Neutral Citation Number: [2020] EWFC 9

Case No: ZC16D00299

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/02/2020

Before :

Mr Justice Mostyn

- -

Between :

ALESIA VLADIMIROVNA HASKELL	**Petitioner/ Applicant**
- and -	
PRESTON HAMPTON HASKELL	**Respondent**

- -
- -

Lucy Stone QC (instructed by **Child & Child**) for the **Petitioner/Applicant**
The Respondent appeared in person

Hearing dates: 28 January to 4 February 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE MOSTYN

This judgment was delivered in private. This redacted and anonymised version of the judgment may be published. In no report of the judgment may the children be identified. Breach of this reporting restriction will be a contempt of court.

Mr Justice Mostyn:

1. In this judgment I shall refer to the applicant as "the wife" and to the respondent as "the husband". This is my judgment on the wife's claim for financial remedies which I heard over six days commencing on 28 January 2020.

2. On 31 October 2019 I gave judgment on the wife's application to enforce arrears arising under an order for interim payments made by Lieven J on 4 March 2019 and on the husband's cross-application for a variation of that order. That judgment is reported at https://www.bailii.org/ew/cases/EWHC/Fam/2019/3434.html. In that judgment I recorded that very substantial monthly payments which had previously been received by the husband from companies of which he was the sole shareholder had come to an end. At paragraph 3 I stated

> "Now those payments have come to an end according to the written evidence of the husband and confirmed by him in his oral testimony. Although he has never asserted that the termination is permanent, his case has always been that he is not a man who is poor, but he is a man who is presently subjected to cashflow difficulties. However, Lieven J plainly assumed that these abundant sums would either continue to be paid or soon revived, but on the husband's case that did not eventuate with the result that he claims to have been unable to have paid the full amount due under the orders."

3. The husband's stance was given to me from the witness box on that occasion. He repeatedly asserted that he was not a man of poverty but rather a man suffering liquidity and cash flow problems during a period of transition in his business activities. Before me on this final hearing his stance has been the same. In his oral evidence he stated that he thought he needed two to three years to revive his fortunes and to repay his debts. In his final written submissions, he stated:

> "The court will do its utmost to make a final order and avoid a prolongation of legal proceedings. However, it must be alert to ensure that the order can be honoured. H must be allowed to focus his attentions of reviving his business fortunes for the benefit of his family and not be impeded by further enforcement proceedings or other litigation pressure. H's case is that he hopes to realise returns on his investments if he is allowed to concentrate his efforts constructively. However, there are no further funds available now. The last three years have been characterized by H calling in what debts he could, borrowing to the maximum, charging everything he owns to the full extent of his ability. There is no more leeway presently. The parties must both endure a period of economy before H's fortunes hopefully revive. Any order of the court must allow for this too."

4. His very final words to me were to accept that he was indeed moving between two different phases of his business life, and that he needed time to make the transition.

5. The clear view I have formed is that the husband is exceedingly astute commercially who is presently forging a change of direction in his business activities. A snapshot at the present time would not be a realistic way of looking at his resources. Nor would such a snapshot pay proper regard to the statutory mandate of having regard not merely to his existing resources but also to resources that he is likely to have in the foreseeable future. It is noteworthy that notwithstanding that he proclaims that he is at his economic nadir he has not disposed of any of the building blocks of his commercial empire. True, he has borrowed quite substantially in recent times from his father in order to navigate the transitional rocks and eddies. But everything has been left intact, presumably because he is confident that they will ultimately come to fruition in the foreseeable future.

6. It is therefore unrealistic to approach this case on a snapshot basis. The schedule of assets attached to the husband's final position statement proclaimed that his net worth at that point, but excluding his trust interests, was minus £50 million. This is to be compared to an *Imerman* document dating from 2010 obtained by the wife, and disclosed by her in accordance with proper procedures, which stated that his fortune, including his trust assets (he drew no distinction between his personal and trust assets in that document), amounted to US$185 million.

