

1985 September 16

[TRIANTAFYLIDIS, P.]

IACOVOS ARISTIDOU,

Appellant.

v.

NIKI ARISTIDOU,

Respondent.

(Application In Civil Appeal 6901).

5 *Stay of Execution—Maintenance order—Application for stay pending appeal—Principles applicable in respect of stay of judgments pending appeal—Special circumstances should exist justifying such a stay—Civil Procedure Rules 0.35, rules 18 and 19.*

10 By means of this application the appellant seeks a stay of execution of the order of maintenance against which the present appeal has been made. The appeal is fixed for hearing on 9.12.1985. This application is based on 0.35, r. 18 of the Civil Procedure Rules. The amount of maintenance awarded to the respondent was C£420 per month. The trial Court took inter alia into account that the elder son of the parties, Aris, is of age, that the appellant would continue to pay about C£75 per month for 15 his education until June 1985 and that, on the other hand, the respondent would, out of the amount of maintenance payable to her, pay for the food and other household expenses entailed by the fact that Aris would continue to reside with her.

20 For the period from February 1985 to June 1985 the appellant, even though he was bound to pay only C£260 per month, he in fact continued to pay about C£400.

25 Aris has in the meantime joined the National Guard and therefore, respondent's expenses will be temporarily reduced.

Held, partly allowing the application.

(1) It is well settled that special circumstances should exist justifying the stay of execution of a judgment; such circumstances do not include contentions that the judgment appealed from is against the weight of evidence, that there was no evidence to support it or that there has occurred a misdirection in Law. *Guerrera v. Guerrero* [1974] 3 All E.R. 460 distinguished. 5

(2) The appeal will not be rendered nugatory if the stay is not granted for the short period from now until the day of its hearing on 9.12.85. On the contrary if the stay applied for is granted the respondent will be deprived of the fruits of her litigation in a manner causing to her real mischief. 10

(3) As it is clear from the payments made voluntarily by the appellant from February to June 1985 he is fully conscious of his responsibilities to his children; he has done everything possible to meet their needs notwithstanding the financial difficulties he faces. The respondent's expenses will be temporarily reduced by reason of the fact that the elder son Aris joined the National Guard. In the light of the above a partial stay of execution of the order of maintenance would be granted namely that C£40 per month out of the C£420 will not actually be paid over pending the outcome of the appeal; and as counsel for the respondent did not appear to be in a great hurry to collect the costs awarded to him, the order for costs would be stayed. 15 20 25

*Application allowed in part.
3/4 of respondents costs to
be paid by the appellant.* 30

Cases referred to:

Cropper v. Smith [1883] 24 Ch. 305;

Oppert v. Beaumont [1887] 18 Q.B.D. 435;

Mavrochanna v. Michael (1984) 1 C.L.R. 760; 35

Monk v. Bartram [1891] 1 Q.B.D. 346;

Chester v. Powell, 1 T.L.R. 390;

Guerrera v. Guerrera [1974] 3 All E.R. 460.

Application.

5 Application for the stay of execution of the maintenance order issued in Application No. 41/83 of the District Court of Nicosia until the final determination of the appeal filed against it or until further order.

L. Papaphilippou with *H. Solomonides*, for the appellant.

10 *K. Talarides*, for the respondent.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of this application the appellant seeks a stay of the execution of the order of maintenance against which the present appeal has been made.

 The appeal is fixed for hearing on the 9th December 1985.

20 The said maintenance order was made on the 11th February 1985 but its execution was stayed, on the 26th February 1985, by an ex parte order of a Judge of the District Court of Nicosia which was, eventually, discharged on the 2nd July 1985.

25 The present application for stay of execution is based on rule 18 of Order 35 of the Civil Procedure Rules; and quite properly the stay of execution was sought, as aforesaid, in the first instance, from a Judge of the District Court of Nicosia, in accordance with rule 19 of Order 35.

30 Useful reference as regards the application of rules 18 and 19 of Order 35 may be made to *Cropper v. Smith*, [1883] 24 Ch. D. 305, and to the at that time in force rules 16 and 17 of Order 58 of the Rules of the Supreme Court in England, which correspond to our aforesaid rules 18 and 19.

