

Roxar v Jaledoust (2017)

[2017] EWHC 977 (Fam)

28/04/2017

Barristers

Rachel Chisholm

Court

Family Division

Practice Areas

Financial Remedies

Application to discharge or vary a periodical payments order which provided for payment on a joint lives basis.

The husband applied to discharge or vary a periodical payments order made in December 2010. The order required him to pay global maintenance of £2,250 pcm on a joint lives basis.

At first instance, after a contested hearing in December 2015, a deputy district judge varied the level of ongoing periodical payments to £1,750 pcm.

The husband appealed.

The appeal came before HHJ Hess in April 2016 who set aside the order and directed a re-hearing before him which took place in September 2016. Prior to the re-hearing the husband disclosed, for the first time, the value of his NHS pension (£194,000) and the wife applied to enforce the arrears of maintenance.

HHJ Hess varied the periodical payments order as follows:

1. With effect from 1 November 2015, quantum of the payments was varied from £2,250 pcm to £2,000 pcm.
2. With effect from 1 November 2016, the payment was divided into two parts: the sum of £1,300 pcm to be paid on an ongoing basis and the sum of £700 to be paid for four months, during which time child maintenance was to be agreed, failing which an application to the CMH would have to be made.
3. With effect from March 2020 (6 months after the youngest child's 18th birthday) the figure of £1,300 was to reduce to £850 pcm to continue until the husband's state retirement age.
4. There would be a pension sharing order for 50% of the husband's NHS pension.
5. The arrears of £19,000 were secured by way of a charge on the husband's property.

The husband appealed, inviting the court to discharge the periodical payments order and achieve a clean break between the parties.

Appeal before Baker J

The appeal centred upon HHJ Hess's treatment of the parties' respective incomes, earning capacities and liabilities.

In each respect, Baker J held that the analysis carried out by HHJ Hess was clear and comprehensive:

Income - the court had been entitled to base the husband's likely future income on that received in the previous year.

Earning capacity - HHJ Hess had been justified in concluding from the husband's oral evidence that he had an unexploited earning capacity. HHJ Hess cited the following passage:

"it is totally right to say that I've taken my foot off the throttle. I don't see why I should pay my ex-wife what I do. I don't see any benefit to myself ... "

Debts - HHJ Hess was entitled to conclude that the existence of a debt of £38,000 to his brother's company had not been established to the requisite standard of proof. The one-paragraph letter, upon which the husband sought to rely, was insufficient.

Baker J further held that the additional evidence filed by the husband prior to the appeal before him was insufficient to justify the court disturbing HHJ Hess' careful evaluation of the husband's income and earning capacity.

The appeal was dismissed.

Permission

 **Family Law Week**