



Neutral Citation Number: [2021] EWCA Civ 1

Case No: B6/2020/0235

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL FAMILY COURT
HHJ OLIVER
BV19D08227/ZC19F04012

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/01/2021

Before:

LADY JUSTICE MACUR
LORD JUSTICE MOYLAN
and
LADY JUSTICE ASPLIN

Between:

Amita Rattan Appellant
- and -
Tushar Kuwad Respondent

The Appellant Wife in Person
Mr J Swift (instructed by Fletcher Day Ltd Solicitors) for the Respondent Husband

Hearing date: 2nd December 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am 11th January 2021.

Lord Justice Moylan:

1. This is a second appeal. The wife appeals from the order made on 6th January 2020 by His Honour Judge Oliver (“the Judge”) by which he allowed the husband’s appeal from a maintenance pending suit order of £2,850 per month made by Deputy District Judge Morris (“the DDJ”) on 1st October 2019.
2. The Judge set aside the order principally on the basis that the DDJ had “failed to apply the law appropriately” in that she had not undertaken any “critical analysis of the wife’s needs”, in particular as to which items included by the wife comprised her “immediate expenditure needs”. In addition, although the Judge was “sure there is a need for maintenance”, he did not consider that he was in a position to determine what alternative amount should be ordered.
3. This case has a very regrettable procedural history. This probably, in part, reflects the fact that the wife has been acting in person. However, it is an understatement to say that this appeal has not been addressed with appropriate expedition. Delays occurred in the required documents being filed but, in hindsight, this should not have delayed the progress of the appeal for as long as they did. In addition, the final financial remedy hearing has been very substantially delayed making the issue of maintenance pending suit even more significant than it might otherwise have been.
4. The wife’s grounds of appeal raised a broad range of issues. I gave permission to appeal because I was persuaded that the appeal raised an important point of principle as to the approach which the court should take to the determination of an application for maintenance pending suit. I was also persuaded that the wife’s appeal had a real prospect of success in respect of her challenge to the Judge’s decision that the DDJ’s assessment was flawed.
5. For the reasons set out below, I consider that the wife’s appeal should be allowed.
6. I am grateful to the wife and to Mr Swift for their respective submissions.

Background

7. The parties married in 2009. The husband is aged 44 and the wife is 42. There are two children of the family; the wife’s child by a previous marriage, aged 17, and the parties’ child aged 9.
8. When the parties met, the wife was living in Canada where she worked for a construction company in their accounts department. In 2010, the wife and her child joined the husband in England. During the marriage, the husband worked as an IT consultant and provided his services through a corporate vehicle. The wife requalified as a teacher. She worked as a teacher for a year during the marriage and has done so since shortly after the parties separated.
9. The parties separated in March 2019 when the husband left the former matrimonial home. After a brief period, when the parties’ child lived with the father, the mother and the children have remained living in the former matrimonial home.
10. The wife commenced divorce and financial remedy proceedings in April 2019.

