



Neutral Citation Number: [2022] EWFC 198

Case No: LS20P00806

IN THE FAMILY COURT AT LEEDS

Leeds Family Court,
Westgate, Leeds, LS1 3BE

Date: 16 September 2022

Before:

HHJ SHELTON

Between:

**AB
- and -
CD**

Applicant

Respondent

**Dr Sandy Joseph appeared for the Applicant
Mr Rhys Taylor appeared Pro-bono via the Advocate Scheme for the Respondent**

Hearing dates: 14 and 15 July 2022

Approved Judgment

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HHJ SHELTON

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

HHJ SHELTON:

Introduction

1. For convenience I shall refer, as I did in my perfected judgment dated 5th January 2022, to the Applicant as the husband and the Respondent as the wife notwithstanding they are divorced, and the husband has remarried.
2. The applications before me are cross-applications concerning child and spousal periodical payments.
3. The parties have one child, to whom I shall refer as XFR, who will be 20 next month.
4. XFR was born severely disabled and will be dependent on others for her care for the rest of her life. The wife has always cared for XFR since she and the husband separated in October 2007. XFR was then 5.
5. On 13th December 2021, I ordered that the husband pay from 15th December 2021 and on 15th of every subsequent month interim maintenance in the sum of £1,150 (£1,149 for XFR and £1 for the wife). I ordered the case to be listed for a remote case management hearing on 10th June 2022 and for a further substantive hearing on 14th and 15th July 2022. I gave consequential directions for the evidence to be updated, including for the local Welfare Rights Unit to update its earlier helpful report dated 3rd November 2021 as to the benefit entitlements of both XFR and the wife.
6. My reasons for making only an interim order were the unknowns over (i) XFR's future educational placement from September 2022; (ii) the benefits available to both XFR and the wife after that date; and (iii) whether the wife would be able to take up employment in 2022.
7. The husband appeared in person at the case management hearing on 10th June 2022 but was represented by Dr Joseph at the hearing on 14th and 15th July 2022. Mr Taylor appeared on behalf of the wife at each of the hearings.
8. The Transparency Project attended at each of the three hearings pursuant to FPR 2010, r 27.11(2)(ff). There was a challenge on behalf of the husband to its attendance, which I overruled.
9. Each of the hearings took place remotely by agreement between the parties. The evidence was completed on 15th July 2022, with written closing submissions to follow. Judgment was to be handed down in writing on 12th August 2022.
10. The issues remain the same as in my earlier judgment:
 - (i) What is the quantum and the duration of the periodical payments the husband should pay for XFR?
 - (ii) Should the joint lives' order in favour of the wife be discharged?

XFR

11. XFR has a complex medical history and has a genetic diagnosis of a chromosome 16 deletion that does not appear to fit a defined genetic syndrome. Within my earlier judgment, I set out the nature and effect of her disabilities from a doctor's report and her latest Education, Health and Care Plan dated 8th September 2021.
12. XFR has recently been unwell. On 14th March 2022, she started to have difficulties over her balance and mobility. There was then a change in her behaviour, with her being unable to sleep and becoming agitated and distressed. Three weeks later, XFR was admitted to hospital by ambulance. She remained in hospital for two weeks. After her discharge, her sleep and behaviour continued to be irregular. The neurology report, dated 15th June 2022, does not suggest that XFR's recent symptoms are representative of a new neurological problem. Needless to say, all XFR's latest difficulties have added to the care she has required.
13. XFR left a specialist school and College in the North of England in July 2022.
14. From September 2022 XFR will attend a specialist college in the North of England for the next three academic years. It is a five-day, four-night placement from Monday morning to Friday afternoon during school term time. XFR will live with the wife at weekends and during school holidays. The plan is to stagger XFR's transition to staying overnight at college: from 31st October, she will stay overnight one night a week; from 7th November, two nights a week; from 14th November, three nights a week; and from a date in December 2022 (the date of 21st December 2022 in the email I have read, must be wrong), four nights a week. By January 2023 XFR should be staying overnight at college from Monday to Thursday during term time.
15. There is, however, a good chance that XFR's start at college, or at least the transition to her overnight stays there, may be disrupted if the surgery to her right foot/ankle, planned for this month, is delayed until October 2022. Further imaging of her spine is likely to be required before the surgery can take place.
16. The husband has not seen or had contact with XFR since December 2020. He said he wished to 'bypass' the wife and make arrangements for video contact directly with the college; some of the gifts he had sent to XFR during the last six months had been returned unopened. The wife disputes the latter, unless it occurred when she and XFR were in hospital. There is a complete breakdown in the parents' ability to communicate with each other over contact or anything else.

