1983 March 3

[A. Loizou, Loris And Stylianides, JJ.]

IN THE MATTER OF THE COURTS OF JUSTICE LAW 14/60,

and

IN THE MATTER OF DEMOSTHENIS CONSTANTINOU,
Appellant,

and

IN THE MATTER OF AN APPLICATION BY MAROULLA DEMOSTHENOUS, PERSONALLY AND AS NEAREST FRIEND AND RELATIVE, OF HER MINOR CHILDREN KLEOPATRA AND XENIA.
Respondent (Applicant).

(*Civil Appeal No.* 6503).

Children—Maintenance—Reasonable maintenance—Discretion of the Court—Principles applicable—And principles on which Court of Appeal interferes with an award of maintenance made by a trial Court—Section 40 *of the Courts of Justice Law*, 1960 (*Law* 14/60).

This was an appeal from the maintenance order of C£100 per month, which was made against the appellant, for the benefit of his two minor daughters.

The two girls were residing with their mother at the house owned by her. She was working as a cleaner and her monthly salary was C£108. The eldest of the two daughters aged 14, was attending the third class and the other one aged 12, the second class of Secondary School. In addition, they were attending courses at the Institute of Foreign Languages and they were paying an amount of about C£100.- for tuition fees. The respondent-mother, was utilizing for her upkeep and that of the two children, the whole of her income as well as C£60.- provided by the appellant through an interim order issued by consent on the 19th October, 1982, but this income had proved insufficient for their maintenance.

The appellant was an Acting Sergeant in the Cyprus Police Force and his monthly salary, after deduction of income tax, social insurance and pension contribution, was C£310.115

mils. He used to provide his two daughters with food but he stopped doing so since September 1982.

Held, (*after stating the principles governing an award of maintenance—vide pp.* 253–255 *post*) that on the totality of the material before this Court including the findings of fact and the conclusions drawn therefrom by the learned trial Judge and the need of the infants as well as the financial position of the parties at the time of the hearing of the application and bearing in mind that matters relating to the determination of what is reasonable maintenance and what is just in the circumstances are really questions of discretion and that an appellate Court will not interfere unless it is persuaded that in one respect or another the discretion of the trial Court has been wrongly exercised this Court has come to the conclusion that this appeal should fail and is hereby dismissed with costs.

Appeal dismissed.

Cases referred to:

Re T. (an infant) [1953] 2 All E.R. 830;

Re W. and Another (infants) [1956] 2 All E.R. 368;

Sherwood v. *Sherwood* [1929] P. 12 (C.A.);

Attwood v. *Attwood* [1968] 3 All E.R. 385 at p. 388;

Gengler v. *Gengler* [1976] 2 All E.R. 81;

Cann v. *Cann* [1977] 3 All E.R. 957.

Appeal.

Appeal by the father against the order of the District Court of Nicosia (Ioannides, D.J.) dated the 4th December, 1982 (Appl. No. 41/82) whereby he was ordered to pay £100.—per month for the maintenance of his two minor daughters.

A. Eftychiou, for appellant.

G. Papatheodorou with *H. Neocleous*, for the respondent.

A. LOIZOU, J. gave the following judgment of the Court. This is an appeal from the maintenance order of C£100.—per month made against the appellant by a Judge of the District Court of Nicosia for the benefit of his two minor daughters Kleopatra and Xenia.

The appellant and the respondent were married in 1966 and there were these two daughters from their marriage. Some three years ago their relations were strained and started living apart and on the 10th September, 1982, a decree of divorce

was issued by the Ecclesiastical Court of the Greek Orthodox Church to which both parties belong, but it should be mentioned that an appeal is still pending.

The two girls reside with their mother at the house owned by her. She works as a cleaner at the School for Retarded Children in Nicosia and her monthly salary is C£108. The eldest of the two daughters, Cleopatra, aged 14, attends the third class and Xenia, aged 12, the second class of Secondary School. In addition, they attend courses at the Institute of Foreign Languages and they pay an amount of about C£100.– for tuition fees. The respondent–mother utilizes for her upkeep and that of the two children, the whole of her income as well as C£60.– provided by the appellant through an interim order issued by consent on the 19th October, 1982, but this income has proved insufficient for their maintenance.

The appellant is an Acting Sergeant in the Cyprus Police Force and his monthly salary, after deduction of income tax, social insurance and pension contributions, is C£310.115 mils. He used to provide his two daughters with food but he stopped doing so since September 1982.

After hearing the evidence adduced, the learned trial Judge found as a matter of fact that after paying for his own maintenance, he was left with an amount of C£160.– per month for various personal expenses and for possible future rent and of course, to pay out of them this money for the maintenance of his children. The question of future rent arose because the appellant who has been so far staying in Police Barracks may very soon lose that benefit as the Station, where he is staying, will close down and he will have to seek accommodation for which rent will be paid. In giving evidence he stated that at the time he was maintaining his children the cost for providing for their food, clothing and education was about C£90.– per month.

On these findings, the learned trial Judge who directed himself correctly on the law, made the order appealed from which has been challenged by the appellant on the broad ground that the amount ordered to be paid by him is excessive in view of his financial position and the means at the disposal of the respondent–mother.

The making of maintenance orders by our Courts is governed

by section 40 of the Courts of Justice Law of 1960, Law No. 14/60, subsection 1, of which reads as follows:-

"If any ecclesiastical tribunal of the Greek-Orthodox Church or of a Church to which the provisions of paragraph 1 of Article 111 of the Constitution apply (hereinafter referred to in this section as 'the Church') would have power to entertain a matrimonial cause brought by a wife in respect of her marriage, and the husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or infant children of the marriage, a President of a District Court or a District Judge, on application of the wife, may make a maintenance order directing the husband to make to her such periodical payments as may be just".