Proceedings

11. I do not propose to set out the history of the financial remedy proceedings which effectively started with an application by the wife for a freezing order. At a hearing on 26th April 2019 in respect of that application, the husband was ordered to pay the wife the immediate sum of £5,000 “to enable her to meet” her and the children’s living expenses. The husband paid this sum in early May 2019.
12. The wife applied to the Child Maintenance Service which assessed the husband as liable to pay the sum of £16.60 per week.
13. On 11th July 2019 the wife applied for maintenance pending suit, including an order in respect of school fees. This was supported by a statement in which she set out her income needs which replicated the needs she had set out in her Form E and totalled just under £4,900 per month. Of this sum, the mortgage instalments for the former matrimonial home represented £2,500. After deducting her anticipated income, the wife set out an ongoing monthly income “shortfall” of £2,830. She sought higher sums in respect of August and September when she would not be employed. In addition, she sought school fees for the younger child of £650 per month. The wife also sought additional sums to pay for, what she described as, “essential repairs to the house such as heating, hot water, stove fan, oven” and other items at a total cost of £3,250.
14. The wife set out that the husband worked as a software consultant. He had set up a company in 2011, of which they were both shareholders, and he received “a high level of salary and dividends”. She also said that the husband had transferred a total of £285,000 from his company to India between April and June/July 2019.
15. The First Appointment took place on 19th July 2019. The wife’s application for maintenance pending suit, with some other applications, was adjourned to be listed on the first available date after 6th September 2019 with a time estimate of one day. The husband was ordered to file and serve a statement in response to the wife’s maintenance pending suit application, “in particular setting out his current income and expenditure”, by 4.00pm on 23rd August 2019.
16. The first date provided by the court for the maintenance pending suit hearing was 14th November. The wife’s then solicitors contacted the court and, on 16th September, were able to obtain the earlier date of 1st October 2019. The wife’s solicitors immediately informed the husband’s solicitors of this new date and pointed out that the husband had not filed his statement in response to the wife’s application which was “urgently” required. The husband’s solicitors replied complaining about the short notice and saying that their client “does not have a job and is simply accruing personal debts to pay his living costs”.
17. The husband’s statement is dated 30th September 2019. He said that his job with a named company had “come to an end” on 30th August and that he had received no income since then. He set out his outgoings which totalled approximately £4,500 per month, including rent of £1,500. He also said that he owed his brother £250,000 and had “director loan debts” of £300,000. In respect of the wife’s “comment about the fact that I have money in India”, he said that: “I further understand the funds I sent back have been utilised to partly pay my brother’s many creditors for my obligations. I do not have any other source of funds or savings”.

18. At the hearing on 1st October 2019, which lasted the whole day, the wife was represented by counsel and the husband appeared in person. In her written submissions for the hearing, the wife's counsel set out a summary of the law which included that the "focus" of the application was to meet "immediate needs". Reference was made to *Moore v Moore* [2010] 1 FLR 1413; *TL v ML and Others (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263; and *Re G (Maintenance Pending Suit)* [2007] 1 FLR 1674.
19. The DDJ refused the husband's application for an adjournment. In her judgment, she briefly summarised the background and noted that she had been referred to the "well-known law in terms of maintenance pending suit".
20. When dealing with the wife's budget, the DDJ addressed the mortgage instalments payable for the former matrimonial home. This issue had been addressed during the course of the hearing. The DDJ recorded that, as part of her order, the then mortgage on the former matrimonial home would be changed to a fixed rate mortgage with the consequent saving of approximately £600 per month. The husband "had been reluctant to agree" to this change because it would incur a penalty charge but "some very quick calculations" during the hearing had demonstrated that, even with the penalty charge, more would be saved by changing the mortgage to a fixed rate. This would reduce the maintenance pending suit sought by the wife to £2,200 per month.
21. The DDJ set out that the husband "is a skilled and experienced IT consultant" who "now says that he cannot work". The wife did not accept that he "is not in employment or cannot work" and she pointed to the fact that he had "sent over £360,000 to India" in the 10 months to April 2019. The husband accepted that he had received £246,000 from the sale of properties "of which he sent £181,000 to his brother" and kept £65,000 in his company "but that company is now not producing any money". The DDJ noted that the husband "did not actually deal with the allegation that a total of £360,000 had been sent to India" but he did say "that a lot of the problems of the company and the problems with him working were because of conduct of the wife".
22. In respect of the husband's income needs, the DDJ said that the rent could be saved "because there is a second property" which was no longer occupied by tenants and which was "available for the husband to move into".
23. The DDJ rejected the wife's claim for the sum of just over £3,000 in respect of "essential repairs" because there was "nothing before me to indicate what needs to be done or the cost of doing so".
24. As to the husband's position, the DDJ found that his "case is not clear, it is confused". She did not understand why he was saying that he had no employment nor why he could not obtain employment. She was also clearly sceptical of the husband's case as to the transfer of funds to India.
25. The husband appealed from the DDJ's order. The order was challenged on a number of grounds including what were said to be procedural flaws as to the listing of the application on 1st October. However, the focus of the appeal was on the judge's financial analysis which was said to be deficient in a number of respects. It was argued that the DDJ had "failed to direct herself on the applicable law relating to an application" for maintenance pending suit, the "usual approach [being] to examine a

specific budget of immediate expenditure needs to deal with short-term cash flow problems”. In her judgment the DDJ had “failed to analyse [the wife’s] budget”, “failed to identify what part of [the wife’s] budget [the DDJ] found reasonable and essential expenditure”; “failed to analyse [the husband’s] budget and his needs”; and the DDJ had made “unreasonable assumptions as to [the husband’s] available financial resources”.