7. The wife rightly makes her claims by reference to the needs principle alone. There is no marital acquest in view of the present downturn, and so the sharing principle is not engaged. Her claim is conventionally framed in the context of the standard of living enjoyed by the parties during their marriage and the likely upturn in the husband's fortunes. The husband, too, argues that the claim should be dealt by reference to need alone although his position is that the wife should receive minimal amounts. Neither party argues that the claim should be adjourned to be revived in the future. This would be an intellectually pure way of dealing with the situation with which I am presented. However, Miss Stone QC rightly points up the practical and legal difficulties faced by any claimant who has such a solution foisted on her. So far as I am aware there is no reported case of a claimant successfully later reviving capital claims that were adjourned at the final hearing.

8. I will deal with this case in accordance with the joint approach of the parties. I will make an award to the wife of capital sums to meet her needs although I will give the husband time to pay them and he will explicitly be granted liberty to apply for an extension of time should his fortunes not revive as forecasted. The onus of proof to justify an extension will be squarely upon him, however.

9. The husband is aged 53. He was born in the USA, although he has renounced his US citizenship. He is a citizen of St Kitts and Nevis, and of Sweden. He lives in Moscow. His father is exceptionally wealthy and lives in Jacksonville, Florida USA. His mother is still alive. He has two sisters who are the trustees of a grandchildren's trust established by his father, to which I will refer later. He has one son from a previous relationship, D, who is presently studying at university in the United States. The fees and accommodation costs of D alone amount to $75,000 a year; this is fully met by the husband.

10. The wife is aged 39. She was born in Belarus and remains a citizen of that country, although she also has a Swedish passport.

11. The husband and wife met in 2003 in Moscow. The husband was working there developing his business interests and the wife was there working as a model. They started dating and in 2005 they began to live together in an apartment owned by the husband in Moscow. They became engaged in 2007. They planned to marry in South Africa in August 2008 at a vineyard owned by the husband there. However, shortly before the ceremony the relationship foundered, and the wedding was cancelled. However, they were soon reconciled and were married in Moscow on 16 December 2008. On 8 April 2009 they signed a Russian post-nuptial agreement which provided for separation of property. The existence of this agreement is an additional reason for confining the wife's claim to needs alone.

12. The husband and wife have three children. A was born on 8 September 2009 in Sweden to which country the parties had moved earlier that year. He attends a private London school. B was born on 27 June 2012 in Russia. Shortly before her birth the parties learned that she would be born with severe brain damage as a result of microencephaly. She is profoundly impaired: immobile, blind and speechless. She lives in Belarus under the primary care of the wife's own mother but supported by 24-hour professional care. C was born in London on 4 March 2014, the parties having moved here in September 2013. She also attends a private London school.

13. Between 2009 and 2013 the husband was careful not to spend more than 90 days in any given year in Sweden, although both he and the wife, as I have explained, obtained Swedish passports. This was the well-established time threshold for avoiding taxation of global, as opposed to domestic, income. However, the Swedish tax authority has nonetheless sought to treat the husband as having been tax resident in Sweden during that period and has levied an enormous tax impost on him as a result. This the husband is seeking to appeal. I will have more to say about this below.

14. After their arrival in London in September 2013 the parties enjoyed a superior life-style dwelling in high-quality rented accommodation. Unfortunately, the marriage was blighted by the husband's serial infidelity and abuse of cocaine and alcohol. The wife issued a divorce petition on 24 November 2016 and commenced her claim for financial remedies on the same day. On 21 December 2016 the parties physically separated, and although they discussed reconciliation they never cohabited again. Although the husband initially defended the divorce proceedings on the ground that the parties were not habitually resident here, that defence was withdrawn, and I pronounced Decree Nisi on 30 January 2020.

15. This was therefore an 11-year cohabitative relationship.

16. Initially the husband's position was that he was a rich man with complex international business affairs who could well afford to support his wife and children properly. By virtue of the size and complexity of the case he applied for it to be allocated to High Court judge level. In the witness statement in support of the application dated 28 March 2017 his then solicitor wrote:

> "On the basis of the limited financial information I have, it is apparent that the Respondent holds assets in a significant number of jurisdictions, including the following: Russia, the United States, West Indies, South Africa, Sweden, Mauritius, Australia, Jersey, British Virgin Islands. I am instructed that

