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## Remarriage Not Ground for Alteration of Divorce Settlement

When financial arrangements are being made on divorce, the issue of the payment of maintenance is often in point.

One of the concerns from the point of view of the payer is that if the ex-spouse remarries, their circumstances may well change significantly, so that the payment of maintenance is no longer appropriate.

Another issue which often arises is what happens when the person paying maintenance retires, as this can also affect the appropriate amount of maintenance payable.

Recently, a case was heard which dealt with both these issues. A man had been paying maintenance to his ex-wife for 12 years. As he was coming up for retirement, he sought to pay her a lump sum instead of continuing to pay maintenance. He enquired on more than one occasion whether she was cohabiting or intended to remarry and was informed that neither circumstance applied. In 2005 he therefore agreed to a consent order, as a result of which he paid his ex-wife a lump sum of £125,000 in lieu of future maintenance payments.

In 2006 his ex-wife remarried. He went to court to make an application for the consent order to be set aside on the basis that her remarriage had made the assumptions on which it had been based invalid.

For such an action to succeed, it is necessary that:

- Since the order was made there has been a supervening event which has led to a change of circumstances which undermines or invalidates the basis of the order;
- The events are such that if leave to appeal out of time were to be given, the appeal would be certain, or very likely, to succeed; and
- The new events have occurred within a relatively short time of the order having been made.

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The court ruled that the man's ex-wife had not planned to remarry at the time the settlement was negotiated and therefore the settlement stood. The man appealed to the Court of Appeal. The Court considered that the payment of the lump sum was intended to provide for a 'clean break'. That in turn depended on the intentions of the parties at the time. The purpose of the husband's enquiries regarding his ex-wife's domestic situation was to assure himself that she was not cohabiting, rather than to protect himself from the risk of her remarrying. At the time of the agreement, she had no intention of remarrying, but that carried no implications regarding her future intentions. There was no basis for making the assumption that she would not remarry in any particular period, nor had the agreement between them provided for any variation in the event that she did remarry within a particular time frame.

On a majority decision, the Court of Appeal rejected the man's appeal.

This case shows how difficult it can be to alter financial arrangements designed to achieve a clean break and proves again that in such matters you get what you negotiate, not necessarily what you deserve.

For advice on all aspects of family and matrimonial law please contact Liz Williams on Tel: 01274 728 327.

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