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Case number: RS19D05206

IN THE FAMILY COURT SITTING AT TORQUAY FINANCIAL REMEDIES COURT

The Willows
Torquay
Devon
TQ2 7AZ

BEFORE:
DDJ David Hodson

B E T W E E N

JD v RMD

Scott Horner of counsel instructed by WBW Solicitors for the applicant wife
Vivien Croly of counsel instructed by Ian Walker Family Law and Mediation
Solicitors for the respondent husband:

Heard on 13 and 14 July 2023
Reserved written Judgment given on 14 July 2023

Judgment

Introduction

1. This is a written judgment at the end of a two-day final hearing of financial remedy claims following an in-person hearing on 13th July 2023.
2. I have notified the parties of my intention to report this judgment, anonymously. Family court judges have been asked to report 10% of their judgments, which is patently not happening, but certainly more first instance judgments should be publicised if openness and transparency of family justice is to have any meaning. There is here no new law, nor suggestions of new law, nor of procedure. But where the vast majority of reported decisions are in big-money cases, well outside the experience of most before the family courts, it's crucial that the interested public should see the other side. And this is such a case. Debts exceeding the assets. Costs owing also exceeding the assets. Open offers which

are polarised and unrealistic. Long-running litigation despite the best attempts of judges. The impact of the legal aid charge. The family Court acting as quasi-debt counselling service. And similar. These are more likely to be matters before the first instance family Court than the invariable big-money High Court decisions, important as they are for precedents in law.

3. I set out the bare facts in a couple of sentences. The only available asset is equity in two properties of approximately £20,000. There are hard debts of about £30,000. There are so-called soft debts to family of about £8000. The outstanding total costs of these financial remedy proceedings are £26,000 although the total family court costs are £60,000 which, because they both are on legal aid, will be a charge on the recoverable and preserved assets. There are minor other resources which are irrelevant here. Yet there are 2 children aged 9 and 7 spending good time with each parent and needing accommodation.
4. The time which specialist lawyers take in studying financial remedy law such as issues of sharing, provision for needs, income budgets, premarital and post separation accrual, mixing of non-marital assets, distinctive contributions and similar suddenly falls by the wayside. These cases of small assets or debts are a different category, although following of course the same law in as far as it can be applied. There is little judicial guidance or caselaw illustrations. I have done my best in this case, but it will be clear to any observer that there are only either bad outcomes or lesser unsatisfactory outcomes and I have tried to find fairness for the latter.

Background

5. The Wife is 44 and the husband is 42. They came from separate countries abroad but have been here many years. They started cohabiting in 2006 and within a year had bought a property in joint names which was the family home. I shall refer to it here as Flat 2, a two-bedroom flat in a building also containing a one-bedroom flat, Flat 1 which was purchased a few years later. In 2010 there were some difficulties in the relationship, each had a new boyfriend and girlfriend, and the wife moved out for a short time. How long was disputed; a few months or a couple of years which I find is irrelevant. By 2013 at the latest, the relationship had resumed and they married in October 2014. They have 2 boys aged 9 and 7. In 2016 they bought Flat 1. In early 2019 they separated when the wife with the children moved out of the family home and they have lived apart ever since.
6. I would suggest these are facts which are not at all unusual in the family courts. But it should not take 4 years from separation for matters to be resolved. In fairness, the Form A was only January 2021, 2 years after separation. There was a divorce issued in April 2019 and conditional order November 2020 and I presume a decree absolute will be now applied for. I have not seen any papers but I understand there were FLA applications, with almost certainly cross applications which is why both parties have legal aid which was then extended to children and finance proceedings. I believe there may be a non-molestation order and if this has to be amended as a consequence of one part of this order then I shall rely on the lawyers to take those steps. There were disputed children

proceedings with an order dated 6 June 2022 providing for equal time during holidays and the children being with their mother 9 nights a fortnight and with the father for the remaining 5 nights. I described this as fairly generous spending time arrangements, what used to be known as contact, but now relatively normal where the children live and go to school close to each parent. Legal aid covered these proceedings. So whereas in these financial remedy proceedings the husband has incurred approximately £16,000 and the wife £10,000, frankly amazingly low figures to a final hearing with several interlocutory hearings, the totality of their legal aid costs are £28,000 for the husband and £31,000 for the wife i.e. about £60,000 in total. This is the equivalent of being owed to the lawyers, although of course they are guaranteed to be paid unlike in the private equivalent. But this money must be paid if property is recovered or preserved. As the only asset is the equity in the 2 properties, which is an issue in the case, the charge will attach to that equity, either the property or proceeds.