> the Respondent has interests in trusts which are situated in Jersey, The United States and British Virgin Islands. Those trusts hold shares in limited companies which are in turn held offshore.
>
> …
>
> A further issue arises in relation to whether this matter should be transferred to the High Court for hearing given the extent of the assets, the multiplicity of jurisdictions in which assets are held, the offshore trusts and the fact that there are foreign post nuptial agreements. Given the extent of the assets and these issues, it appears that this case should be transferred to the High Court for hearing.
>
> It is inevitable that the transfer of this matter will lead to a further delay. However, the delay will not prejudice the Petitioner. As an interim measure and without prejudice to a final order being made in this matter, I am instructed that the Respondent is currently making payments to the Petitioner to cover her general personal expenditure, rent, cleaner, nanny, child support, school fees. It is submitted that she will not suffer financially if the matter is adjourned to be heard in the High Court."

17. The case was therefore allocated to High Court judge level and followed a conventional path with the exchange of Forms E. Orders were made by Cohen J and Roberts J in March 2018, however, adjourning the claim on the basis that the parties were, as mentioned above, exploring a reconciliation. Throughout this period the husband was amply supporting the wife and was not asserting that his business was in decline and heading for the doldrums. That only happened when it became clear to him that the reconciliation was not going to take place. His 2017 Form E stated that he had personal and business assets of £23m, trust assets of £22m, and liabilities of £32m, of which the main item was Swedish tax of £11m. It asserted a current income need for himself of just under £1m annually.

18. In 2018 nothing changed. The husband continued to support the wife and the children amply while living a high lifestyle himself. For example, between May and December 2018 he spent nearly $189,000 on himself on his Amex card alone. In August 2018 the husband was able to borrow without difficulty $336,000 from the grandchildren's trust. In November 2018 Z Co (to which I refer below) borrowed $4.7m from the husband's father, again without difficulty. On 29 November 2018 the husband lent $300,000 to an individual, unsecured, in order to curry political favours in the Democratic Republic of the Congo (DRC). This is now said to be irrecoverable. The picture that emerges is that money was readily available and readily dispersed for pleasure and other speculative reasons.

19. In January 2019 the husband reached the conclusion that a reconciliation was not going to work and announced that the parties would proceed to a divorce. At that point everything changed. His attitude to the wife became unremittingly punitive. He denounced her as a gold-digger and began a process of financial attrition which has

led to the present dire situation where the wife and children are shortly to be evicted from their home in Central London and made homeless.

20. On 24 January 2019 the husband texted the wife:

> "We must reduce our expenses living separately. I have cancelled the ski trip as it will save £12,000. I will not go to LA. Sorry for the bad news that I had to tell that the reason I started asking for cost reduction is when I realised we have no chance to reconcile."

Two days earlier, on 22 January 2019, the husband told the wife that he had terminated the tenancy over the family home in Central London. The following day he emailed her to say that she had to take over her own telephone contract. The day after that, the very day of his text, he emailed her to say that he had cancelled her membership of the club at 5 Hertford Street. In contrast, his American Express statement records that in the month up to 22 January 2019 he had spent on that card alone nearly $19,000.

21. On that same day, 24 January 2019, the husband later texted the wife to say:

> "Unfortunately, I have been very low on cash for the last two years and at this moment I am being supported by my father. I have been holding it together with hopes of us getting back, knowing if we were together my parents would always be willing to support our lifestyle and our children's well-being during this very difficult period. They said they would be willing to buy a house for us in the near future. This is the truth, I do not lie any more to anyone especially to you. We need to avoid court and because I cannot nor can you can afford it (sic). I can agree to keep the apartment until summer if you allow me to stay in (sic) A when I am in London for weekends from March 1 when I move to Moscow. I am agreeing to divorce you as you have asked for. I will take care of you and the beauties the best I can but we must reduce our expenses living (sic)."

22. The clear picture that emerges is one of insidious coercive control. The wife and children will only get money and be supported by the husband, provided that they bend to his will.

23. The pressure became uglier. On 28 January 2019 the husband texted the wife:

> "We should consider moving [B] to London and sell the apartment [in Belarus] to support you. That will allow your mother to also move and NHS will cost much less than our current costs."

The apartment in Belarus is worth a mere $70,000.

24. On 31 January 2019 the husband wrote a dogmatic letter to the wife demanding that in relation to the payment made to her account each month of £6,145 she should

provide documentary proof of each and every expenditure made from that account, down to the last penny. Examples of the ever-increasing syndrome of control in that letter were:

"travel budgets should be provided and approved by me in advance" and "do not make any cash withdrawals from the account except with my prior written approval. All payments should be made either by wire transfer or by card".

