

FINANCIAL ORDERS FOR CHILDREN UNDER THE CHILDREN ACT 1989

CHILD SUPPORT ACT 1991

One of the principal features of 1991 Act is that it is intended that the jurisdiction of the court shall be excluded and replaced by the Secretary of State.

R (Kehoe) v Secretary of State for Work and Pensions [2005] 2 FLR 1249 HL

CSA has jurisdiction only where the child is under 18 years of age & is the natural or adopted child of a person with care and a non-resident parent & all three are habitually resident in the UK.

Stepchildren, children over 18 years of age, & cases where any one of the parties or child are not habitually resident are excluded from the jurisdiction of the Secretary of State.

The future of CSA

THE LAW

s.15 and Schedule 1 – Family Proceedings Rules 1991 Part 1V

WHICH COURT ?

High Court

County Court

Magistrates Court (maximum lump sum £1,000)

PARTIES

Applicant – parent, guardian, person with residence order, child over 18.

Respondents – either or both parents, present or former step-parent who has treated the child as a child of the family.

ORDERS

Subject to CSA, the County Court or High Court can make one or more of the following orders against one or both parents : -

s. 1 (2)

- a) Periodical payments unsecured ;
- b) Periodical payments secured ;
- c) Lump sum (not so as to avoid the restrictions of the CSA)
- d) Settlement of property order;
- e) Transfer of property order.

The orders can be made for the benefit of the child or the child himself.

a) & b) can only be made if the application was issued whilst the child was under 18.

s.2 (1)

This provides that the limitations on orders for children aged over 18 or extending beyond that age shall not apply :

If

- a) the child is, or will be, or if an order were made without complying with either or both provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- b) there are special circumstances which justify the making of an order without complying with either or both of these provisions

PRINCIPLES ON WHICH THE COURT EXERCISE ITS JURISDICTION

The court is directed to have regard to the following matters, s. 25 (3) MCA 1973 :

- a) financial needs of the child;
- b) income, earning capacity, if any, property & other financial resources of the child;
- c) physical or mental disability of the child;
- d) manner in which he was being, & in which the parties to the marriage expected him to be educated or trained ;
- e) considerations mentioned in relation to the parties to the marriage in para a) b) c) & e) subsection (2).

Matters referred to in e) are income, capital etc. of each of the parties, their needs, obligations & responsibilities, standard of living enjoyed by the family & any mental or physical disability of either party.

In addition, to matters prescribed above, when the court is exercising its powers against a party to a marriage in favour of a child of the family who is not the child of that party, the court is directed to have regard :

s. 25(4) MCA 1973

- a) whether that party assumed any responsibility for the child's maintenance, & if so, the extent to which & the basis upon which

- that party assumed such responsibility & the length of time for which that party discharged such responsibility;
- b) to whether in assuming & discharging such responsibility that party did so knowing the child was not his or her own;
 - c) to the liability of any other person to maintain the child.

WHAT IS THE APPROACH OF THE COURT ?

Re P (a child) [financial position] [2003] EWCA CIV 837.

Mr. Justice Bodey

- 1) The welfare of the child while a minor, although not paramount, is naturally a relevant consideration as one of “all the circumstances of the case”
- 2) Considerations as to the length & nature of the parents’ relationship & whether or not the child was planned are generally of little relevance, since the child’s needs & dependency are the same regardless.
J v C (child: financial provision) [1998]3 FCR 79.
- 3) One of the financial needs of the child (to which by para (1) (c) the court must pay regard) is for him or her to be cared for by a mother who is in a position, both financially & generally, to provide that care. It is well established that a child’s need for a carer enables account to be taken of the caring parent’s needs

- 4) By para 4 (1)(a) &(b) of Sch.1, the respective incomes, earning capacities, property & other financial resources of each of the parents must be taken into account, together with their respective financial needs, obligations & responsibilities. “ The child is entitled to be brought up in circumstances which bear some sort or relationship with the father’s current resources & father’s present standard of living”
- 5) However, as this later concept lends itself to demands going potentially far wider than those reasonably necessary to enable the mother to properly support the child “one has to guard against unreasonable claims made on the child’s behalf but with the disguised element of providing for the mother’s benefit rather than the child”
- 6) In cases where the father’s resources permit & the mother lacks significant resources of her own, she will generally need suitable accommodation for herself & the child, settled for the duration of the child’s minority with reversion to the father ; a capital allowance for settling up the home &a car; & income provision (with expenses of the child’s education being taken care of, generally, by the father direct with the school).
- 7) Such income provisions reviewable from time to time, according to the changing circumstances of the parties & the child.

- 8) The overall result achieved by the orders under Sch 1, should be just & reasonable taking into account all the circumstances.
- 9) In considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and budgetary presentations. Rather, the court should do it's best to achieve a fair & realistic outcome by the application of commonsense to the circumstances of each case.
- 10) Comparisons with the commercial cost of providing care unlikely to assist.
- 11) When setting up a budget for the sort of lifestyle that a child should be enabled to have, the court should not generally attach weight to the risk that the father may reduce or withdraw his support when the child comes of age (or ceases education or training) thereby obliging the child to adapt to a lower standard of lifestyle at that time.

DURATION OF THE ORDERS

- b) Not before the date of the application
- c) The order cannot be backdated to a date before the date on which the current CSA assessment takes effect
- d) The order cannot be extended beyond the child's 17th birthday, or in exceptional circumstances, if the child is in full time education, the child's 18th birthday
- e) If the application is made by the child over 18, the court can make a secured / unsecured periodical payments order or lump sum if : -
 - i) The Applicant is, or will be if the order is made, under going instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not whilst in gainful employment

OR

- ii) There are special circumstances to justify the making of an order

AND

- iii) The parents are not living in the same household

BUT

- iii) Not if immediately before the child reached 16 yrs a periodical payments order was in force in respect of him.

INTERIM APPLICATIONS

The situation may arise where the P with C is left without any support for the child.

In many cases the provisions of CSA 1991 prohibit her from applying to the court for an order for the child, and the CSA may take many months to deal with an application, under s.4.

There is nothing to prevent the court making an order for the P with C which includes support for the child. Such an order has to be expressed as remaining in force ***“until a child support calculation is made”***

When the order is made up partly of the mother’s maintenance and partly of the child’s the court would add the words ***“whereupon this order shall be reduced by the amount of any such calculation”*** Such an order would not be possible where the mother had remarried. Indeed, any such order is only legitimate where there is a genuine and substantial amount of spouse support in the order ; where the order in reality relates only to the children, it is not legitimate.

Dorney-Kingdom v Dorney –Kingdom [2000] 2 FLR 855 CA.

Annabel Beattie.

Park Court Chambers.

16, Park Place,

Leeds.

LS1 2SJ.

11.09.2008.