 It may be derived, also, from the judgments delivered in the *Cropper* case, supra, that an application for stay of

execution need not be made necessarily to the Judge who has given the judgment in respect of which a stay of execution is sought, but that such application may be made, as in the present occasion, to another Judge of equal jurisdiction (see, also, in this respect, *Oppert v. Beaumont*, [1887] 18 Q.B.D. 435). 5

The principles governing the exercise of the discretionary powers of this Court in a case such as the present one have been stated in, inter alia, *Mavrochanna v. Michael*, (1984) 1 C.L.R. 760, and in case-law referred to in the judgment in that case, and need not be repeated herein all over again. 10

It is well settled that special circumstances should exist justifying the stay of execution of a judgment and that such circumstances do not appear to include contentions that the judgment in respect of which an appeal has been made is against the weight of evidence or that there was no evidence to support it or that there has occurred a misdirection in law (see *Monk v. Bartram*, [1891] 1 Q.B.D. 346). It was, furthermore, stressed in *Chester v. Powell*, 1 T.L.R. 390, that stay of execution pending appeal will not be granted unless it can be shown that irreparable mischief may be done by refusing it. 15 20

I have been referred, also, to the case of *Guerrera v. Guerrera*, [1974] 3 All E.R. 460, but I regard this case as distinguishable from the present one due to entirely different circumstances. 25

I have not been satisfied that in the present instance the appeal of the appellant will be rendered nugatory if the stay of execution applied for by him is not granted in respect of the short period of time between now and the 9th December 1985, when this appeal will be heard and when, of course, the matter of the stay of execution may, if necessary, be raised once again. 30

On the contrary, I think that the respondent will be deprived of the fruits of her litigation in a manner causing to her real mischief if the execution of the maintenance order made in her favour by the trial Court is stayed; and it is to be noted that in the amount of maintenance awarded 35

to her, that is C£420 per month, there are included, apart from her own maintenance, the reasonable expenses for the clothing, shoes and entertainment of one of the two children of the parties, Demetris, who is a minor, and, also, the
5 expenses for the electricity, water and telephone services to the house in which the respondent is residing with this child.

The trial Court took also into account that the elder son of the parties, Aris, is of age and that the appellant would
15 continue to pay about C£75 per month for his education expenses until his graduation from the English School in June 1985, and that the appellant would, also, pay for his son's clothes, shoes and entertainment. The respondent, on the other hand, would, out of the amount of maintenance payable to her, pay for the food and other household
10 expenses entailed by the fact that Aris would continue to reside with her.

It was, moreover, agreed between the parties that the appellant will pay directly the school fees of their son Demetris which amount to about C£75 per month.
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From an affidavit sworn by the appellant, and dated the 8th July 1985, it appears that during the period from February to June 1985, when there was in force the ex parte order of the District Court staying the execution of
25 the maintenance order which is challenged by this appeal, the appellant, even though by virtue of the said ex parte order had to pay monthly only an amount of C£260 as maintenance to the respondent, he nevertheless continued to pay in all about C£400 per month, because in addition
30 to the aforesaid amount of C£260 he paid the bills for the telephone, the electricity and the water in relation to the house in which the respondent is residing, and he paid, also, for the clothing, shoes and entertainment of his son Demetris; and in addition to all these he paid for the education of both his sons and for the other expenses of Aris.
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It is clear from the above that the appellant is a person fully conscious of his responsibilities to his children and

that in spite of the fact that he faces financial difficulties he has done everything possible to meet their needs.

Anyhow, if the applied for by the appellant stay of execution is not granted he will be, until the hearing of his appeal, bound by a judgment to continue paying maintenance at the rate of C£420 per month, whereas previously, for more or less the same expenses, he was paying, in addition to the amount of C£260 of maintenance for his wife, approximately an additional amount of C£140 per month, of his own volition and out of a sense of duty to his children, in order to meet expenses which are now covered by the global amount of C£420 payable per month to his wife.

Though it is not open to me, while dealing with present application, to reduce permanently the amount of maintenance assessed by the trial Court, I have, nevertheless, taken into account, for the purposes of this application, that the elder son of the appellant, Aris, has, in the meantime, joined the National Guard and, therefore, to a certain extent, the expenses of the household kept by the respondent, which are incurred due to the fact that he has been residing with her, will be temporarily reduced by virtue of this factor; and taking, further, into consideration the definitely difficult financial circumstances of the appellant I have decided to grant a partial stay of execution of the order of maintenance made by the trial Court by ordering that from now until the determination of the present appeal, or until further order, the appellant will pay to the respondent per month only C£380 instead of C£420 and that the remaining C£40 will become due and payable by the appellant to the respondent every month but will not be actually paid over pending the outcome of this appeal.

Also, as counsel for the respondent did not appear to be in any great hurry to collect the costs awarded to him by the trial Court I have decided, in order to afford more financial breathing space to the appellant, to grant an order staying execution in respect of such costs until the outcome of this appeal, or until further order.

As regards the costs of this application for stay of execution, and since it has been successful only to a small extent, as aforesaid, I order that the appellant should pay to the respondent three quarters of its costs, which will be
5 payable after the determination of his appeal.

Order accordingly.