25. On 6 February 2019 the husband texted the wife to say that he would not agree to the release of her car on which he had paid the deposit until and unless she agreed a budget with him. On 18 February 2019 he wrote a letter to the wife's solicitors in which he stated "your client needs to understand that my financial situation is not good and I am not able and not willing to provide her with a luxurious lifestyle, particularly when we are going to divorce."

26. Unsurprisingly, by that point the wife had reached the conclusion that the husband's motives were not benign and that she would have to seek the assistance of the court in fixing her interim maintenance. Therefore, she applied on that day for maintenance pending suit and a costs allowance. This was fixed for hearing on 4 March 2019.

27. In his statement made within that application on 1 March 2019 the husband proposed that a flat should be rented at a cost in the region of £6,000 per month and offered to pay £13,247 per month in maintenance together with school fees and health insurance.

28. Lieven J considered the application and awarded rather more than the husband was prepared to offer. Her award was:

    i) £8,900 pm (£4,900 for the wife and £2,000 each for A and C) on the 25th of each month;

    ii) £2,145 pm to the wife to meet monthly costs of the nanny on the 25th of each month;

    iii) School fees (and extras) for A and C – may be paid directly to the Bursar;

    iv) $2,000 pm for monthly care costs of B in Belarus – may be paid directly to the wife's mother;

    v) £12,618 pm plus utilities until 2 July 2019 for rent and utilities at the flat in Central London;

    vi) £500 pm by permitting the wife use of an Amex card; and

    vii) Costs allowance of £20,000 pm for four months.

29. The total value of the interim award came to about £45,700 per month, exclusive of school fees. This Lieven J was satisfied the husband could well afford to pay. She rejected his proposal that he should pay, exclusive of school fees, just under £20,000 a month.

30. The husband flatly refused to pay what had been ordered and unilaterally decided to pay what he felt was reasonable. Thus, arrears quickly built up. On 6 June 2019 the

matter came before Roberts J who quantified the arrears in the sum of £102,489 and ordered them to be paid by 13 June 2019. Two days before that hearing the husband sought to apply to vary the order of Lieven J.

31. The husband did not pay that sum. Further arrears accrued. On 23 August 2019 the wife issued a judgment summons. By then the arrears amounted to over £175,000. By that time the husband had stopped paying the rent on the apartment in Central London. Possession proceedings were commenced, which the husband did not defend. Judgment was entered for possession and for arrears of rent and associated costs quantified at over £90,000. Eviction is scheduled for 23 March 2020.

32. The judgment summons and the husband's cross-application to vary came before me on 31 October 2019 when I gave the judgment referred to above. Essentially, I suspended part of the liabilities under the order to enable a private FDR to take place on 13 December 2019. That duly happened, but no settlement was reached. The matter was restored to me on 16 December 2019. I decided that early closure was urgently needed. Adventitiously, another case due to be heard by me had recently settled and I was able to fix the final hearing for 25 January 2020. The total arrears under the interim order by the time the matter came before me, inclusive of the suspended sums, exceeded £310,000.

33. What was the husband doing, or not doing, from March until December 2019? He did not sell any of his assets. Nothing has been disposed of. He continued to enjoy his high lifestyle. Thus, the wife was able to establish by looking at the husband's postings on social media that he was on holiday in South Africa in April (when he posted a picture of himself paragliding with the caption "life is beautiful"); in Turkey in May; in St Tropez in June; in Ibiza in July; in Switzerland in July in order to attend a party hosted by the US ambassador to that country; and in December with the children as well as D at his beautiful home in Cape Town. On 31 May 2019 he posted a picture of himself holding a bottle of Château Haut-Brion 1966 with the caption: "It was a beautiful year".