Background

17. I propose to give only an abbreviated version of the background that appears at greater length in my judgment of 5th January 2022.
18. The husband is now 51, the wife, 45.
19. They married in June 2000 and separated in October 2007. Divorce and financial remedy proceedings followed.
20. On 20th August 2008, agreement was reached as to the split of the capital on divorce. The wife received a lump sum of £160,000 in full and final settlement of her capital claims. A contested hearing took place as to periodical payments. The deputy district

judge's award of global periodical payments of £1,100 pcm, apportioned £400 to the wife on a joint lives' basis, £400 for XFR and £300 towards XFR's school fees was appealed by the wife to Holman J on 3rd September 2009. The appeal was compromised upon the husband increasing the global sum to £1,600 pcm, apportioned £600 each pcm to the wife and XFR and £400 pcm towards XFR's school fees.

21. On 14th March 2012, Pauffley J varied the terms of Holman J's order of 3rd September 2009. The husband was to continue paying global periodical payments of £1,600 pcm but apportioned £100 pcm to the wife on a joint lives' basis and £1,500 pcm to XFR.
22. On 12th July 2017, Sir Mark Hedley, sitting as a judge of the High Court, approved a settlement of £275,000 in trust for XFR, to assist in the purchase of a property for her, including any alterations or adaptations required for XFR's benefit. The settlement came about by reason of an application made by the wife under Schedule 1 of the Children Act 1989. The monies were paid by the husband's father. The court also varied, by consent, the order of 14th March 2012 for the periodical payments payable by the husband for XFR's benefit to continue in the sum of £1 pa after her nineteenth birthday.
23. Later in 2017 the wife sold her then property and moved house under the terms of the trust.
24. On 20th May 2020, the husband issued the current proceedings for a reduction in the periodical payments order made by consent on 14th March 2020. The husband's income had fallen by reason of him being furloughed in the Covid 19 pandemic.
25. On 2nd October 2020, District Judge Troy reduced the existing order for XFR from £1,500 to £1,150 pcm; the order of £100 pcm to the wife was preserved.
26. On 2nd January 2021, the husband became seriously unwell and was off work for some months.
27. On 21st July 2021, District Judge Troy reduced the global periodical payments payable by the husband to £1,000 pcm. I increased those payments to £1,250 pcm for the months of October and November 2021 pending my decision on 13th December 2021. Thereafter, I reduced the sum payable on an interim basis to £1,150 pcm, apportioned £1,149 pcm to XFR and £1 pcm to the wife. This case was then listed as I have set out at paragraph (5) above.

Legal Framework

28. This is set out in my earlier judgment.
29. It is agreed that the Court's powers to make a periodical payments order are preserved when a child reaches 19 where 'there are special circumstances which justify the making of an order': *Matrimonial Causes Act 1973, s29(3)(b) (MCA 1973)*. Special circumstances include the disability of a child: see *C v F (Disabled Child: Maintenance Orders [1998] 2 FLR 1*.
30. I must have regard to the matters in section 25(iii)(a-e) of the Act and to XFR's needs in their broadest sense having regard to the special circumstances of the case.

31. The application to discharge the joint lives periodical payments order in favour of the wife is to be dealt with under s31 of the MCA 1973. The principles I must apply are those set out by Mostyn J in *SS v NS [2015] 2 FLR 1124* at [46] and at sub-paragraphs (iv) and (x) in particular which bear quoting in full.

