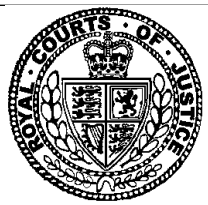

Neutral Citation Number: [2024] EWFC 131

Case No: BV20D01752

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 January 2024

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between :

DH	**Applicant**
- and -	
RH	**Respondent**

- -
- -

MR B MOLYNEUX KC (instructed by BloomBudd) appeared on behalf of the Applicant.

MR D BROOKS KC (instructed by Stowe Family Law) appeared on behalf of the Respondent.

- -

Approved Judgment

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

MR JUSTICE MACDONALD:

1 This Court again has before it financial remedy proceedings between the applicant, DH (hereafter 'the wife'), and the respondent, RH (hereafter 'the husband'). The matter comes before the court today for a pretrial review in relation to a final hearing of matters listed in February. A number of matters arise between the parties that require a short ruling in respect of each. Those matters are, respectively: the current draft in relation to the directions taking the matter to the final hearing; a question in relation to alleged arrears of maintenance pending suit; and cross applications in relation to the current structure and amount in relation to the legal services payment order.

2 Dealing firstly with the issues in respect of the directions order, I am satisfied that the disclosure that is set out at para.5 of that order as applied for in the application form should be directed and I do so. In relation to para.6, I am satisfied that the Court should make a direction today in relation to those chattels limited to directing the disclosure of the whereabouts of those items so that the Court is equipped at the final hearing with that knowledge. The Court will, of course, address at the final hearing the question of the delivery-up or not of those chattels.

3 As far as para.7 is concerned, I am satisfied it is appropriate to delete the preamble and to delete the word "already" in that paragraph. It will be a matter for the Court at final hearing as to what material it treats as admissible where there is a dispute and as to what weight the Court attaches to evidence where it is satisfied that it is relevant and admissible.

4 I am satisfied that the parties are correct in relation to their proposal as far as para.8 is concerned. I do not consider it necessary to direct a limited expert report in relation to the question of the ability to undertake sharing of the pension. There is no Part 25 application for such an expert before the Court, no expert has been identified and there are therefore no costs and no timescale before the Court. The Court will have available to it a document from the pension trustees confirming the position of those trustees regarding the shareability of that pension asset. Whilst the Court will avoid, if possible, leaving matters on hold, the Court is able, if necessary, to hold the ring at the end of the final hearing were there to be continuing disputes in relation to that issue.

5 As far as para.9 is concerned, it is a fairly fundamental principle that the Court should have if possible up-to-date valuations before it at the final hearing. The valuations we presently have in relation to those properties are now two years out-of-date in a volatile economic climate. In those circumstances, I am satisfied to endorse the valuation procedure proposed by the wife. In default of that procedure being adopted, the figures at para.9 will stand as the valuations in relation to those properties.

6 As far as para.10 is concerned in relation to the cryptocurrency expert, the issue that arises in relation to that beyond the slight date change proposed by leading counsel is the fate of a schedule of questions proposed by the shadow expert instructed on behalf of the wife. There is a lack of clarity over the long course of these proceedings as to precisely how the Court has considered in the past or, indeed, how the parties have negotiated in the past those questions should be dealt with. In light of that lack of clarity, I am not prepared today to make any substantive direction in relation to the fate of that document, in particular not to direct that it be sent to the single joint expert. The wife will be in attendance in the meeting that is due to take place and she will have the benefit of her shadow expert at that meeting, albeit he will not be permitted to talk. In the circumstances, the wife will have an opportunity to put such questions as she wishes within the confines of the instructions that this Court has approved at that meeting.

7 As far as paras.11 and 12 are concerned, I am content to direct 6 February 2024 for the response of the husband to the conduct statement and that will have to be separate from the section 25 statement. At the present time, I am satisfied that the page limit for the bundle, bearing in mind the documentation currently before the Court, should be 1,750 pages and I am satisfied the trial timetable should be that which was discussed during the course of submissions with leading counsel.

