Case No: FD15F00056

Neutral Citation Number: [2017] EWFC 52

IN THE FAMILY COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 3/08/2017

**Before** :

MR JUSTICE MOSTYN

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**Between :**

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|  | **Elizabeth Jane Green** | Applicant |
|  | **- and -** |  |
|  | **Charles John Adams** | Respondent |

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**The Applicant (**represented with leave of the Courtby **Mr Holden)**

**The Respondent (**represented with leave of the Court by **Dr Pelling)**

Hearing date: 12 July 2017

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Judgment

**Mr Justice Mostyn:**

1. This judgment deals with certain consequential matters arising from my principal judgment dated 3 May, 2017 ([2017] EWFC 24, and which is on Bailii at [www.bailii.org/ew/cases/EWFC/HCJ/2017/24.html](http://www.bailii.org/ew/cases/EWFC/HCJ/2017/24.html)). In that judgment, I ordered the father to pay the mother a lump sum of £20,600 together with costs of £400; a total of £21,000. My order that gave effect to this judgment, which was sealed on 16 May, 2017, required that sum of £21,000 to be paid by 16:00 on 1 June, 2017
2. On behalf of the mother Mr Holden applies for costs in the sum of £857, being the cost of registering the charging order provided for in my previous judgment; the cost of applying for an order of the sale pursuant to that order; the time spent in making those applications at the prescribed litigant-in-person rate of £19 per hour; and the time spent in court today at the same rate.
3. On behalf of the father Dr Pelling applies for my judgment, and the order giving effect to it, to be altered, as he says that there are errors in my assessment of the constituent parts of the (admittedly modest) amount of £20,600 referred to in paragraph 1 of it. In addition, Dr Pelling applies for yet further anonymisation of my principal judgment.
4. I deal first with the costs application. On 19 May, 2017 the mother applied to register the charging order at HM Land Registry and this was completed by 27 May, 2017. The fee for this was £40. Although my order did not expressly provide for this fee to be met by the father it is in my judgment manifestly a reasonable sum for him to pay. On or before 30 May, 2017 the father applied to the Court of Appeal for permission to appeal and for a stay of execution. At the same time, he paid £3,200 to the mother’s account and stated that he would pay the balance of £17,800 within 21 days if the Court of Appeal refused his application.
5. The father’s application came before Lord Justice Gross in the afternoon of Thursday, 1 June, 2017, which was, as stated above, the date provided for in my order for payment of the lump sum and costs totalling £21,000. He did not have time to deal with the lengthy grounds of appeal but he was quite sure that a stay of execution should be refused; and he so ordered.
6. On 4 June, 2017 the father, through Dr Pelling, applied for a reconsideration of the refusal to grant a stay of execution pursuant to CPR 52.24(6). Of course, neither this application, nor the application for permission itself, acted as a stay of execution – see CPR 52.16.
7. The mother took the view that these steps taken by the father were a delaying tactic. Accordingly, on 14 June, 2017 she applied for an order for sale of the property which was the subject of the charging order.
8. On 28 June, 2017 Lord Justice McFarlane refused permission to appeal and a stay of execution.
9. On 1 and 2 July, 2017 the father paid the balance of £17,800 to the mother.
10. On behalf of the father Dr Pelling argues that he (the father) is not to be criticised for pursuing legitimate appellate remedies. He was doing so with all due expedition and in the circumstances the mother was acting with undue haste, and disproportionately, in applying for an order for sale while his application for permission to appeal, and for reconsideration of the refusal of a stay, was pending. I do not agree. The father’s assault on my judgment was not confined to the limited corrections which he now argues through Dr Pelling. Instead, it was an attack on the legality of my judgment, principally in respect of the provision of a replacement car. That was given very short shrift indeed by Lord Justice McFarlane, and in my judgment rightly so, as the complaint was completely meritless. In such circumstances, it was entirely within the mother’s rights to pursue enforcement of the lump sum notwithstanding that the father’s applications to the Court of Appeal remained outstanding.
11. Accordingly, in my judgment the mother is entitled to her costs, which I assess in the sum of £857.
12. I now turn to the father’s applications.
13. On 2 May, 2017 Dr Pelling had written to my clerk, after I had prepared my judgment, making further submissions. He pointed out that Mr Holden on behalf of the mother had not sought payment of more than half of the cost of the trip to Israel or of the cost of a new laptop. Unfortunately, these points arrived too late for me to take them on board.
14. In my principal judgment at para 1(ii) and (v) I allowed 100% of these expenses (£3,000 and £600 respectively) and I stated - incorrectly - that the entirety of these costs had been sought by the mother. Thus, I had allowed in respect of these two items £1,800 more than the mother had actually claimed.
15. On 22 May, 2017, that is to say after the judgment had been handed down, and after order giving effect to it had been sealed, Dr Pelling wrote to my clerk raising these points again and raising two further points. These two further points were, first, that the true cost of the trip to China referred to in my judgment of paragraph 1(iii) was £2,300 (which he had established by an email from the school) and, second, that the true cost of a kayak was no more than £500 (which he had established by Internet research). Therefore, he argued that in respect of these two items my assessment had been overstated by £350 and £300 respectively, a total of £650.
16. Accordingly, Dr Pelling argued that my lump sum of £20,600 was overstated by a total of £2,450 (i.e. £1,800 plus £650).