“x On an application to discharge a joint lives order an examination should be made of the original assumption that it was just too difficult to predict eventual independence”

So, too, does sub-paragraph (iv):

“(iv) In every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable.”

However, I do not ignore sub-paragraph (vii) in which it is important for the judge to stand back

“and to look at the global total and ask if it represents a fair proportion of the [husband’s] available income that should go to support the [wife].”

Any award should only be made by reference to needs.

The Evidence

Husband

32. The husband is a pilot.
33. In March 2020, the husband was furloughed. From October 2020 he, along with numerous other employees in the company, accepted a 75 per cent part-time contract as a way to avoiding redundancy. The contract is dated 15th September 2020.
34. On 2nd January 2021, the husband became seriously unwell, as a result of which he received a critical illness payment of £100,000 on 22nd July 2021. At the time of the last hearing, he had spent £70,000 of that sum on debt and had £30,000 left. That has also now been spent.
35. Fortunately, and as the medical evidence makes clear, the husband has made ‘a good recovery’. As was presaged in my previous judgment, the husband has now returned to full-time work in early 2022. He writes in his statement dated 31st May 2022:

“Since the last hearing I have now returned to work. I have agreed against the recommendation of my doctors to go back full-time on a temporary basis. This is firstly to ensure I regain my skills after such a long time without flying; secondly, as I have a large amount of annual leave also to try to mitigate the increase in cost of living and the leave to take this year as a result of not taking any last year and maintenance paid to the [wife].”

36. The medical evidence on which the husband relies is set out in a letter from his GP dated 21st April 2022, in which it is said the husband would ‘prefer to work part-time as a way to reduce stress and again I think this seems like a very sensible measure’.
37. The husband’s P60 for the years ending 5th April 2021 and 5th April 2022 show a gross income of £101,960 and £76,505 respectively. This equates to around £5,400 pcm to 5th April 2021 and £4,272 pcm to 5th April 2022. He received a loyalty bonus of £12,984 in January 2022, which he has spent. The recent pattern of his income from February 2022 is around £4,450 pcm. However, this disregards pension contributions of £841 and saving schemes of £550, together amounting to just under £1,400. He told me in evidence all his savings scheme had been encashed to meet the legal costs of this hearing, save for around £650 he invested in Crypto currency.
38. The husband puts his outgoings at around £8,000 pcm; that figure includes the current maintenance of £1,150 pcm.
39. These outgoings need to be placed in context. The husband’s living arrangements are unchanged from those set out in my previous judgment. He and his second wife, together with their two children, aged 10 and 8, live in a substantial Grade II listed property. The property is owned by a family trust on the husband’s side. It was purchased, the husband told me, in 2015 for around £1 million. He pays no rent for his occupation of the property but is required to maintain and improve it ‘as part of the agreement allowing us to live there’. The property is expensive to maintain; it has an outdoor swimming pool and a tennis court.
40. The husband’s wife has a flat on the south coast of England, which is registered in her sole name but was also purchased by the same family trust. The flat is let. The rent received does not, it is now said, go towards the family expenditure, although in my previous judgment I found it went to the children’s expenses at least in part. The wife does not work but is the full time carer of their two children.
41. The family trust was formerly administered by the husband’s father and latterly the husband’s sister. He told me in evidence that the trust ‘has no money’. He repeated that which I recorded in my earlier judgment that if he were to leave his present home, he would have to meet rental costs elsewhere of around £2,500 pcm, and he would be ‘worse off’. His present home is approximately ten minutes drive from his workplace. There is no evidence of the husband requesting the trustees to allow him to downsize to a smaller property in the area. He said the trust would not entertain that suggestion but supplied no reasons.
42. The husband was extensively cross-examined by Mr Taylor on what Mr Taylor later described in his written closing submissions as the husband’s ‘unconscionable spending since the last hearing’. He gave examples. These are listed at paragraph 17 of his submissions and include the purchase of a new dog, £2,300; an energy saving battery, £5,000; a pond filter, £1,474.88, plus fish for the pond, £200; a heat exchanger for the swimming pool, £355; and wooden posts to hold up the veranda roof, £2,500; and a new dressing table and lights, £445.
43. The husband denied he had frittered money away on luxury items for gifts and social events. He was at pains to point out that he was required to maintain and improve where he lived. The buying of the posts had been to keep up the veranda roof; and the