7. Despite best judicial attempts, the finance litigation has not run smoothly. The first appointment was June 2021 when there was no financial disclosure from the husband because he was awaiting amendment of his legal aid certificate. Nevertheless sensibly directions were given leading to an FDR in October 2021. By then, there was still no financial disclosure from the husband even though by now he had legal aid for the financial remedy proceedings. Further directions were given with another FDR in March 2022. This was ineffective, partly because values of properties were not known nor amounts on mortgages. Yet more directions were given for disclosure. It was listed for yet another FDR, as soon as available after May 2022. Sadly for reasons which are unclear to me, it wasn't fixed until September 2022 and then listed for November 2022. This was again ineffective, with the order specifically saying the court could not give an indication because of lack of agreed valuations and mortgage balances. It recorded that the husband, albeit represented by counsel, had produced a bundle of 2183 pages. It defies belief how this could ever have been appropriate in a case with such modest financial arrangements. The court rightly certified it should be listed for final hearing without further attempts at an FDR. That hearing, late March 2023, could not go ahead because of an absence of reliable valuations and yet further directions were given including for a surveyor's report. It then came before me on 13th July. Both parties were represented by young but specialist financial remedy counsel who did a very good job on the good points available for their respective clients. Both parties gave evidence with helpful closing submissions.
8. However I must record this long timetable is a matter of real despondency. Although most English family lawyers will not necessarily appreciate this and there are alas geographic areas of real delays, in my experience doing international work I can truly say that the English family court system is one of the fastest in the world consistent with thoroughness of preparation. I have seen cases at the CFC and the Exeter Family Court where the FDR has been within 9 months of the Form A, sometimes less, and final financial hearings well within 18 months, sometimes even 12 months. Well-run cases with collaboration by the lawyers notwithstanding substantial differences in the dispute. Far faster than most other jurisdictions. I appreciate there may have been delays here because of legal aid in this case. But in my experience, 2 ½ years from the issue of the

Form A to the final hearing is long, and in any event is too long. This is notwithstanding judicial attempts on a number of occasions; there were no less than 3 judges who were debarred from dealing with the final hearing because of attempting an FDR. No difficulty in somewhere like the CFC but a real difficulty in smaller provincial courts.

The properties

9. Flat 2 was purchased in 2007 and until separation was the family home. The husband remains there. It was either funded jointly or by the husband alone and certainly the renovation works came from compensation payments received by him, of which more below. The surveyor valuation is £87,500, mortgage of £78,510, costs of sale of about £4200 with an early redemption fee of £2351 namely equity of about £2438, say £2500. Any slight variation in the property market, especially downwards with higher interest rates, will lose this equity immediately. There had been a mortgage originally but there was a remortgage in late 2020 to which I refer below. It is a 2-bedroom property. Each party seeks it. The wife to have the proceeds. The husband to retain it. It is in his sole name. It was bought originally in joint names but when there was the time of separation in 2010, it was put into his name. This allowed him to remortgage it in 2020 after the separation, which was the essence of the hearing on fact-finding.
10. Flat one was purchased 2016. It is a one-bedroom property. It was funded wholly or primarily from further compensation monies received by the husband and is in his sole name. It has a value of £77,500, mortgage of £54,588, costs of sale again of perhaps £4200, early redemption fee of £1037 and therefore equity of perhaps £17,674, say £17,500. It has throughout most of its ownership been occupied by a friend of the husband, a recovering alcoholic. The husband says that because a number of items belonging to the wife are stored there, taking up most of one room, he hasn't been able to obtain a commercial rental. He is getting about £200 per month. I said that whatever other order I made, I would direct that within a month at the latest, whatever were the items belonging to the wife at the flat must be collected by her so that there were no more hindrances on allowing it to be fully let if that was the outcome.
11. The husband has about £500 in the bank and the wife about £3000. He has a pension worth (value, not income to be produced) about £5000 and she has pension of about £3000. Obviously there is no pension sharing order. I took these generally into account.