The prerequisites are that the husband has been guilty of wilful neglect to provide reasonable maintenance for the infant children of the marriage (in our case) and the Court may make a maintenance order as may be just. These provisions are in substance similar to those of section 3(2) of the Guardinaship of Infants Act, 1925, which came under examination in a number of cases. Mention may be made to the cases of *Re T. (an infant)* [1953] 2 All E.R., p. 830; in *Re W. & Another* (infants), [1956] 1 All E.R., p. 368, and a number of other cases to which reference will be shortly made and the principles enunciated in this line of English decisions may be used by our Courts in construing and applying our own section 40 in respect to the meaning of what is reasonable maintenance and what is just in the circumstances. It has been repeatedly said (see inter alia *Sherwood* v. *Sherwood* [1929] P. 12 (C.A.)) that there are no hard and fast rules to determine the question of maintenance and that each case has to be decided on its own merits the amount being in the discretion of the Court and that the question what is the reasonable maintenance for the wife and children has to be considered with reference to the husband's liability in law to maintain his wife and children and that no doubt the word "reasonable" has to be construed in relation to the standard of life which he previously maintained. The position is set out by reference to a number of cases in *Attwood* v. *Attwood* [1968] 3 All E.R., p. 385, at p. 388, where Sir Jocelyn Simon, P., summed up the position as follows:

"In my view the general considerations which should be

borne in mind in this type of case are as follows—(i) In co-habitation a wife and the children share with the husband a standard of living appropriate to his income, or, if the wife is also working, their joint incomes. (ii) Where co-habitation has been disrupted by a matrimonial offence on the part of the husband, the wife's and children's maintenance should be so assessed that their standard of living does not suffer more than is inherent in the circumstances of separation, though the standard may be lower than theretofore (since the income or incomes may now have to support two households in place of the former one where household expenses were shared). (iii) Therefore, although the standard of living of all parties may have to be lower than before there was a breach of co-habitation, in general the wife and children should not be relegated to a significantly lower standard of living than that which the husband enjoys. As to the foregoing, see *Kershaw* v. *Kershaw* [1964] 3 All E.R. 635, at pp. 636, 637, and *Ashley* v. *Ashley* [1965] 3 All E.R. 554. (iv) Subject to what follows, neither should the standard of living of the wife be put significantly higher than that of the husband, since so to do would in effect amount to imposing a fine on him for his matrimonial offence, and that is not justified by the modern law. (v) In determining the relevant standard of living of each party, the court should take into account the inescapable expenses of each party, especially, though not exclusively, expenses of earning an income and of maintaining any relevant child. (vi) If the wife is earning an income, or if she has what should in all the circumstances be considered as a potential earning capacity, that must be taken into account in determining the relevant standards of living: see *Rose* v. *Rose* [1950] 2 All E.R. 311, per Denning, L.J., [1950] 2 All E.R. at p. 313, and *Levett-Yeats* v. *Levett-Yeats* (1967), 111 Sol. Jo. 475. (vii) Where a wife is earning an income, that ought generally to be brought into account, unless it would be reasonable to expect her to give up the source of the income: *Levett-Yeats* v. *Levett-Yeats* (1967), 111 Sol. Jo. 475. (viii) Where the wife is earning an income, the whole of this need not, and should not ordinarily, be brought into account so as to ensure to the husband's benefit: *Ward* v. *Ward* [1947] 2 All E.R. 713 at p. 715, and J. v. J. [1955]

2 All E.R. 617, per Sachs, J. [1955] 2 All E.R. at p. 91, and per Hodson, L.J. [1955] 2 All E.R. at p. 621. (ix) This consideration is particularly potent where the wife only takes up employment in consequence of the disruption of the marriage by the husband, or where she would not reasonably be expected to be working if the marriage had not been so disrupted. (x) At the end of the case, the court must ensure that the result of its order is not to depress the husband below subsistence level: *Ashley* v. *Ashley* [1965] 3 All E.R. 554. (xi) An appellate court will not interfere with an award of maintenance unless, to use the words used in *Ward* v. *Ward* [1948] P. at p. 65, "it is unreasonable or indiscreet"; that is to say that the justices are shown to have gone wrong in principle or their final award is otherwise clearly wrong".

These are the principles which were referred to by the learned trial Judge and guided himself in the present case. We adopt them with respect and we have reproduced them here at some length for future guidance. These principles were applied in *Gengler* v. *Gengler* [1976] 2 All E.R. 81, though in its turn the dictum of Sir George Baker P., in that case at p. 81, was disproved and also that case was distinguished in *Cann* v. *Cann* [1977] 3 All E.R. 957, but we do not intend to deal with these aspects of these decisions as they have no bearing to the facts of the case before us, but relate to matters relevant to maintenance orders regarding wives only.

On the totality of the material before us including the findings of fact and the conclusions drawn therefrom by the learned trial Judge and the needs of the infants as well as the financial position of the parties at the time of the hearing of the application and bearing in mind that matters relating to the determination of what is reasonable maintenance and what is just in the circumstances are really questions of discretion and that an appellate Court will not interfere unless it is persuaded that in one respect or another the discretion of the trial Court has been wrongly exercised. We have come to the conclusion that this appeal should fail and is hereby dismissed with costs.

Appeal dismissed with costs.