34. He was also able to find time to abuse and threaten the wife, particularly in relation to their profoundly disabled daughter B. On 7 September 2019 he texted the wife to say that he would be filing an application in Belarus for B's custody. This was a remarkably cruel thing to do, and especially striking given that he did not even visit B until she was four years old and did not reveal her existence to his parents and sisters until recently. Of course, no such custody application has been made. In this regard the husband was, in the famous words of Alexander Pope in his mordant pen portrait of Joseph Addison, "willing to wound and yet afraid to strike". On 30 September 2019 he went yet further and texted the wife to say:

> "Funny that Cinderella moves to London, leaves her completely retarded daughter in Belarus, moves to London with ur past. Enjoy ur fashion life. Alesia, never forget who gave u the Cinderella life you have. B will be ur responsibility when we divorce."

Although the husband admitted under cross-examination that this was "mean and spiteful" I do not think that this really captures the depths of malignity to which by then he had sunk.

35. The husband's attitude towards his disabled daughter and to her mother is inexplicable. Plainly, B's placement in Belarus under the supervision of the wife's mother, but with 24-hour professional care, is in her best interests. Yet in his section 25 statement the husband argues that she should be cared for in Moscow "so that I could visit her regularly". His true motive, of course, is to free up the capital value of the apartment in Belarus to put towards wife's needs. This apartment is, I repeat, worth a mere $70,000.

36. In his oral evidence the husband asserted that B was not a beneficiary of the grandchildren's trust. That trust was established by his father and has over $19 million in it. $50,000 a year is paid for each grandchild, but not including B. The husband maintained that B had specifically not been made a beneficiary because in her condition she had lesser needs than the able-bodied grandchildren. I was truly shocked when that evidence was given. Miss Stone QC then put to him extracts from the deed of trust. It was executed on 30 July 2012. It declares that it was created for the primary benefit of the grandchildren of the husband's father. It lists the grandchildren known to be living at that point. C had not been born and so she was not mentioned. B had just been born but her existence was a secret, so she was not mentioned. A letter dated 16 January 2020 from the trustees, the husband's sisters, purports to state that while C is a beneficiary, B is not. This was quite untrue, as was the husband's evidence. B is just as much a beneficiary of this trust as her siblings and cousins. On the last day of the hearing the husband produced a written statement from his father. In it his father stated:

> "It was only in the beginning of last year that I and Preston's sisters learned that his daughter B survived past birth, and her current state. Preston has asked me to comment on the possibility that B would receive distributions from the Grandchildren's Trust. It is difficult for me to comment on this. I did not envisage this when I set up the trust because I did not know about her. I have no formal authority in relation to the trustees. B's situation is very different from the other 9 grandchildren. She does not have education, entertainment and travel needs that my other grandchildren have. It is impossible for me to say what her actual needs are. I think her parents are best placed to know this. If the trustees were to ask for my opinion, I would recommend them to ask Preston to tell them what B's needs are and to consider making reasonable distributions on that basis."

Again, I cannot forbear from expressing my surprise that B's acute needs should be thus treated.

37. In my judgment it would be a perverse and unreasonable exercise of discretion for B not to be treated equally to the other grandchildren. I shall proceed on the basis that the $50,000 annual payment will be equally made available to the husband for B.

38. I turn to examine the husband's financial position. His interests are held in quite complex corporate and trust structures and there is an element, as the husband put it in his position statement, of a money-go-round, where money is lent by one arm of the empire to another. I shall try to explain the position as simply as possible, focusing on

the hard assets and hard third-party liabilities. I shall not place any weight on sums said to be owed to the husband's father as I consider these to be extremely soft debts. These are not debts which the husband would be expected to repay any time soon. Had the marriage continued I am quite sure that there would be have been an indefinite deferral of these debts. On the same basis I place no weight on the debt of $574,000 said to be owed by the husband to the grandchildren's trust.

39. At the outset I state that I am satisfied that the husband, as he stated to me, needs about two years in order to bring his various ventures to profitability and liquidity. The award that I make will be built on that foundation.

40. I look first at the husband's interests in Africa.

41. The husband, via a company and a trust, holds 71.79% of a BVI company, Y Ltd, which is involved in real estate developments in the DRC and South Africa. The DRC development is conducted through a subsidiary which holds lease rights to plots of land located in Lubumbashi. There are third parties involved and the extent of the husband's interest in the development is calculated at 50.61%. The plots are in the process of being developed for residential and commercial use. A valuation prepared in December 2018 by Mazars, the top accountancy firm, appraised the value of 100% of the DRC venture as $53.77m and the husband's 50.61% interest in at $27.2m. The figure of $53.77 million was calculated by taking the area of the land available at 1,685,000 m² and multiplying it by the value per square metre of $44.75 giving $74.66 million. From this figure various liabilities were subtracted to give $53.77 million. These liabilities included a loan from Y Ltd in the sum of $13 million. That should be disregarded when looking at the hard reality. Plainly, although the land is yet to be developed there is enormous latent value available to the husband, if not now, then within the foreseeable future.