Income

12. The wife is working, and has been for many years, as a care assistant in a care home. She earns perhaps £18,000 pa which provides about £30,000 with state benefits. It was said she could increase her earnings with better qualifications but she said that although she was very good at working with people, she wasn't good with paperwork and higher qualifications required far more involvement with regulatory matters. I accepted this having seen her in evidence.

13. The husband has had difficulties with his employment for health reasons. He had an industrial accident which left him with hearing and visual difficulties. He had severe asthma. He received a compensation payment, perhaps £17,000, which had gone significantly into purchase or renovation of the family home. He had however held down a job but was then made redundant. He had also had a road traffic accident which left it painful for him standing or sitting any amount of time, thereby reducing even more his ability to work. Compensation from that, perhaps £40,000, went into the investment property. A little while before the separation, for work he had moved about 100 miles, living there during the week but with of course extra expense of accommodation. The separation occurred whilst he was working there. That work came to an end. He set up his own company but that failed during lockdown. Since then, he has been unemployed, or on a zero hours contract producing very little income. He has been certified by universal credit as limited capability for work and work-related activity. They are not requiring him to search for work or prepare for work. In the note from his own counsel, he was said to have a total of about £20,000 per annum: from the minimal work, rental, universal credit and PIP.
14. Obviously he has no mortgage earning capacity. There was a suggestion the wife might have as much as £70,000 capacity but this was later shown from a further report to be unrealistic. She might have a mortgage earning capacity but without a good amount of capital, it is simply impossible for her to purchase.
15. I record here that the husband is on his own. But for several years, said to be shortly after separation, the wife has had a boyfriend with whom she works at the care home and whose mother owns the care home and who has also lent her a car. The boyfriend has acted as guarantor for her rental. He lives with his mother a couple of miles from the wife and she said they do not live together and have no plans to do so. Apparently he owns a property outside Devon. It was said on behalf of the husband that she had a wealthy boyfriend and they would live together. This was disputed by the wife. I wasn't referred to the case, but reminded myself about *Grey v Grey* 2009 EWCA 1424. But in that matter, the discussion was about spousal maintenance which it isn't here. Lord Justice Thorpe highlighted the difficulties of ascertaining if there was financially dependent cohabitation. I was satisfied that although the wife had a long-term boyfriend with which there were financial connections, none of this was certain for the future nor gave her any rights against him, other than the contractual guarantee. It might end tomorrow and therefore her needs remain.

Debts

16. This was the heart of the case. The husband complained that during the marriage the wife spent more than they earned. She said in turn that she had no knowledge of the finances of the family. She said that through most of the later years she gave about £700 per month to him as contribution to the household budget. This was a good part of her net income. She also had 2 children soon after marriage and took 9 months each time maternity leave which must have had an impact on her income, ability to contribute to the household finances. I find both were right. I've no reason to disbelieve the husband when he said that finances were difficult throughout the relationship and which he perceived to be,

in part at least, the expenditure of his spouse. Money has been tight as it is for very many families and debts have arisen even when they were both working. But equally I've no reason to disbelieve the wife when she said that she had no idea about the level of their debt, the number of credit cards and similar. She was simply not involved. This is a model of marriage which works okay in many marriages. Sometimes one spouse won't share anything about the household finances and sometimes one spouse doesn't really want to know. There are different marital dynamics. I'm satisfied this wife had limited knowledge of their debts although I'm sure she knew there were financial difficulties because it was clearly then and now a burden for the husband.