26. The Judge referred to section 22 of the Matrimonial Causes Act 1973 (“the MCA 1973”) and to the notes in the Family Court Practice 2019 (the “Red Book”), in particular the references there to *Tl v ML* and to *S v S (Maintenance Pending Suit)* [2013] 1 FLR 1173. His conclusion was that the maintenance had to be “reasonable”, as set out in section 22, and that “it should deal with immediate expenditure needs which have to be critically examined and long-term expenditure needs should be best dealt with at the final hearing”.
27. The Judge considered that the wife’s budget and concluded that aspects of it were “not short-term … income needs”. These included items such as house insurance, house alarm, car tax, shoes and clothes, TV licence and entertainment. The DDJ had not undertaken a “critical analysis of the wife’s needs”, which included “absolutely everything that is spent”, and had, therefore, “failed to apply the law appropriately”. The Judge repeated that “it is immediate expenditure needs which need to be looked at, nothing more”.
28. The Judge also considered that the DDJ had not sufficiently analysed the husband’s needs to identify what “he might reasonably need over a short period of time”.
29. In respect of the order that the mortgage terms should be changed, the Judge concluded that this was not something the court had power to order. The Judge also decided that the wife’s application for school fees was not “appropriate for a maintenance pending suit application” because they were “long-term expenditure items” and should not be included as maintenance.
30. The Judge accordingly allowed the appeal because of the above “three fatal errors”, namely the “lack of critical analysis of the wife’s” needs; the inclusion of the school fees; and the assumed reduction in the mortgage instalments of £600 per month. The Judge was “sure there is a need for maintenance” but, as referred to above, he did not consider that he was in a position to decide what order should be made in place of that made by the DDJ.

Maintenance Pending Suit

31. Section 22 of the MCA 1973 gives the court power to make an order for maintenance during the course of the proceedings. It provides:

“(1) On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and

ending with the date of the determination of the suit, as the court thinks reasonable.”

This is an extremely valuable power because it enables the court to make an order to meet the income needs of a spouse and the children at a time when they might be in real need of financial support following the parties’ separation and the commencement of proceedings. It is intended to provide the court with the ability to act expeditiously and to make an order which meets that need at an early stage of the proceedings when the evidential picture might be far from clear. It is a very broad statutory power which extends to the court making such order as the judge “thinks reasonable”.

32. The broad nature of the statutory power means that the manner in which it should be exercised is contained in guidance given by the courts. This guidance does not, however, detract from the substantive requirement being only that the order must be reasonable. As (the then) Nicholas Mostyn QC (when sitting as a Deputy High Court Judge) said in *TL v ML*, at [124(i)], this equates to “fairness”, consistently with the overarching objective in financial remedy cases, which is that the outcome should be “fair”: *White v White* [2001] 1 AC 596, Lord Nicholls at p. 599G/H.
33. It is also clear that, as set out in the Red Book, the purpose of an order for maintenance pending suit is to meet “immediate” needs. The principal issue raised by this appeal is what needs qualify as being immediate and how should the court approach the determination of this question. However, I would stress that the particular circumstances of each case will determine on which issues the court will need to focus and the degree of scrutiny which will be required. In every case the key factors are likely to be the parties’ respective needs and resources and, as was also set out in *TL v ML*, at [124(ii)], the “marital standard of living” but beyond that, the court’s approach will be tailored to the facts of the particular case. In the majority of cases, the family’s financial resources are unlikely to be sufficient to enable the marital standard of living to be maintained for both spouses (and the children). However, as a generalisation, the parties’ separation does not, of itself, provide a reason for that standard being reduced in the same way that it does not, of itself, provide a reason for that standard to be increased.
34. In a number of cases, the court’s approach has been described as “rough and ready”. The need for the court to adopt a pragmatic approach was described by Balcombe J (as he then was) in *F v F (Maintenance Pending Suit)* (1983) 4 FLR 382, at p. 385:

“Clearly there must be an empirical approach, since on an application for maintenance pending suit it is quite impossible practically to go into all the kinds of detail that the court can go into when dealing with the full hearing of an application for financial relief, and in the ordinary sort of case the registrars who deal with these applications will have to take a broad view of means on the one hand and income on the other and come to a rough and ready conclusion.”

