

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
 CAUSE NO. D27 OF 1989

BETWEEN: KENT EDVAL GREEN                    PETITIONER  
 AND:     ANN MARIE GREEN                    RESPONDENT

Mr. Timothy B. Shea     - for Petitioner  
 Ms. Eileen Maierhofer - for Respondent

RULING

By an Order of the 29th September, 1989 for ancillary relief pending suit it was ordered by and with the consent of both the petitioner and the respondent that :-

"2. The Respondent continues her employment with Finiterre Ltd."

The applicant who is the petitioner, now applies to have the order of the 29th September, 1990 varied by discharging paragraph 2 thereof. The discharge of that paragraph was objected to on its merits by the respondent. The latter also objected to its discharge on the grounds that:

1. Under the Matrimonial Causes Law ("the Law") the Court has no jurisdiction to vary an order made pending suit.
2. The applicant being in arrears with his maintenance payments, the application should be refused even if it were one the Court might entertain.

The Law expressly provides in Section 23 for the variation of ancillary orders made at the time of pronouncing a decree but is silent in respect of the variation of orders pending suit. I do not however consider that the Law's silence in relation to the variation of orders pending suit results in the Court not having jurisdiction to vary such orders. Until

decree absolute the cause is before the Court from which it follows, I think, that the Court has jurisdiction to vary any order it may make pending suit. Consequently there is strictly no need for the Law to make provision to that effect. On the other hand as after the decree absolute the cause is at <sup>an</sup> end there can be jurisdiction to vary only if the Law so provides.

In Hardkinson v. Hardkinson (1952) page 285 the so-called rule that a party in contempt cannot be heard or take proceedings in the same cause until he has purged his contempt, was considered by Lord Denning M.R. He held that in the modern application of the rule ~~Lord Denning M.R.~~ the Court has a discretion whether or not to hear the party. As he explained at page 298:

'I am of opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.'

In my view the fact that in this instance the husband is in arrears with the maintenance payments would not justify my refusing to hear him.

I turn to consider the merits of the application.

The circumstances which played a major role in the fashioning of the consent order in this case, were that the wife was gainfully employed and her continued employment could reasonably be assured by the husband. Consequently the sum

ordered to be paid as maintenance by the husband was less than would otherwise have been the case. Those circumstances will remain unchanged at least until the end of December 1990 by which time a final order may have been made as the matter is due to be heard by the Court on the 19th December, 1990. Whilst those circumstances remain unchanged there have been two developments which may affect them. One is that the company by which the wife is employed is in financial trouble and the husband whose company it largely is intends to take over the management of the company. The other is that the husband is in arrears with his payments of maintenance.

In favour of the discharge of paragraph 2 of the order, Mr. Shea submitted that prima facie the provision was bad as it dragged into the contest between husband and wife a third party that had no interest in the outcome of that contest. He further submitted that in arranging for the continued employment of the wife, an objective of the order had been that husband and wife would work for different companies so as to avoid emotional problems at the work place. Consequently if the wife continued to be employed by the Company which the husband now considered he must manage to put it on a sound financial footing that objective would not be secured.

When dealing with an application for the variation of a consent order I proceed on the basis that the order in relation to which the application was made was correctly made. Therefore it seems to me that Mr. Shea's submission that the order is bad in so far as it seeks to continue the wife's employment in a company controlled by her husband, is not one that I should accept. Indeed, the fact that the husband is in arrears with his maintenance payments is cause for continuing the wife's employment with Finiterre Ltd. Mr. Shea, however, submitted that there has been a change of circumstances since the order was made. Namely that Finiterre Ltd needs to be managed by the husband. Consequently emotional conflicts between husband and wife at the work place which the order sought to avoid become a present risk. I acknowledge the risk but I do not think it is as

real as it is made<sup>out</sup> to be. At present the husband has possession of the books of the company and employs an auditor who keeps a record of the sales for the husband. It has not to my mind been made out that the husband's physical presence at the business place is a necessity. Further, as the hearing for a final order is scheduled in less than a fortnight such risk as there may be necessarily become minimal.

For the foregoing reasons the application is dismissed.

Sir Denis Malone