17. So at trial we had to work our way through what were the debts at each particular point, in circumstances in which the husband had produced a document, summarising his previous extensive disclosure, showing present debts in excess of £60,000. That was hard to believe including consistent with the ES2 spreadsheet and consistent with having remortgaged the properties in late 2020 for £45,000. Where had that money gone? This was the reason for serious and justifiable suspicion by the wife and her advisers and had troubled me in my prehearing reading. I set out now what I believe is the position.
18. At the point of separation, the husband asserted the debt was £18,720. This was various credit cards and loans, £2000 owing to his family and £3500 owing to his tenant. This last had arisen because his tenant, a recovering alcoholic, was not comfortable in holding any money and the husband looked after it on his behalf, paying his bills for him. But because the husband was desperate for money because of debts, he used the money held for the tenant to pay off some of his credit card bills but thereby created an indebtedness to the tenant. I accept this was the level of the marital debt at the point of separation.
19. At the end of 2019, the husband asserted the marital debt was now £29,836, an increase of £10,000 within the year. But this was misleading. It included payments he had made to the mortgage, costs of travelling to where he lived for work and other living costs. The true position of debts including soft debts to family and tenant, was probably about £21,000, an increase of perhaps £3000 and he was working for at least some of this period.
20. His equivalent figure for the end of 2020 was £40,000. But again this was misleading for a number of reasons. It again included his paying off the mortgage, which of course is now found in the mortgage redemption figures, paying living costs and general expenditure. I think from his figures the real increase is about £3000 namely by now it may be about £24,000 hard debts.
21. A couple of other crucial events occurred in 2020. He took two loans from the Halifax. One was for £10,000 and the other for £19,000, the latter being mid September 2020. From these loans he paid off credit cards and other debts. If by my assessment from the evidence his debts were £24,000 towards the end of 2020, then he should have been completely clear. He should have had an amount left over and perhaps that was the living expenses of 2020 as by now, lockdown, he had no work.

22. Then he remortgaged each property in October and December 2020. One was for £25,000 and the other for £19,670 in other words receipt of about £45,000 or thereabouts. We could see it arriving in the bank statements. He paid off immediately, as far as we could tell, the Halifax loans. He paid off money owing to his mother although previously we had understood that was part of the hard debts represented by the £24,000 owing towards the end of 2020. He responded by saying he had taken more borrowing which wasn't recorded in his schedule. Even so, it was difficult to see where the remaining money had gone. In simple terms, he had borrowed £29,000 to pay hard and family debts which we had ascertained were at least £24,000 and we did not know what happened to the remaining £5000. He then remortgaged for about £45,000 to pay off the loans of £29,000 and we do not know what happened to the remaining £16,000.
23. What was however very clear is that the debts at the time of the separation had now been fully converted into a remortgage on the 2 properties. So the claim by the husband for the wife to indemnify him for the marital debts fell away immediately. The only debts we were now looking at were accrued during the period of separation when they were living independent financial lives. I'm clear that as a matter of law regarding post separation finances, the starting point is each should be responsible for their own unless there is financial dependency and I cannot find any here. I accept the husband has been paying the mortgage and outgoings but equally he has had the benefit of living in the property and the income from the other property.
24. Reverting to the schedule, the husband sought to show that in 2021 there was an increase of debt of £16,500, in 2022 an increase of £6000 and up to the middle of 2023 an increase of £4000. Hence he put forward to this court that there was a marital debt to be taken into account by the court of £67,554. For this there were many documents and many calculations. But they were thoroughly unreliable both generally as far as hard debts were concerned and specifically because they ignored the loans and the remortgage. It was a document prepared to put a particular case to the court which failed.
25. Instead, looking at the spreadsheet prepared for the court, there were various credit cards, council tax arrears and similar hard debts of about £30,000. There was money owing to his family of £7700. His open position was that the wife should be responsible for 2 of the hard debts, approximately £16,000, and he would be responsible for the rest. Even if that had some fairness, which was doubtful because it was entirely post separation, I cannot disregard that the wife has no financial wherewithal, income or credit, to indemnify or take over.
26. So these debts were not matrimonial. I do not see any good reason for this being put to the liability of the wife.
27. Living on credit cards is never wise; in fact, it is financially reckless except that a good number in society feel they have, actually may have short-term, no other choice. But he must find a way now to clear this credit card debt and find a sensible way forward for his living expenses. He said that the credit card companies are waiting to hear the outcome of this case. They may be prepared

to give him a year at a lower interest rate but lower is relative in the present economic climate. They want to be paid.

