenance claims: different jurisdictions, different approaches

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What is spousal maintenance?

- One spouse provides ongoing financial support to the other partner
- Section 74 Family Law Act 1975
- Can be a lump sum, periodic sum or satisfied by transfer of property
- Proceedings must be commenced within 12 months of a decree nisi becoming absolute unless leave of the court is granted

Types of maintenance

- Two types of temporary spousal maintenance orders:
 - Urgent
 - Interim
- Final order
- *Clauson and Clauson* (1995) FLC 92-595

A 'clean break'

- S. 81 Family Law Act 1975 – duty on the court to end financial relations between parties
- Categorisation of marriages
- *Bevan and Bevan* (1995) FLC 92-600
- Feminisation of poverty: *Mitchell and Mitchell* (1995) FLC 92-601

Criteria for spousal maintenance order

- Threshold requirement that one spouse is unable to support themselves adequately
- Reasonableness of available work: *N v N* (1997) FLC 92-782
- Court must consider the entirety of the Applicant's financial circumstances
- High Court: *Hall and Hall* [2016] HCA 23

Needs and capacity

- If threshold is crossed, court must enquire as to:
 - A consideration of the reasonable needs of the applicant; and
 - A consideration of the capacity of the respondent to pay

When does an order end?

- In theory:
 - when the payee dies
 - when the payee remarries
 - when the payer dies
- Limited time orders: *Rosati v Rosati* (1998) FLC 92-804

Varying an order

- Court has the power to discharge, suspend, revive or vary an order
- *Vautin and Vautin* (1998) FLC 92-827
 - Married 1971 and separated 1989
 - 3 children aged 18 to 23
 - Parties agreed orders in 1991 and wife sought variation in 1998
 - Claim succeeded

England

- Clean break v joint lives or a 'meal ticket for life'
- In court decides to make a maintenance order, must consider imposing a term sufficient to allow the financially weaker party to achieve financial independence without undue hardship
- Recent move away from joint lives to fixed term
- Regional differences

SS v NS (Spousal maintenance) [2014] EWHC 4183

- Stay at home wife was 39 and banker husband 40
- Three children
- Order: equal division of capital and spousal maintenance of £30,000 until the youngest child was 18 plus a capped percentage share of the husband's bonus for 6 years
- Mr Justice Mostyn's comments

Wright and Wright [2015] EWCA Civ 201

- Husband an equine surgeon
- Wife a stay at home mother
- Children aged 10 and 16
- Original proceedings in 2008 - joint lives order in wife's favour
- Varied in 2012 and upheld on appeal
- Was an expectation that the wife would find a job and contribute to the household expenditure

Implications

- Query rise in number of husband's going to court to reduce or cancel their existing maintenance orders
- Terms 'transitioning to independence', 'acceptable degree of hardship' and 'term orders' will be heard more in the courts

Needs based approach

- Key concept for determining a maintenance order is 'needs'
- Juffali v Juffali 2016 EWHC 1684 (Fam)
- Her annual 'needs' included:
 - £40,000 for a new fur coat
 - £83,000 for 15 new cocktail dresses
 - £80,000 for a ball gown
 - £58,000 for 72 luxury handbags
 - £23,000 for 6 casual handbags
 - £4,000 for 15 pairs of sunglasses
 - £2.1million for travel, including £600,000 for private jet charters

Needs based approach

- Juffali's actual worth was disputed – he said £113.8million and she said £8 billion
- Estrada received £75 million, including a £53 million cash payment
- Mrs Justice Roberts:
 - marital standard of living is relevant to the amount of spousal maintenance but not decisive
 - standard of living should be carefully weighed against the desired objective of eventual independence
 - A party cannot expect to replicate the marital standard of living going forward

Other jurisdictions

- France – compensatory payment on separation but generally no ongoing maintenance
- Scotland – maintenance payments for maximum of 3 years
- Canada – maintenance calculated by formula

Implications

- If there is a choice of forum, consider it carefully



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