8 The next issue before the Court concerns the order for maintenance pending suit made by this Court last year. The maintenance pending suit order is contained in the bundle and provides *inter alia* at para.7.1(d) that maintenance pending suit should include payment to the applicant for the applicant's move to London including her rental deposit, storage and all reasonable expenses associated with the applicant and the children's move to London payable upon production of the relevant invoices and paid no less than seven days before payment shall fall due. The wife contends today that the husband is in arrears in respect of the maintenance pending suit order. The husband denies that he is in arrears having regard to the conduct of the wife following the making of that order.

9 Having regard to the evidence before the Court, I am not satisfied that the husband is in fact in arrears with respect to maintenance pending suit when one steps back and looks at the picture as a whole. The judgment in relation to the maintenance pending suit application was very plainly, on a clear reading of the judgment, based on the wife's case that she required to be able to rent a flat in London for a monthly rent. The figure advanced by the wife at the hearing was not accepted by the Court but the Court did accept that she required a monthly sum to enable her to rent a flat in London and afforded her £7,000 per calendar month to that end and, as is made clear by the order, also made provision for a rental deposit, storage and all reasonable expenses arising out of that move to London. At no point during the hearing that led to that judgment was mention made of the intention of the wife in fact being to relocate to Wyoming to one of the properties there owned by the parties. Accordingly, the Court made a maintenance pending suit order on the basis that the wife would be moving to London at the rate I have described. Moving costs, as is made clear by the order, flowed from that move to that city.

10 Subsequent to the hearing and without any application to vary the maintenance pending suit order which was not appealed, the wife in fact relocated to Wyoming. I dealt with this development in para.8 of the second judgment that I gave in this matter in which I said as follows:

> "As I have noted, in June 2023, having regard to the evidence the wife then placed before the court, I was satisfied that she intended to return to rented accommodation in central London and that that intention constituted the most obvious material change of circumstances informing the court's evaluation of reasonableness in the context of the application for MPS. However, following the hearing in June 2023, instead of taking up rented accommodation in London, as she had stated to the court was her intention, the wife instead moved into one of the parties' properties in Wyoming. Ms Campbell on behalf of the husband sought to demonstrate that this was the wife's intention at the time she represented to this court that she intended to take up rental accommodation in London, that is a matter that falls to be dealt with at the final hearing if necessary. However, and quite remarkably, on 21 July 2023 David Lillywhite, the wife's former solicitor at Burgess Mee, sent a demand for payment of removal costs of £19,123 relating to the wife's relocation to Wyoming without any apparent

reference to the fact that that step did not accord with what had been represented to the court by the wife only a month before."

1 1 In the circumstances, having represented to the Court that she required £7,000 per calendar month (as I say, lower than the figure advanced by the wife at the time) plus moving costs to relocate to London, the wife never did so. The husband paid three months' rent at £7,000 per calendar month before it became apparent that the wife was in fact now at one of the properties in Wyoming. In this context, having regard to that factual background, I agree that the position is as simple as that described by Mr Molyneux in closing submissions and to adopt that formulation I am satisfied that there are no arrears as the husband set off monies paid in relation to the London rent of £7,000 per calendar month, amounting to £21,000 in total, against the order as drafted. I am satisfied that he was entitled to do that.

1 2 As already determined in the second judgment, the £19,000 worth of moving costs related to London which was the only option presented to the Court. I am not satisfied it is just for the husband now to have to pay the costs of removal that were incurred when the wife unilaterally changed plans from those represented to the Court. Whilst Mr Molyneux today urges the Court to provide the wife with a figure representing some storage costs, there is no evidence before the Court today to underpin those figures at all, and I am not prepared to make an order for payment based on a counterfactual that was not presented to the Court at any point during the original hearing. In those circumstances, I decline the application to enforce.

1 3 Finally, in relation to the legal services payment order, I am not satisfied that it is appropriate to vary the legal services payment order up or down at this stage of the proceedings. In its original judgment, the Court set out the reasons in detail for arriving at the figure it did for the legal services payment order after careful consideration of the tasks to be performed in these proceedings. I do not accept that in this case that task has substantially changed or altered in the face of further evidence placed before the Court. The case remains one that will concentrate in large part on the extent to which the husband has disclosed a complete picture of his finances. That was the position when the Court assessed the figure originally and it is the case now.