expenditure on the energy saving battery was purchased to reduce the cost of electric (about, it was hoped, £100 pcm). Many of these items had been financed out of what remained from the critical illness cover, all of which had now been spent. The cars the husband runs are only modest; a twenty year old Golf and a ten year old Mini. His wife also has two cars of some age.

44. The husband has a Tesco credit card debt that stood at just over £5,000 in January 2022.
45. I see little reason to depart from my previous analysis of the husband's outgoings that, living where he does, he requires around £5,500 pcm excluding whatever periodical payments I order for XFR and the wife. However, he still contributes to savings accounts at the rate of £550 pcm and to his pension at the rate of £841 pcm; and he has met the global periodical payments of £1,150 pcm.
46. The husband would 'prefer' to work part-time and reduce his hours by twenty-five per cent, with a commensurate drop in income. I do not see how he is able to meet his own outgoings regardless of what orders I make in favour of XFR and the wife. He told me it would not be economical for his present wife to work.
47. The husband's proposal is that he pay £400 pcm for XFR until he retires at 60 and the joint lives order in favour of the wife be discharged now.
48. The wife, the husband told me, must contribute to her own needs; she would not be XFR's primary carer 'for much longer'. While he accepted that the wife would continue to care for XFR at weekends and during holidays, she would, he said, be assisted by carers funded by direct payments from the local City Council, as was the case now.

Wife

49. The wife is and has been for many years XFR's full-time carer.
50. Her property has been adapted for XFR's use. The cost of the adaptations was met by a combination of grant, the wife's equity on the sale of her previous home and mortgage. The outstanding mortgage is £59,552. In my previous judgment I did not find the taking out of the mortgage to be unreasonable; indeed, it had been foreshadowed at the time the settlement was approved by the court.
51. The wife's income from benefits, as I found it to be in December 2021, was £1,623.53 pcm. As at the date of the hearing before me on 14th /15th July 2022 it had modestly increased, on my calculations, to £1,702 pcm, made up as follows:

(i) Universal Credit	£ 906.57
(ii) Carer's Allowance	£ 302.03
(iii) Child Benefit	£ 94.46
(iv) Personal Independence Payment (non-mobility payment)	£ 398.84

£1,701.90

Mr Taylor's figure is £1 more but it makes no difference. In addition, the wife receives the payments I ordered the husband to make of £1,150 pcm, giving a total income of £2,852.00.