Adding that, what he described as “administrative expediency”, could not “be allowed to work injustice in an individual case”.

35. Bodey J quoted from *F v F* in *M v M (Maintenance Pending Suit: Enforcement: On Dismissal of Suit)* [2009] 1 FLR 790 at [64]. This was, in turn, picked up in *Moore v Moore*. In that case, Coleridge J, sitting in the Court of Appeal, said, at [22]:

“An order for maintenance pending suit is, as Bodey J observed, ‘a creature different in form and substance from substantive orders made upon the making of decree nisi’. It is designed to deal with short-term cash flow problems, which arise during divorce proceedings. Its calculation is sometimes somewhat rough and ready, as financial information is frequently in short supply at the early stage of the proceedings.”

36. The origin of the need for the court to examine the applicant’s budget “critically” appears to be *F v F (Ancillary Relief: Substantial Assets)* [1995] 2 FLR 45. It is relevant to note that that case concerned exceptional wealth. This was the context for what Thorpe J (as he then was) said, at pp. 50/51, when he set out the factors he considered relevant to his determination. He first observed that the MCA 1973 was “designed to provide statutory criteria sufficiently flexible to meet the circumstances of every conceivable case”. He then said that “the husband and wife in this case belong to a tiny percentage of the world population who have control and management and entitlement to huge sums of money”. This meant that:

“... in determining the wife's reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra-rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people. Thus I conclude that it would be wrong in principle to determine the application on some broad conclusion that if the wife cannot manage at the rate of a quarter of a million a year, she ought to be able to. I think that it is necessary to establish a yardstick that more nearly reflects the standard of living which has been the norm for the wife ever since marriage and for the husband for considerably longer.”

He next considered it relevant that “even on his own case the wife and children have been significantly undermaintained since the separation”. The third factor he considered were the costs of the proceedings.

37. The “fourth consideration”, which I set out at length, was that:

“even in the case of a family of unusual riches it would surely be wrong for the court not to look carefully and indeed critically at the suggested budget. Mr Pointer has said that the all-important particularisations in the bundle are the product of a team effort, the team members being the wife, her solicitor and her counsel. Well, it would be naive to ignore the psychology of the team members. Inevitably it is a litigation exercise. It is in part an advocacy exercise. There is every incentive to put figures as high as they reasonably can be put and perhaps some temptation to gild the lily. So I find that Mr Blair's most powerful

submission is in his detailed exposure of certain elements within the wife's budget which are unjustifiable even in a 'super rich' case and which must result from excess of zeal on the part of the compilers of the budget."

Before leaving that authority, I would simply comment that the nature of the budget there being considered was very far removed from the list of income needs provided by the wife in the present case and as will be provided in the majority of cases. I return to this issue below.

38. In *Tl v ML* Nicholas Mostyn QC summarised the principles applicable to the determination of an application for maintenance pending suit as follows:

"[124] From these cases I derive the following principles:

(i) The sole criterion to be applied in determining the application is 'reasonableness' (s.22 of the Matrimonial Causes Act 1973), which, to my mind, is synonymous with 'fairness'.

(ii) A very important factor in determining fairness is the marital standard of living (*F v F*). This is not to say that the exercise is merely to replicate that standard (*M v M*).

(iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing (*F v F*). That budget should be examined critically in every case to exclude forensic exaggeration (*F v F*).

(iv) Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources (*G v G, M v M*). In such a situation, the court should err in favour of the payee.

(v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed, but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial (*M v M*)."

Whilst I accept the general effect of these principles, as with all guidance, they clearly have to be applied in the particular circumstances of the individual case. In the present case, for example, it was not necessary for the wife to provide a specific maintenance pending suit budget. Her income needs as set out in her Form E matched her needs for the purposes of her application for maintenance pending suit. Further, not all budgets require critical analysis. The extent to which a budget or other relevant factors require careful analysis will depend on the circumstances of the case. I return to this below

but, in summary, the wife's budget in this case did not require any particular critical analysis; it was a straightforward list of income needs which were easily appraised.

