

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No.: A29/2007

In the appeal between:

THEODORUS THEODORELLIS

Appellant

and

ANASTASIA THEODORELLIS

Respondent

CORAM:

MALHERBE, JP *et* BECKLEY, J

JUDGMENT:

MALHERBE, JP

HEARD ON:

12 NOVEMBER 2007

DELIVERED ON:

22 NOVEMBER 2007

[1] The parties to this appeal were formerly married to one another. Their marriage was dissolved by a decree of divorce on 12 May 1998. A Deed of Settlement was made an order of Court on the same date. In clause 1 of the Deed of Settlement appellant undertook to pay maintenance to the respondent in the amount of R3 800,00 per month until her death or remarriage, whichever occurs

first. On 2 August 2005 respondent applied to the Bloemfontein Maintenance Court for the increase of the amount of maintenance on the grounds of

“personal circumstances and increasing costs of living.”

In the prescribed form for such an application, she set out her total monthly income as R4 300.00, being the said maintenance of R3 800.00 plus R500.00 interest on an investment of R80 000.00. She applied for an increase to the amount of R9 500.00.

- [2] The proceedings in the Maintenance Court started on 1 December 2005 and was eventually concluded on 6 October 2006 when the presiding Magistrate ordered appellant to pay maintenance to respondent in the amount of R7 055.00 per month from 1 December 2006. It is against this decision that appellant now appeals, contending that the Magistrate should not have granted any increase whatsoever.

[3] Mr. Fischer who appeared on behalf of appellant, used strong language in his attack upon the Magistrate's findings. He said that the Magistrate had acted capriciously and that respondent had misled the court *a quo* by failing to mention other sources of income which were established only during cross-examination. I do not think that this criticism is warranted: It is true that in her evidence-in-chief respondent testified that her only income was R4 300.00 per month, but three weeks before she started her testimony her attorney wrote to appellant's attorney that she owned immovable property in Cyprus worth approximately 20 000 Cyprus pounds. He also mentioned respondent's Super Save savings account, a Money Market bank account and a savings account in Cyprus in which respondent deposited 80 Cyprus pounds per month that the immovable property earned as rental. In her evidence-in-chief she repeated the contents of this letter. It is, therefore, not correct that she only disclosed other sources of income under cross-examination as was submitted by Mr. Fischer.

[4] If regard is had to all the evidence, it is readily understood why respondent did not regard the rental that she earned in Cyprus as income that she could use to maintain herself in South Africa. She testified that the rental was being deposited into an savings account in Cyprus to create a fund from which the old house or houses on the property could be maintained and which she could use when she visited Cyprus. She also testified that she never considered investing that money in South Africa where she could perhaps earn more interest than in Cyprus. In any event, according to her the property was not rented out permanently but only from time to time.

[5] Mr. Fischer also submitted that the respondent failed to tell the Maintenance Court that she earned R1 000.00 per month from the sale of jewellery and candles. She makes it abundantly clear in her evidence that she sold these things

°here and there here and there not every month Maybe
this month I will get R1 000.00 out of selling, maybe the next month

I get nothing”

meaning that these sales did not constitute a regular income per month.

[6] There are two factors that made an increase necessary, viz. inflation since 1998 and the cost of a medical aid scheme for respondent in the amount of R2 500.00 per month. The Magistrate did not order the appellant to pay the whole shortfall that she calculated at R6 510.00. She said the following in her reasons:

“In fairness to the defendant the applicant will have to draw from her assets and investments to contribute to the maintenance of herself. The court finds that a legally fair increase in the contribution by the defendant will be one of R3 255.00 per month. That is half of the difference referred to, and reflected in the applicant’s budget.”

It is common cause that appellant can comfortably afford the increase.

[6] The appellant has not convinced me that the court *a quo* erred in its finding.

[7] In the result the appeal is dismissed with costs.

J. P. MALHERBE, JP

I concur.

A. P. BECKLEY, J

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BLOEMFONTEIN

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