28. What troubles me is what happened to the remainder from the remortgage monies. Is it undisclosed? Does he have it in cash? I don't know and I have certainly not had a satisfactory explanation despite best attempts in cross examination. But on the balance of probabilities, I think it is unlikely that he would have these credit card debts with high rates of interest, with perpetual pressure from credit card companies to repay, if he had undisclosed cash available. I was impressed with him in his giving evidence about his real grasp of the figures, the interest rates and the emotional burden of carrying these debts. I did not have any impression of subterfuge, and that as soon as the case was over, funds would arrive and repay the debts. So this is the basis of the order. If it does become clear that he has funds then he has clearly lied to the court.

Outcome

29. I start with the family home with an equity of about £2500. Many years ago, Lord Justice Thorpe in a case which I vaguely remember might have been *H v H* spoke about a noninterventionist approach of the family Court, unless intervening was necessary in the interests of fairness and justice. The small level of the equity, the costs of sale and early redemption which would go with a sale, plus the precariousness of the level of the equity with the risk it may go into negative equity, makes me make no order. It is accommodation for the husband just as the wife has rental accommodation affordable by her out of her income. It's a matter for the husband to afford the mortgage but his case is that he wants to keep it. He needs somewhere for the children to stay when they are with him. It has been his home since 2007. If I were to order it to be sold and for example the proceeds divided equally it would have to be coupled with a provision that the wife took liability for one half of any negative equity. I want to produce a clean break here. So this property stays with the husband and there is no order
30. However in respect of the investment property and given it has a marital element, the wife has an interest. Moreover with the level of debt, it almost certainly has to be sold. However I do not accept the claim of the wife that she should receive the entire proceeds. Even though this is a needs-based case, the family Court cannot, should not, entirely ignore the question of provenance. As the years post *White* have progressed, I have seen this feature increasingly strongly in a number of higher court decisions. To ignore would go against public and judicial feelings of fairness and justice. I also take account that the wife has her housing needs met through affordable rental. The money came from the ill-health, industrial and other accidents suffered by the husband. It would be harsh and unfair simply to ignore for some sort of sharing equality of equal needs. Moreover I have to be conscious of his debts even though they are post separation. He may have failed to show what happened to the balance of the remortgage monies but I cannot thereby effectively give the wife the property as a quasi-consideration. No add back claim was run.
31. In these circumstances I think that from the equity of about £17,500, the wife should have £4000. I wondered about expressing as a percentage, which would

invariably be the sensible course of action. Indeed, the wife thinks the property is worth much but I have to rely on the court ordered single joint expert. I worry about delays from the husband. I worry about more litigation arguing about the value of the property and any offers made. This is a relatively cheap property, a one-bedroom property valued at £77,500. In my limited experience of dealing with financial remedy cases in Devon but generally from the simple fact of the value of this property, there will surely be demand for both a one-bedroom property and at this cheap price. I think it's reasonable that it should be sold in the space of 5 months and if not, interest will then run on the £4000.

32. Regarding the contents pertaining to the wife, which she says is maybe 2 boxes, the husband must set out in 7 days to the wife through her lawyer a time when she can come to collect within 7 days thereafter, at her cost. She is entitled to be accompanied but not by her boyfriend which would be unnecessarily insensitive. In turn, the wife must write to the husband through his lawyers within 7 days to say if she wishes to collect the sofa. If she does, then the arrangements above apply. If she doesn't, it is for the husband to use and it is his. There are no other relevant contents.
33. There are no other orders. There will be no order as to costs. There will be no spousal maintenance. Child maintenance will be a matter for the agency.
34. I'm conscious that the legal aid charge will bite on the lump sum being recovered by the wife. But this was always going to happen. Even if she had been fully successful on her entire open position namely having the entire equity in both properties with no liability for any debts, it would still have bitten on the entire amount. It won't in as far as it will be put over if she were to buy a property but on all the information available to me, she does not have the funds and indicated she hasn't any immediate expectation.
35. I'm conscious that the legal aid charge will bite on the net proceeds retained by the husband. But so will the outstanding debts. How they interrelate is not a matter for me, and in any event, I wasn't given any information in that respect. It might be that the legal aid charge could also be put onto the matrimonial home which is being retained and has a small equity which might, if there were improvement in the property market, be sufficient for the charge. But such decisions are outside of the judicial discretion and outcome.
36. I so order

DDJ David Hodson
14th July 2023