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Neutral citation: [2023] EWFC 244 (B)

Case number BV21D07891

In the Financial Remedies Court sitting at Swindon

Date: 21/11/2023

Before:

DISTRICT JUDGE HATVANY

Between:

JN

Applicant Wife

And

GN

Respondent Husband

Extempore JUDGMENT

1. This is a final financial remedies hearing. The applicant wife Mrs N. is ably represented by Ms. Ellis of counsel. Mr N's solicitors came off the court record immediately prior to the court hearing today. Mr N told me that he is unable to afford any representation and therefore he now appears in person.
2. Fortunately, the parties have had constructive discussion prior to the hearing. The main asset is the former matrimonial home in which Mrs N resides. Mr N has agreed to transfer his interest in the property to Mrs N.
3. Mrs N's open proposal is that Mr N should in addition clear the mortgage on the property. The mortgages combined amount to £47,000 or thereabouts. For the

purposes of today the property, which has three bedrooms, has a value of £280,000 and net equity of £224,500. This equates to about £112,000 each on an equal sharing basis.

4. On the face of it the parties have identical housing needs although Mrs N says that she needs room for her father when he comes to stay.
5. There are two charging orders registered against the title. I am told that one of these has been cleared by Mr N. Mr N has also agreed to clear the remaining charging order of £1600 or thereabouts.
6. Mrs N has agreed to use her best endeavours to release Mr N from the mortgage. If she is unable to do this within one year of today, then the property would be sold.
7. The two major outstanding issues I must decide are as follows:
8. In addition to transferring his beneficial interest in the property to Mrs N, should Mr N also have to clear the mortgage so that Mrs N is left with a mortgage free property?
9. Should Mr N have to pay anything towards Mrs Ns legal costs of circa £19,000 since September for his alleged failure to comply with court orders and the financial proceedings rules?

10. Relevant Background.

11. The parties were married for 23 years. There is one adult child PN who is now 28 years old. The parties separated in 2013 when Mr N left the former matrimonial home. For at least four years Mr N has been cohabiting with SS who is the sole tenant of a social housing tenancy.

12. Despite the large measure of agreement reached between the parties, I must be satisfied as to fairness having regard to the factors under section 25 of the matrimonial causes act 1973.
13. Mrs N's proposals would leave Mrs N in a three-bedroom mortgage free property and Mr N with no security of tenure whatsoever. At first blush, and without further analysis, this does seem manifestly unfair.
14. The cynical side of me shows no surprise that the relationship between Mr N and SS has survived given the lavish sums Mr N has expended on both SS and members of her family. Mr N admitted in cross examination that he had expended some £75,000 to date.
15. Mr N's evidence to this court is that he now has no money, and it remains to be seen whether his existing relationship with SS survives in these circumstances. The court does not have a crystal ball and Mr N would be homeless if SS terminated their relationship.
16. Mr N is working. He is 62 years old and in relatively good health. He earns about £20,000 net per annum.
17. Mrs N is also working. She is 60 years old. She works as a teaching assistant. She is however in poor health. I have considered the medical report dated 27th of March 2023 which summarises several health issues. The medical report suggests that a house move would adversely impact Mrs N's mental health but is entirely silent as to her earning capacity and whether she is able to carry on working in her current role until retirement.
18. Both parties have relatively modest pension provision and neither seeks any sort of pension sharing order.
19. Mr N says he has no money at present although he has failed to give adequate disclosure. Mrs N had savings from among other things a small inheritance but

has apparently run up a large legal bill of about £69,000 of which £19,000 remains unpaid.

20. This has in part been caused by Mr N failing to adequately answer questionnaires, failing to give timely or adequate disclosure, and failing to provide his open proposals within 21 days of the financial dispute resolution hearing as required by the rules until this morning. This in turn has made it impossible to settle the matter hence Mrs N's application for costs since September which I will return to later in this judgement.
21. Even while represented, there has been a history from Mr N of non-compliance with the rules. He was ordered to pay the costs of the wasted financial dispute resolution hearing despite being given a warning at the first appointment hearing about the need to provide full disclosure, answer questionnaires fully and comply with the rules.
22. There are a number of significant features about this case. Mr N readily admitted to having received £468,000 from his father's estate in early 2020 together with an additional £30,000 for a painting.
23. This inheritance is of course not a matrimonial asset which is readily conceded by Ms Ellis. Nevertheless, this inheritance would have been more than enough money to both meet Mr N's housing needs and clear the existing mortgage on the former matrimonial home.
24. Instead, Mr N has engaged in an extraordinary generous and reckless spending spree. It is his case that all the money has gone. He readily admitted to lavishing it on SS and her family, holidays, a car and even a hot tub. It was put to Mr N in cross examination that this equates to expenditure of about £16,000 per month over a 2 ½ year period. Mr N readily accepted that this expenditure had been both wanton and reckless.

