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JUDGE RULES DIVORCED WIVES TO GET A JOB… OR PERHAPS NOT?

by Advocate Victoria Myerson

The topic of spousal maintenance has made the front page and headlines in several national newspapers and caught the attention of thousands of divorcing couples throughout the UK and Channel Islands, with titles such as "**Get a Job Judge Tells Ex Wife**" or "**Divorce Laws Should be Tougher on Women**".

Prior to the seminal case of *White v White* [2001] 1 AC 596 ancillary relief practice was to provide for the financially weaker party's (usually the wife's) "reasonable needs". In other words, once the wife's financial needs were satisfied, the family's remaining available assets were for the husband to keep. The case of *White v White* ended this approach, with the Court finding that there should be no bias in favour of the money-earner or against the home-maker/ child-carer as each contributes equally to the family. As a result, which party earned the money and built up the assets became largely irrelevant, and therefore, there would be no good reason why a wife should be confined to her needs, leaving the husband with the much larger balance of the family assets. *White v White* therefore represented a sea change in the approach of the Court to capital division. Case law since *White v White* has continued to demonstrate a trend towards greater equality in the distribution of capital on divorce.

THE MEAL TICKET: IS THIS THE END?

Inequality with respect to on-going financial support after divorce has (until very recently) remained. In this context however, the disadvantaged party was often the financially stronger one. Historically, on divorce, the wife (more often than not the homemaker) required on-going financial support (in the form of "spousal maintenance") for the parties' joint lives, a concept which has been colloquially referred to as a 'meal ticket' for life.

However, in recent years the joint lives order has been increasingly viewed by the Courts, the profession (and undoubtedly by many of the husband's concerned) as an out-dated concept, no longer applicable to modern life, particularly as wives today often have an earning capacity. This view is encapsulated in the recent English case of *SS v NS (Spousal Maintenance)* [2014] EWHC 4183 which marks a significant shift by the Courts from making joint lives orders towards (extendable) term maintenance orders. Where a joint lives spousal maintenance order is made the onus is on the payer (financially stronger party) to seek a variation should they wish the order to be amended, or even cease due to a change in financial circumstances. Following *SS v NS (Spousal Maintenance)* it is now anticipated that the courts will be more likely to order spousal maintenance restricted to a particular term with the onus on the payee (financially weaker party) to make an application that the term be extended.

The husband and wife in *SS v NS (Spousal Maintenance)* were aged 40 and 39 respectively. They had three children, all under the age of 12 at the time of trial. The husband worked in the banking industry, and the wife had been the primary carer of the children since the birth of the parties' first child, but had obtained part time work at a gym since the parties separated in 2013, and was training to be a Pilates instructor. The parties agreed that this was a case in which it was appropriate for a spousal maintenance order to be made. The dispute related to the level and duration of those payments. The husband sought an order that spousal maintenance be payable to the wife at the rate of £24,000 for the first 12 months, reducing to £18,000 per annum thereafter for four years, decreasing to £12,000 per annum for a further six years, after which spousal maintenance would cease. In contrast, the wife sought (among other things) spousal maintenance of £60,000 per annum, index linked for 27 years. The Court provided useful guidance, the key element of which was the importance of allowing parties to transition to financial independence. The Court stated: "in every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable." The Court clarified this further by stating that spousal maintenance should therefore be ordered on a term (as opposed to joint lives) basis "unless the payee would be unable to adjust without undue hardship". In addition, the Court stated that where the choice between an extendable term of spousal maintenance or a joint lives order is "finely balanced", although statute steers the parties towards an extendable term order, the decision should "normally be made in favour of the economically weaker party". The wife in this case was ultimately awarded £30,000 per annum index linked, for an extendable term of 11 years.

LARGE MAINTENANCE PAYMENTS ENCOURAGE THE 'WAG' LIFE

Baroness Deech, Chair of the Bar Standards Board in the UK and member of the House of Lords has been vocal on the issue of spousal maintenance, and has suggested that generous maintenance payments convey the wrong message to young women that they need not concern themselves with getting a good education "or a degree or taking the Bar course" but rather that they should bag themselves a rich footballer.

FROM JOINT LIVES TO "GET A JOB"

The trend towards financial independence is also prevalent in the very recent case of *Wright v Wright* [2015] WCA Civ 201, heralded as a further blow to the antiquated joint lives order. Mr Wright, a 59 year old equine surgeon and Mrs Wright, 51 year old former legal secretary had two children (aged 16 and 10 by the time the case was put before the Court of Appeal). The parties had divorced in 2008 after 11 years of marriage, whereupon the court ordered the £1.3 million former matrimonial home be sold, with the proceeds being divided equally. Mrs Wright purchased a £450,000 home mortgage free with her share of the proceeds and Mr Wright was ordered to pay his ex-wife £33,200 per annum in spousal maintenance, £20,800 per annum child maintenance and school fees (a total of £75,000 per annum). Last year Mr Wright asked the High Court to reduce his maintenance payments. He argued that it was not fair that he should be expected to continue to support his ex-wife indefinitely whilst she made no effort at all to find employment, and that the current

arrangement would become unaffordable following his retirement at 65. The wife argued that there should be no adjustment to her spousal maintenance. The High Court found that the wife had been put on strict notice that she was expected to make a contribution to her own maintenance, and stated that there was no good reason that she had not secured employment following the parties' separation. As such, the High Court ordered that Mrs Wright's spousal maintenance should cease following a tailing off period over the next five years leading up to Mr Wright's retirement. Mrs Wright appealed but was unsuccessful. The Court of Appeal stated that it was "imperative that she take immediate action to contribute financially to her own future". In other words, Mrs Wright was told to go out to work and support herself, like so many other women with children.

Strong words, and great headline making material. But the case cannot be taken in isolation. The Courts will continue to consider each case on its own facts, taking into account all the circumstances, including the parties' ages, earning capacity and health. So although financial independence is a worthy aim, it will not be a realistic one in every case, and as a result, while a joint lives order may become a rarer edict, it will not become a wholly obsolete one.

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