42. The South African development is in relation to land designated for mixed use development near Lanseria International Airport. The project is known as "PP". The South African subsidiary owes £5.6 million to a commercial bank – Nedbank. I was told by the husband in his evidence that the development of the land has been impeded by the difficulty in obtaining vacant possession from squatters. In a rider to his witness statement the husband stated that the bank had applied for liquidation of PP. However, the liquidation had been postponed under a settlement agreement made in September on terms that monthly interest payments were made. The husband said that these have not been paid and so the liquidation will be resumed. But in the witness box the husband accepted that other legal strategies were being adopted including seeking protection from creditors under the South African equivalent of Chapter 11. It was clear to me that the liquidation was far from certain and that the husband's personal guarantee of the bank loan was unlikely to be called upon. I decline to attribute a hard liability to the husband in this respect, but I do not attribute any value to this aspect of the development.

43. Via three companies and a trust the husband owns a winery in South Africa near Stellenbosch. In a rider to his witness statement the husband says that the value of the winery is nil due to negative net asset value. The accounts show that it runs as a loss. However, no attempt has been made to dispose of it. The accounts show that it has assets of R34 million and liabilities of over R80 million suggesting that it is well and

truly insolvent. However virtually all of the debt is owed to the parent companies. Here again, the accountancy picture is belied by the reality.

44. Via three companies and a trust the husband owns a magnificent villa in Cape Town, and via two of those companies and the same trust owns another fine villa in Johannesburg. The villa in Cape Town is an outstanding property with views over the ocean. It is said to be worth, inclusive of an adjacent plot of land, R125 million and is subject to commercial mortgages of R35 million. The villa in Johannesburg is said to be worth R20 million and is subject to a commercial mortgage of R12 million. Neither of these properties is advertised for rent on the Internet. They are fully staffed and available for use by the husband as and when he wishes. Although he rented the Cape Town villa to a friend over the Christmas period this did not stop him and the children occupying the property as usual, using their own rooms, and throwing a large dinner party for 17 people. No attempt has been made to sell either of these properties. If the husband's financial position was really as dire as he proclaims these would be the first to go under the hammer.

45. Via two companies the husband owns 20% of a hotel in Madagascar. He says he has invested around $250,000 in it. No attempt has been made to liquidate this holding.

46. I move to Russia and the Ukraine.

47. Via a BVI company, Z Co, the husband owns 52.27% of the shares (just over 51.5 million shares) in a company listed on the Swedish stock exchange called X Ltd. On its website X Ltd describes itself as "Russia's largest and fastest growing junior public gold producer." At a market price of 3.53 kroner per share this gives a value of 182 million kroner or just under $19 million. The company owes $37m to Z Co. Z Co owes $5 million to the husband's father and $59 million to the husband and one of his trusts. However, attributing, as I do, no weight to these money-go-round debts, it can be seen that there is very substantial present and future value here. In the rider to his witness statement the respondent says:

> "X Ltd is a gold exploration and production business which is still in its development stage. The company's subsidiary has just finished construction of the new CIL plant at Tardan, financed with the proceeds of the Rights Issue and bank debt. The company's announced strategy is to build a new mine with a gold producing plant at its other site, Kara-Beldir, so as to increase gold production by 2 tonnes per year. This will require significant further investment."

48. Via three companies the husband owns half of a building in Kiev in the Ukraine. The most recent value given to the husband for the building by the Ukrainian holding company is $2 million. The husband asserts that this value is not realistic and says that it should be valued at cost namely $608,000. There is no evidence that this is so. On any view the husband has an asset of considerable value here and, again, it is noteworthy that he has made no attempt, in what he claims is a financial crisis, to dispose of his interest.