25. Mr N was honest with the court about this and I'm willing to accept what he says about having no funds left given that he can no longer afford legal representation. Notwithstanding his lack of disclosure, I am not prepared to draw adverse inferences that money has been hidden away. I accept Mr N's sworn evidence that there is no money left. I find him to be an honest witness.
26. In my judgement, Mr N is right not to attempt to argue that his housing needs are not met if his beneficial interest in the property is to be transferred to Mrs N given this extraordinary dissipation of funds that could and should have been used to meet Mr N's housing need.
27. In addition, Mr N admitted to receiving the benefit of an endowment policy in 2016 and that the parties had intended to use the proceeds of £28,000 to clear the mortgage. It is on this basis, that Mrs N argues that Mr N should now clear the mortgage.
28. Mr N also received the additional sum of £56,000 in 2019 when he cashed in one of his pensions. Unlike his inheritance, these monies are classed as matrimonial assets which Mr N has had the sole benefit of.
29. Ordinarily, the starting point for a marriage of 23 years where there is one grown-up child should be a 50-50 division of the assets. Both parties on the face of it have identical housing need. Mrs N is arguably over housed in a three-bed property with an additional box room and that property would have been sold to enable the parties to go their separate ways.
30. Although the inheritance was received post separation and is rightly conceded by Ms Ellis not to be a matrimonial asset, were it not for Mr N's wanton dissipation, this sum alone could have been used both to meet Mr N's housing need and discharge the mortgage on the former matrimonial home which would have left both parties with a mortgage free property.
31. The endowment monies of £28,000 that Mr N received in 2016 and the further sum of £56,000 he received in 2019 when he cashed in his pension were both

assets that had their origin in matrimonial endeavour and therefore would have formed part of the pot for distribution. Instead Mr. N has had the sole benefit.

32. For these reasons, this case demands a radical departure from equality in favour of Mrs N. By large measure Mr N accepts this and he does not contest transferring his beneficial interest in the FMH to Mrs N.
33. In doing so, Mr N is forfeiting his claim to a share of one half of the equity amounting to £112,000. Should Mr N have to go further and clear the mortgage as sought by Mrs N as well as clear outstanding costs of circa £19,000 Mrs. N has incurred since September last?
34. The Case law has been comprehensively covered in Ms Ellis's position statement on behalf of Mrs N. In addition, practice direction 28A makes it clear that a party who fails to negotiate reasonably prior to any hearing can expect a cost penalty. Mr N failed to set out his open position within 21 days of the financial dispute resolution hearing or at all until this morning, He failed to provide a S.25 statement despite the previous order. He has largely failed to engage. He says his solicitors have not requested this information from him but that is a matter between him and his solicitors. I find that this has hampered settlement.
35. I am not however going to order Mr N to pay the full £19,000 sought. As a general observation I find that the costs of £69,000 are very high notwithstanding the additional work caused by Mr N's non-cooperation. Instead, I propose to order Mr N to pay the sum of £10,000 towards these costs. I have already accepted and made a finding that Mr N does not have this sort of money at present and so these costs will have to be paid monthly I suggest at a rate of £350 per month which means the debt will be cleared in just over two years.
36. Mr N will also have to clear the £1600 or so outstanding on the remaining charging order.

37. I am not going to order Mr N to pay anything towards the mortgage of £47,000 based on my finding that the money is simply not there to facilitate this notwithstanding the absence of disclosure on the part of Mr N.
38. I also take the view that if Mrs N is to remain in a three-bedroom property with a box room and have the benefit of the entirety of the equity with Mr N effectively forfeiting his £112,000 half share, then she should continue to be responsible for the mortgage for the four remaining years. She has managed to maintain the monthly payments which I understand to be currently about £660 per month since separation and she will have to continue to do so until the end of the mortgage term.
39. Save for the box that was mentioned, the contents shall remain as they are having been divided many years ago.
40. Mr N has agreed that should he die before Mrs N, she should receive the benefit of the Aegon Scottish life policy.
41. The parties joint account is to be closed and Mrs N is to retain the nominal balance outstanding. As only Mr N has been operating this account, he will have to account to her accordingly.
42. Both parties to retain their modest pensions and there is to be a clean break to permit the parties to finally go their separate ways.
43. I invite Ms Ellis to draw in order that reflects this judgement.