39. In *BD v FD (Maintenance Pending Suit)* [2016] 1 FLR 390, after reciting the above principles, I said:

"[34] I would add to these principles what I said in *G v G (Child Maintenance: Interim Costs Provision)* [2009] EWHC 2080 (Fam), [2010] 2 FLR 1264, when determining an interim application under Sch 1 to the Children Act 1989."

'[51] ... Interim hearings are an expensive exercise and, in my view, they should be pursued only when, on a broad assessment, the court's intervention is manifestly required. The jurisdiction to make an interim award is a very broad jurisdiction ...

[52] It is a very broad jurisdiction but it is one which, as I have said, should be exercised when on a broad assessment the court's intervention is manifestly required. Otherwise parties will be encouraged to engage in what can often be an expensive exercise in the course of the substantive proceedings when the proper forum for the determination of those proceedings, if they cannot be resolved earlier by agreement or otherwise, is the final hearing when the evidence can be properly analysed and the parties' respective submissions can be more critically assessed.'

In my view, my remarks apply equally to applications for maintenance pending suit or interim maintenance under the Matrimonial Causes Act 1973."

40. Given Mr Swift's reliance on that case in this appeal, I would point out the context of my observations. The wife had cash and investments of approximately £1.4 million and was living in a house purchased, following the breakdown of the marriage, for £2.9 million with funds provided by the husband. The husband was paying, and proposed to continue to pay, maintenance pending suit at the rate of just over £200,000 per year. The wife was seeking an additional sum of between £70,000 and £190,000. It was in that context that I made comments about when the court's jurisdiction should be invoked. The comments I made have no relevance to the present appeal.

Submissions

41. I propose only to set out the briefest summary of the parties' submissions, but I have, of course, taken into account all the points raised in the comprehensive submissions made to us.
42. Mr Swift submitted that the Judge was right to conclude: (i) that the DDJ had failed to undertake the required "critical analysis" of the wife's income needs; (ii) that the DDJ had been wrong to include school fees as part of the maintenance order: and (iii) that

the DDJ was not entitled to order the husband to take steps to reduce the mortgage payments by changing the mortgage to a fixed rate.

43. The main focus of the husband's case on this appeal was that the Judge was right when he decided that the DDJ had failed to "assess in any way" either the wife's budget or the husband's budget. During the course of the hearing, in response to questions from the court, Mr Swift identified items in the wife's budget which he submitted were not "immediate" income needs, including dentist, house insurance and house alarm. He further submitted that, although the court has a wide discretion, maintenance pending suit should only be ordered when "necessary". This latter submission was based on what I said in *BD v FD* which, as referred to above has no application to the circumstances of the present case.
44. The wife submitted that the DDJ had applied the right legal approach in that she had undertaken a "broad assessment" when determining, in accordance with s.22 of the MCA 1973, what maintenance was reasonable. In contrast, she submitted, the Judge undertook a "flawed application of the case law". She submitted that she was seeking no more than her "basic income needs" which were as set out in her Form E and replicated in her application for maintenance pending suit. In her Skeleton for the appeal hearing, the wife analysed the case law and submitted that the effect of *TL v ML* was not to require "mere criticism" of a budget such as hers but to "exclude forensic exaggeration".
45. The wife also questioned how the approach taken by the Judge would work in practice. She took the example of the Judge's criticism of her inclusion of the monthly amount of £12.50 for TV licence and suggested that she would not have been able to return to court to obtain the sum required when "the quarterly payment would be due".
46. In respect of the mortgage on the former matrimonial home, the wife submitted that she had sought to take reasonable steps to reduce her outgoings, which attempts had been thwarted by the husband. She also told us that the husband had, in fact, agreed to changing the mortgage during the course of the hearing before the DDJ.