49. Via three companies and a trust the husband owns two plots of land in Crimea. In the rider to his witness statement he asserts that the plots are worth $228,000 although he

maintains that that value has recently fallen owing to a recent change of zoning from residential to engineering and transport. Again, the husband has taken no steps to dispose of this interest in what he says is a time of crisis.

50. The husband maintains an office in Moscow where he employs numerous members of staff. Not one has been let go in this supposed time of crisis.

51. I move to Romania.

52. Via two companies the husband owns 32.16% of a Romanian business which carries out workplace consultancy and design, fit out, mechanical and electrical works, project management, and office furniture supply for office interiors. This business is profitable, but heavily indebted to one of the husband's trusts. In 2018 the husband received, via a company, dividends in respect of his 32.16% shareholding of €560,000. He says, without giving an explanation, that the dividends fell in 2019 to €250,000. The husband does not advance a capital value for his interest in this business. He has not sought to dispose of it at this supposed time of crisis.

53. I move to Sweden.

54. Via two companies and a trust the husband owns a fine property in the Swedish Archipelago together with a motor yacht. He asserts that the property is worth 13 million kroner. It is subject to a commercial mortgage of just over 6 million kroner. He says that the motorboat is worth 75,000 kroner. The overall value in sterling is given as £557,000. He has made no attempt to sell this property. He says that his sons would be upset were he to do so. It is not available for rent.

55. I have mentioned above the tax debt claimed in Sweden. This is said to amount to £22 million. The husband explained to me that the Swedish tax authorities appear to have moved the goalposts in circumstances where he strictly complied with the 90-day residence rule. In his position statement the husband describes this tax debt as follows:

> "The liability arises from an assessment of H's worldwide income between 2010 and 2014 (when H had been advised, wrongly as it transpired, that he would only be taxed in Sweden on his Swedish income and on wealth remitted to Sweden). The impact of this decision was that the Swedish tax authorities applied an anti-avoidance rule which treated the income of all of the companies beneficially owned by H (including those in the trusts) as being H's income. That income comprised principally interest on inter-company loans within the structure which, in reality was never paid and represented a money-go-round in any event. The tax debt is the subject of aggressive enforcement proceedings by the relevant authority in Sweden, which has already seized real property, and the benefit of a loan of US$6 million advanced by H to X Ltd. It cannot be ruled out that the Swedish tax authorities will seek to make H bankrupt. The Swedish tax debt cannot be ignored and, were H to have liquid resources with which to meet the debt, he must

> repay it, in priority to meeting W's claims, as would be the case for a debt owed to HMRC."

56. The husband explained to me that while he had lost a challenge to the assessment at first instance, he was nonetheless appealing that decision and the appeal would take 18 months to two years to be heard. If that appeal were unsuccessful, he could petition the Swedish Supreme Court and that would take an equivalent period to be determined. So, enforcement of this debt is a long way off. Even if the worst came to the worst and he were to fail on his appeal the Swedish authorities may well struggle to enforce this debt in this country or other common law countries having regard to the well-recognised rule against foreign revenue enforcement (see, for example, *Holman v Johnson* (1775) 1 Cowp 341 and *Government of India v Taylor* [1955] AC 491, HL). The husband produced a memorandum from an English lawyer explaining that the debt would be mutually enforceable under Council Directive 2010/24/EU. However, as matters stand, that directive will cease to have effect in this country on the expiry of the Brexit withdrawal transition period on 31 December 2020. It is completely unknown what alternative arrangements, if any, will be put in place prior to that date. Therefore, the husband may well be in a strong position, were he to lose his appeals, to negotiate an acceptable settlement with the Swedish tax authorities. I therefore categorically reject the suggestion that this debt, which has speculative and conjectural aspects to it, is to be treated as a hard debt immediately payable.

57. Although I cannot put even an imprecise figure on the husband's likely future wealth after the expiry of the two-year breathing period, I am satisfied that it is more likely than not that very substantial resources will be available to him in the reasonably foreseeable future.

58. I am further satisfied that even at the present time the husband has the availability of funds to keep the wife and children afloat for the two-year period. And that at the conclusion of the two-year period he will likely have sufficient funds available to him to make at that point a clean break capital settlement in the wife's favour.