52. The wife's income is set to change from this month. There is, however, much uncertainty as to what it will end up being. She will certainly lose the Child Benefit of £94.46 pcm. On 22nd June 2022, XFR was assessed as having limited capacity to work. The Welfare Rights Unit advised the wife to make a claim for Universal Credit for XFR in XFR's name. The reasoning for this step was to avoid any gap in the wife's Universal Credit reducing and XFR's Universal Credits starting. On this basis it is likely that XFR would receive Universal Credit of £619.59 pcm and W, £201.69 pcm. It is also likely, on my reading of the report, that the wife would continue to receive Carer's Allowance of £302.03 pcm, but this is subject to complicated rules such as the wife providing at least 35 hours care for XFR a week, with the week running from Sunday to the following Saturday at midnight. I was not addressed about whether this would affect the direct payments from the local City Council for personal assistants or annual respite care. The figure calculated by the City Council for the last year was £45,610.79. The monies must be used as directed and what remains unspent returned to the Council. The wife will also continue to receive some part of the Personal Independence Payment. It should be paid as normal for the first 9 weeks, giving her £400.40 pcm. Thereafter, the wife is able to claim back those days XFR is at home, but such payments are paid in arrears.
53. The above summary is the best that I am able to obtain from the various reports before me. The author of the report, Ms Kate Morrison, felt unable to attend court to give evidence, but I am grateful to her for her assistance. I repeat there is a good deal of uncertainty as to how the detail of all this will unfold and what it will mean for XFR and the wife going forward.
54. It follows I do not think Dr Joseph's summary of the wife's income at paragraph 14 of her closing submissions is accurate. It includes Child Benefit; the mobility component payable directly for the car; ongoing Personal Independence Payment (non-mobility) which will reduce from January 2022; or that it has yet been established the wife is entitled to the Limited Capability for Work Related Activity Element. The differences in the interpretation of the report simply underscores the point I made in the previous paragraph.
55. I add that as long as the wife is in receipt of Universal Credit, she will continue to receive 75 per cent of her Council Tax liability paid through Council Tax Support. If the wife were to start working, her earnings would reduce her Council Tax Support. An earnings taper would also affect the Universal Credit for earned income and/or periodical payments payable to her. I have previously found the purchase of the Skoda car, using the mobility element of the Personal Independent Payment, to be reasonable.
56. The wife's ability to look for work has been affected by XFR's repeated illnesses from April 2022, and the wife's own admission to hospital on 19th May 2022 with an

episode of acute pulmonary oedema related to her heart failure. A cardiopulmonary exercise test in March 2022 placed the wife in the bottom 10 per cent of the population with her heart condition according to her gender and age. I have read the report of the wife's consultant who recommends 'at most only part-time work in a low stress environment....'. She adds:

“...Many patients after an acute event such as [the wife] experienced would not work at all and would definitely be considered for permanent retirement on ill health grounds.”

57. I remain satisfied that the wife is keen to find part-time work, particularly in the legal field, and will use her best endeavours to do so once XFR is settled at college. A day's work experience with solicitors on 4th April 2022 was disrupted by XFR's illness.
58. My assessment of the wife's income needs in December 2021 was in the region of £2,800. These, she says, have now increased to around £3,300 despite the economies she has made in stopping gym membership and cutting back on other expenditure.
59. The wife also has debts of around £5,000 to credit cards. She has also had to draw down on XFR's savings (from £2,100 to £539.26) for replacement splints, specialist shoes and physiotherapy.
60. The wife was asked about XFR's activities; that she went horse riding and swimming and attended local holiday clubs until she had become too old. She was also asked about holidays. The wife had visited Europe earlier this year to see her father who lives there; he had paid for her trip. XFR had been cared for by one of her carers while she had made the short trip. Last year her mother had joined her and XFR for a short holiday on the north-east coast of England, which her mother had paid for.
61. The payments for physiotherapy for XFR were necessary, the wife said, to improve XFR's mobility. The wife was in dispute with the local authority about XFR's physiotherapy needs and the issue is to be decided at an independent tribunal, but no date has yet been set.
62. The increase in her budget the wife said came from an increase in the cost of living. It affected everyone, but particularly someone with the care of a profoundly disabled child.

Discussion and analysis

63. As I made clear in my previous judgment, notwithstanding XFR's many difficulties it is clear from everything I have read and heard about her that she is a delightful young lady. I do not underestimate for a single moment the commitment, labour and love required of those who care for her, particularly on the part of the wife.
64. It makes matters more difficult that the parents' relationship has so completely broken down. The exhortations from judges previously for the parties to try and find a way forward through mediation has come to nothing. The husband's offer to take on more responsibility for XFR's care is unrealistic given the state of the parents' relationship and the geography of where both live. Similarly, his suggestion that the specialist

college care for XFR during convalescence after her operation is not supported by any evidence and is not a role I believe they would undertake; that would fall to the wife.