17. The power of the Family Court to alter an order is given by section 31F(6) of the Matrimonial and Family Proceedings Act 1984, which is given procedural effect by FPR 9.9A(1)(b)(ii) (in respect of final financial orders) and FPR 4.1(6) (in respect of all other orders). Given the need to respect the finality of orders it is a power that must be exercised very circumspectly. If new events are being relied on, then the principles in *Barder v Barder* [1988] AC 20are applicable. Comparable principles apply if a serious mistake is proved: *DB v DLJ* [2016] EWHC 324 (Fam). If fraud is proved, then the order will almost inevitably be set aside: *Sharland v Sharland* [2016] AC 871. None of these categorisations easily accommodate the first set of complaints here, namely that there has been a judicial misunderstanding or error. They do not fall within the power to rectify clerical errors (the slip rule) in FPR 29.16, or the power to rectify errors of procedure in FPR 4.7. I agree with Dr Pelling that the power to correct a judicial mistake (which obviously exists) derives from the inherent power of the court: see *Hazeltine Corporation v International Computers Ltd* [1980] FSR 521.
18. Mr Holden rightly argues that it was well within my power to award the mother more than she was in fact seeking for the Israel trip and the new computer. However, I agree with Dr Pelling that if I was minded to go outside the field of battle as defined by the parties then the father should certainly have been given notice of my intention to do so. In any event, after having examined my memory, and even allowing for the considerable passage of time, I am satisfied that I did not intend to award the mother the full amounts and that I made a minor mistake. It is right that my judgment should be amended to reflect what I intended. Therefore paragraphs 1(ii) and (v) will be corrected to provide that the mother’s claim was for half the sums mentioned, namely £1,500 and £300.
19. However, on 13 July 2017, after the hearing and at a time when this judgment was largely completed, I received an email from Mr Holden which stated that the parties’ son had changed his mind about going on the educational trip to Israel this summer. Therefore, the mother would no longer pursue this head of claim and will repay the sum awarded.
20. The position is very different in relation to the claims concerning the China trip and the kayak. Here, the mother gave her best estimate of the historic costs. It was open to the father to challenge those figures and to adduce competing evidence. He did not do so and now is arguing that the court made its award on a mistaken basis. In my decision of *DB v DLJ* [2016] EWHC 324 (Fam) at paragraph 57 I stated at (ii) and (iii) that the claimant (that is to say the father in this case) must show that the true facts would have led the court to have made a materially different order from the one it in fact made, and that the absence of the true facts must not have been his fault. In my judgment, a correction in respect of these two items of £650 does not satisfy the criterion of a material difference and in any event I am not satisfied that the true facts could not have been placed before me by the father. I do not allow these corrections.
21. My conclusion is that the mother must repay to the father £3,300 (i.e. the full amount of the Israel trip - £3,000, and half the cost of the computer - £300) against which I offset her award of costs made above of £857, leaving the sum of £2,443 to be repaid.
22. I now turn to the father’s application for further anonymisation of the main judgment. He says that the extent of anonymity given by me to the properties in paragraph 14 of my judgment is not enough, and that fictitious numbers and initials should be given. He says that there is a risk of jigsaw identification and a real danger of the people who live at those addresses been targeted by criminals. I am slightly surprised that this submission should be made by the father through Dr Pelling having regard to their trenchant resistance to any form of anonymisation in the proceedings in the Upper Tribunal heard by Mr Justice Charles and reported publicly as *Adams v SSWP and Green*  [2017] UKUT 0009 (AAC). However, I am not satisfied that any further anonymisation is necessary, and this request is rejected.
23. Before I leave the case I am constrained to refer to some developments arising from paragraph 22 of my principal judgment where I bemoaned the abolition of the assets ground of variation in the most recent child support regime and urged the government to consider its reinstatement.
24. I have read with interest the recent Gingerbread report "Children Deserve More" which is to be found at <https://gingerbread.org.uk/content/2380/Findings>. This records how the matter to which I referred was taken up by the mother’s MP with the relevant minister. At page 23 the report records that the minister’s first reply explained that, compared to the CSA, the scope of income which could be captured by a possible variation had been widened to include almost all sources of gross income identified in the self-assessment process. The minister stated *“this will make it harder for wealthier individuals, with income from other sources, to avoid their responsibilities by minimising the amount of child maintenance they pay.”* The author of the report rightly points out that this was a non-sequitur because the assets ground of variation was focussed on people who arrange their affairs so that they do not have any income but who rather live on their capital. At page 28 the report records that, after being pressed, the minister gave a second reply which was that *“[the child maintenance scheme] does not attempt to provide a unique, bespoke solution in respect of the care of each child whose parents live apart, as it would be prohibitively expensive and time-consuming to do so.”* This is dispiriting. The scheme should surely strive to provide a just solution in all cases; for the few as well as the many. Justice surely should not be sacrificed on the altar of managerial efficiency. Ease of administration surely does not furnish an objectively reasonable justification for a process that allows a multi-millionaire father to get away with paying child support for his son of a mere £7 per week.
25. The assets ground of variation reposed on the statute-book, to my knowledge, quite unremarkably for over 10 years, and was in fact successfully deployed in this case (as I described in my principal judgment). To empower a factfinder to determine if arrangements have been made to place assets in non-income-producing structures would not, on any view, be prohibitively expensive and time-consuming; but even if it were relatively expensive and time-consuming, why as a matter of justice should the exercise not be carried out? If the ground is not reinstated then I foresee more cases seeking singular awards of capital, such as the one which I have determined, coming before the family court. And the family court taking an ever more expansive view of what does constitute singular expenditure.
26. That concludes this judgment.