59. I will now state my decision and my reasons for it.

60. The husband will transfer to the wife, at his expense, (a) his 10% interest in the apartment in Petrovsky Pereulok, Moscow; (b) his interest in its contents; and (c) his 100% interest in the Moscow parking spaces. To the extent that any of these are charged the husband is to procure the removal of the charges.

61. The wife will keep her 100% interest in the apartment in Fotieva St, Moscow. The aggregate value of these three properties is £1.019m. I attribute a 4% net rental value to these properties giving an annual yield of £40,760.

62. For the next two years the wife will have to rent. The wife's budget for herself excluding rent is £161,000. However, in her open offer she sought a sum of £3.75 million for capitalised maintenance which translates to an annual income, using the Duxbury algorithm, of £140,000. That is a reasonable figure for her needs for each of the next two years. A reasonable rental figure for the next two years is £6,000 per month. This equates to £72,000 annually. Thus, the wife has reasonable needs amounting to £212,000 annually. From this I subtract the Moscow rental yield mentioned above and reasonable earnings of £20,000 per annum net. This is, in my

opinion, the minimum earning capacity to attribute to a woman of the age of the wife with her skills and attributes. This leaves an annual requirement of £151,240. The husband should pay two years of this requirement upfront in view of his shocking delinquency in relation to the interim order. That gives rise to an immediate need of £302,480. To that I add £395,252 being the wife's net indebtedness (mainly costs), all of which in my opinion has been reasonably incurred. I subtract the sum of £50,000 which is held in an account and which was intended to cover, inter alia, the wife's rental costs between December and the final hearing. That sum will be immediately released to the wife. This gives rise to a figure of £647,732, which will be the first instalment of the lump sum which I order. It will be payable by 2 March 2020. I have no doubt that this relatively modest sum is readily available to the husband having regard to the findings about his resources I have made above.

63. In addition, I order the husband to indemnify the wife in respect of any liability she may have under the judgment for possession and arrears of rent obtained by the landlord of the apartment in Central London.

64. All arrears under the interim order will be remitted.

65. I do not take into account any value of the wife's engagement ring. The husband was very keen that I should do so asserting that it was worth perhaps £100,000. It is bordering on the grotesque that the husband should be expecting the wife to liquidate this ring.

66. I have jurisdiction under the Child Support Act 1991 to deal with periodical payments for the children as the husband is not habitually resident within the jurisdiction. I am not able to apply the formula even as a starting point as I have no feel for the scale of the husband's true earnings. I have accepted that the husband needs some respite at the present time and therefore I do not accept the wife's asserted budgetary need for the children of £182,000 a year excluding school fees. I fix the child support at £20,000 per annum for each of the three children. £20,000 will more than cover B's costs of care. In addition, the husband must pay the school fees of A and C. The husband will receive from the grandchildren's trust $150,000 a year which will more than cover the child support award I have made.

67. In my judgment in two years' time the husband will be in a position to make a clean break settlement on the wife. In my judgment, having regard to the evidence before me, a reasonable sum for him to pay at that time for the wife's housing is £3.5 million all in. Given the relatively young age of the wife and the medium length of the marriage it is not reasonable for there to be a full Duxbury award. Rather, it should be on a stepped basis with the need falling by 50% at age 60. The Duxbury sum needed for a woman aged nearly 42 of £140,000 per annum falling by 50% at age 60 is £2.7 million. I add these two sums together and subtract the value of the Moscow properties, which it would be reasonable to liquidate at that point. This leads to a net figure for the wife's needs of £5.181 million. That will constitute the second instalment of the lump sum and will be payable on 2 March 2022. The law allows the husband to apply to extend the payment date of the second instalment (or even to seek to vary its quantum in highly exceptional circumstances) but he must understand that he would need to adduce very clear evidence that payment of that sum on that date was an impossibility.

68. It will be apparent from what I have written above that I have taken full account of all the matters mentioned in section 25 and section 25A of the Matrimonial Causes Act 1973. I have paid especial regard to the best interests of the children and I have considered carefully the statutory mandate to have regard to the resources that the husband will have in the foreseeable future.

69. Following the distribution of this judgment in draft I have received from the husband a request to "clarify/amplify the decision". I have considered his points carefully and have reached the conclusion that beyond correction of an arithmetical error and correction of one date and two numbers nothing in the draft judgment requires amplification or clarification.

70. That concludes this judgment.