65. In her opening note, Dr Joseph writes that the husband accepts ‘without reservation’ he must continue to pay periodical payments for XFR, but seeks for the present order to be reduced to £400 pcm until he retires or reaches the age of 60. This he suggests would be the appropriate option. He also seeks for the joint lives order in favour of the wife to be discharged now. The written closing submissions do not depart from his opening position, although it appears to be accepted that the wife will only be able to work, part-time, from January 2023.
66. In his opening note on behalf of the wife, Mr Taylor raises the inevitable change in the wife’s income as a portent of she and XFR becoming destitute. Even a return to the position post ante of £1,600 pcm, he writes, ‘now looks optimistic’.
67. Within his written closing submissions, Mr Taylor submits such is the state of flux that a final determination should not be made at this stage, but that I should make a further interim order. He writes:

“To make a final decision now risks being unfair to one or both parties.”

The structure of the award should be as before, namely £1 spousal periodical payments with the balance as child periodical payments; the wife’s Universal Credit would be preserved. I should review the case in six or seven months time. Meanwhile, I should make an order of £1,676.29 pcm to add to the Universal Credit payments likely to be received for most, if not all, of XFR’s first term at college. The crunch comes in January 2023 when the Personal Independence Payment will reduce and be paid in arrears. After January 2023, the payments the wife needs increase to £2,378, disregarding Personal Independence Payment and Carer’s Allowance.
68. The litigation between the parties stretches back to 2008/9. Both, as I found in the earlier hearing, are exhausted by the process. Both have health problems which are likely to be exacerbated by the proceedings continuing unnecessarily. I should, if it can be fairly achieved, arrive at a final order now.
69. It is now decided that XFR will attend college in September 2022.
70. I agree that the benefits that XFR and the wife will receive remain in a state of flux. I think it likely they will receive in total £1,523.71 pcm for the remainder of 2022, made up of XFR’s Universal Credit of £619.59; and the wife’s of £201.69; Carer’s Allowance of £302.03; and the Personal Independence Payment of £400.40. There is some doubt over the Carer’s allowance for the reasons I have given earlier. From January 2023, the Personal Independence Payment of £400.49 will reduce during term time and what proportion of it will be paid and how far in arrears is unknown. It represents a significant part of the wife’s income.
71. My earlier assessment (indeed her own) of the wife’s ability to work in 2022 was overly optimistic. A combination of XFR’s health problems and her own have combined to make that impossible. It is accepted that the earliest she may be able to take up part-time employment is likely to be from January 2023.

72. My analysis of each party's current budget does not lead me to take a greatly different view of them to that I reached in my previous judgment. I then found the wife's budget to be in the region of £2,800. She has incurred some additional cost in the use of petrol, physiotherapy and swimming lesson. There have also been some additional borrowing costs. She has, however, made economies in other areas but further cutbacks may have to be made. The same applies equally to the husband. His budget is in the region of £5,500.
73. The husband is living in a property which is realistically beyond his means to maintain, regardless of what order I make as to periodical payment and his preference to work part-time in the near future.
74. The wife's needs in this case are 'causally connected' to the marriage in caring for their joint child who is profoundly disabled and is dependent upon the wife for her home and care.
75. I am satisfied the wife cannot adjust without undue hardship to the discharge of the joint lives periodical payments order in her favour, at least at this stage. The husband's proposal for XFR is £400 pcm. It would leave the wife with a total income of £1,900 at best on my calculations or around £2,000 on the husband's calculations. Both manifestly do not meet her needs on any sensible basis.
76. Much as I would wish to make final orders today, I agree with Mr Taylor that to do so may cause an injustice to one or both of the parties. I propose, therefore, to make further interim orders and bring the case back in early 2023, with the intention of making final orders at that stage. By then, XFR's benefit position should be settled (as best it can be) and the wife's employment position fully researched and known.
77. In the meanwhile, the previous order I made must be increased to cover the next few months to a global sum of £1,400 pcm, apportioned £1,399 pcm to XFR, and £1 pcm to the wife. I appreciate this is an increase of £250 pcm on the existing order but without it the wife and XFR will not survive. There is only so much to go round.
78. I shall hear further submissions as to directions and the fixing of dates to avoid delay.
79. That is my judgment.