

# Have we seen the end of joint lives maintenance orders?

By Cordelia Williams

## Summary

1. Joint lives maintenance orders are much harder to achieve than, say, 10 years ago. Judges increasingly take the view that, after a period of support, almost any former spouse (usually wife) can gain employment.

## Authorities

2. *SS v NS* [2014] EWHC 4183 (Fam), Mostyn J - summarises the relevant principles guiding maintenance: "an award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies"

- Mostyn J suggested W could earn £32k/year as a Pilates instructor even though she had not yet qualified and was still in training

3. *Wright v Wright* [2016] EWCA Civ 201

- Roberts J granted H downward variation of payments, scaled down over 6 years, on basis of his worsened financial situation
- W appealed on grounds original order had been joint lives order and therefore intended that W would remain to some extent financially dependent on H
- W's appeal dismissed – HHJ Roberts had made a thorough examination of both parties' income and earning capacities
- Pitchford LJ noted subsequent downward variation was justified due to investigation of W's earning capacity which demonstrated she could, with training, support herself without recourse to periodical payments
- Wright still upholds approach that necessary to examine W's budget and earning capacity on variation maintenance cases.
- Wright does suggest change in court's attitude to W's earning capacity.
- Taking into account decision in *Chiva v Chiva* [2014] EWCA 1558 where a professional wife with a 3-year-old child was given a term maintenance order as opposed to a joint lives periodical payments order

4. *Murphy v Murphy* [2014] EWHC 2263

- Only a few months before *Wright*, in the case of *Murphy*, Holman J was asked to determine term of maintenance and whether there should be a step down in the wife's maintenance in the future.
- The parties had agreed on all other aspects of the wife's claim.

- On the facts, the judge felt joint lives maintenance was necessary. This was due to the young age of the parties' children (twins, who were three), the fact that he could not also look at the capital award, the very vague generalisations put forward by the husband as to the wife's earning capacity and the fact that the original order already provided for a reduction in the maintenance payable to the wife of 50p for every £1 she earned (net).
5. Joy-Morancho v Joy (Dismissal of Variation Application) [2017] EWHC 2086 (Fam)
- H's application for downward variation of spousal periodical payments, including backdating the variation and to remit any arrears
  - Application dismissed following the use of an abbreviated procedure hearing.
  - August 2015, Sir Peter Singer had made an order for the Husband to pay spousal periodical payments of £120,000 p.a. on a joint lives basis to the Wife
  - Damning finds had been made against the Husband within the judgment
  - Sir Peter Singer dismissed H's application to vary

### Commentary

6. Baroness Deech – believes duration of spousal maintenance orders should be no more than five years, save in exceptional circumstances; Divorce (Financial Provision) Bill. Baroness Deech: "Our judges are being very old fashioned I'm afraid. They are overchivalrous and the way they were in the 19th century".

7. However, Lord Wilson in March 2017 in reported speech to University Bristol Law Club – "ex wives DO deserve a meal ticket for life."... "the trouble is that it is usually unrealistic to tell a wife, left on her own at perhaps age 60 after a long marriage that, following payments for say three years, she must fend for herself."

### Practical points

8. Drawn from Wright - Ensure the reasons underpinning joint lives order are clearly documented. In Wright, DJ Cushing recorded her expectations of Mrs Wright in her judgment. In a consent order, appropriate recitals can set out the assumptions underlying the maintenance provisions. This may assist parties if the time comes to vary.

9. If seeking maintenance for a term to cover career re-training – prepare information as to courses of retraining available, their duration and the cost. Prepare a CV and have made a reasonable number of job applications.