Determination

47. I would first note that this was not an unduly complex application for maintenance pending suit. In my view, it did not require any extensive analysis but was an application which could be determined justly with a succinct summary and consideration of the relevant factors.
48. The substantive question arising from the Judge's decision is whether he was right to decide that the DDJ had failed to undertake, what he considered to be, the required "critical analysis of the wife's needs". On this, I disagree with the Judge because I have no doubt that the DDJ undertook a sufficient analysis of the wife's income needs. She clearly accepted, as she was entitled to do, the wife's budget as representing her reasonable income needs. It was not an extensive budget of the type which was considered in *F v F*. It was the type of budget which will be very familiar to judges determining financial claims and which they are well placed to decide, on a broad assessment, whether they are or are not reasonable for the purposes of determining an application for maintenance pending suit. The court is not required to undertake any greater "critical" analysis of a schedule of income needs than is required of any other

aspect of the case. The court is required to undertake such analysis as is sufficient to be satisfied that the ultimate award is “reasonable”. In some cases this might require a detailed examination of a budget, in others, such as the present case, it will be immediately apparent whether the listed items represent a fair guide to the applicant’s income needs.

49. I also do not consider that the judge was right to exclude certain items from the wife’s budget as not being “immediate expenditure needs”. The word “immediate”, in this context, does no more than reflect the fact that the court is concerned with an order for maintenance *pending* the final resolution of the financial dispute between the parties. However, the use of this word does not mean that the court should embark on the type of exercise undertaken by the Judge in this case. The fact that some items of expenditure are not incurred every month does not mean they should be excluded for the purposes of determining what maintenance is reasonable.
50. The Form E requires income needs to be set out on an annual, monthly or weekly basis. They will necessarily be averaged over the relevant period. Further, given that maintenance is typically ordered to be paid monthly, it is inevitable that this will require expenditure to be averaged. This does not mean that any of those needs are to be excluded for the purposes of maintenance pending suit. As the wife pointed out in her submissions, she could not return to court when the relevant expenditure actually arose. There may be exceptional items of expenditure which need to be considered but, with all due respect, the approach taken by the Judge in this case was unrealistic and would require far too detailed an analysis. It would also be inconsistent with the broad analysis undertaken for the purposes of determining an application for maintenance pending suit.
51. This case also demonstrates that it is not necessary for an applicant for maintenance pending suit to provide a list of income needs distinct from that set out in the Form E. As the wife submitted, she was seeking no more than her basic needs which she had set out in her Form E and which could also be used for the purposes of her maintenance pending suit application.
52. I reject Mr Swift’s submission, accepted by the Judge, that the DDJ had been wrong to include school fees as part of the maintenance order. School fees can be included within income needs and can form part of an order for maintenance pending suit. There is no reason in principle why they cannot form part of an applicant’s immediate income needs. There is also no reason why, as submitted by Mr Swift, they have to be sought in a separate application; they can simply be included within the one application for maintenance pending suit.
53. As for the mortgage instalments, this provision is now no longer relevant. However, I would observe that, as the wife submitted, this was to the husband’s benefit as it reduced her income needs. Accordingly, in the absence of this being effected, it would have been open to the DDJ to increase the maintenance payments to reflect these greater needs.
54. In conclusion, it is clear to me that the DDJ undertook a sufficient analysis of the relevant factors to support her decision. As referred to above, she plainly accepted that the wife’s listed needs were reasonable. She was entitled to include the amount sought for school fees. She took into account the wife’s likely income. It is also clear that she

analysed the husband's budget and the parties' respective cases as to the husband's resources and determined that the husband had sufficient resources to meet the wife's income needs as well as his own needs. Accordingly, she considered the relevant factors and reached a fair decision as to what level of maintenance would be reasonable. In those circumstances, there was no basis on which the Judge could properly interfere with the DDJ's decision.

55. Finally, in the present case the Judge would have known that the final financial remedy hearing was imminent. He could not have known that the resolution of the wife's substantive claims would be very substantially delayed; they remain unresolved even now. However, as a result, it was unfortunate that the Judge simply decided to allow the husband's appeal without making an alternative maintenance order. Having regard to the fact that the purpose of maintenance pending suit is to meet *current* needs, and to the pressure on the court lists, I would suggest that it would be appropriate for a court determining any appeal also to determine, if allowing the appeal, what alternative order, if any, should be made.
56. In conclusion, for the reasons set out above, I consider that this appeal should be allowed with the Judge's order being set aside (including the costs order). The maintenance pending suit order made by the DDJ will be restored save for paragraph 7 (which dealt with the mortgage).

LADY JUSTICE ASPLIN:

57. I agree.

LADY JUSTICE MACUR:

58. I also agree.