1 4 I accept it is the case the recent disclosure raises some further questions, to some of which the husband has provided innocuous, as he would have it, answers to, but I am not satisfied that this requires the sum due to be paid to the wife to cover matters to the end of the final hearing be increased to some half a million pounds from its current £151,000 which is the payment that falls due today. This is particularly the case where this Court has repeatedly, in the judgments it has given, warned against using the funds provided under the LSPO for the wife to pursue her fixed view that the husband has hidden assets rather than preparing for trial. At this hearing, the pretrial review, the wife's case in this regard now settles somewhere around a position where, as against the £12.5 million worth of assets contended for in the husband's ES2, the assets are in fact according to the wife somewhere over £100 million or more in a figure set out in the conduct statement, there being no ES2 to date from the wife.

1 5 Rather than suggesting that the increase in the legal services payment order will be assiduously directed at preparing for final hearing, through Mr Molyneux the wife is already intimating a further application or applications for disclosure in the little over four weeks until the final hearing. The Court has been here before. This is in the context of there being repeated difficulties with the wife complying with case management directions using the funds that the Court has accorded to her, the most obvious example of this being the position that pertained in relation to the letter of instruction to the cryptocurrency expert before

Christmas which ultimately required the Court to intercede in respect of the terms of the drafting of that letter of instruction and ultimately to sign it off on the wife's behalf.

16 Finally, the Court must bear in mind that the wife's costs in this matter already have reached somewhere between, depending on which figure one adopts from the various figures given in the papers, £1.6 million to £1.9 million. It would not be appropriate in that context to increase the legal services payment order once again by a further £350,000, double the figure that the Court originally assessed was appropriate. I remain satisfied that the wife will be able to secure competent representation for the final hearing with the sum of £151,000 plus VAT that falls due to be paid today.

17 It follows that I likewise do not consider it appropriate to discharge or vary the LSPO as invited to do so by the husband. The Court dealt with the application to discharge the LSPO by the husband made on 28 November 2024 (sic) at the same time as permitting the husband to borrow against the Penn Mutual fund to satisfy the outstanding or remaining costs on the LSPO. In that judgment I said as follows:

> "Permitting the husband to borrow against the Penn Mutual policy will allow him to meet his obligations under LSPO and MPS order as varied, amounting to some £229,275 including amounts outstanding. It will also allow him to fund from the Penn Mutual policy a portion of his own expenses and legal expenses to the final hearing in 12 weeks' time. I acknowledge that this represents a shortfall on the husband's own figures for the period leading up to the final hearing. However, within the limitations placed on the court by this being an interim hearing, and in particular the incomplete nature of the evidence before the court in that context, I am not satisfied that court should go further and implement the complete re-ordering of the interim arrangements between the parties proposed by the husband, comprised of the release of undertakings with respect to the bank accounts, for an order that the wife vacate the Wyoming property and for the net rental income from that property and the properties in New York be divided equally between the parties and to discharge the MPS and LSPO."

I am satisfied that the position broadly remains the same and there is nothing in the submissions I have heard today that causes me to alter those conclusions.

18 In the circumstances, and having regard to the relevant terms of the statute, I am satisfied that the current legal services payment order should remain in place. That requires a final payment from the husband plus VAT to be made to the wife today which the Court will expect the husband to do. Any difficulty with that payment will, of course, put at risk the final hearing which both parties now desperately need to take place.

19 As far as the question of VAT is concerned, I am invited today to determine that that amount should not include VAT by reference to what is said now to be the residential situation of the wife in the United States of America which means that she is not liable to pay VAT. I have not had the benefit today of being taken to the relevant VAT legislation, nor to the authorities that will assist me in determining the meaning of residence or whatever other term is used in that statute to denote liability. In those circumstances, I do not propose, and am not equipped today, to make a decision formally, let alone a finding, that the wife is liable to pay VAT and I decline to do so. In those circumstances, the LSPO order will remain in place as currently ordered by the Court and the proceedings will move forward in that context.