Neutral citation number: [2023] EWFC 336 (B)

1**IN THE FAMILY COURT AT COVENTRY** **No 1660-9103-3789-5402**

Before:

**Deputy District Judge Michael Horton KC**

Between

NR — Applicant
- and -
SE — Respondent

Ms Aimee Fox (counsel) for the applicant
Ms Van Rol (counsel) for the respondent

Hearing dates: 14, 15 December 2023

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Introduction

1. This case has featured some of the most destructive behaviour I have seen for many years. I used the term 'scorched earth' during the course of argument. In my judgment, the term is entirely justified. At the time of the parties' separation, they had savings of over £80,000 from the proceeds of sale of their former family home; they had a thriving business turning over in excess of £350,000 in the year to December 2020; there were the trappings of wealth including designer clothes (I have been

shown a photograph at page 123 of the bundle, for instance, showing the husband wearing a Burberry shirt and shorts and Louis Vuitton trainers with a combined retail price of nearly £2,000). And yet the position appears to be now that the money has gone, there are personal credit card debts on each side of about £20,000 or thereabouts; the business is apparently in liquidation and the parties are left with potential further personal debt under personal guarantees that each of them have given to finance companies for the business's activities. The costs of these proceedings come to about £70,000 so far, and I am told there are ongoing child arrangement proceedings.

2. How has this position come about? Well, the sad fact is it is not through bad luck or ill health or even poor judgment. It is, in my judgment, entirely down to the husband's self-destructive behaviour. In the immediate aftermath of the parties' separation, he made two specific threats on WhatsApp or by way of text. They are at page 126 and 127 of the bundle. The first was, 'you will get fk all'. The second, which is dated 13 May 2021, reads, 'you ain't having shit. I'm going to fuck the whole company up.'

3. Now, judges deciding these cases are used to seeing these sorts of comments made, often made at the very outset of the marital breakdown, when the feelings are at their most intense. But this is not a case of threats being made and then wiser counsel prevailing. The husband was good to his word. The whole company has indeed been ruined and, on the face of it, there appears to be hardly anything left.

Background

4. The wife is 39. The husband is 38. They began to live together in 2004. Their elder daughter is 17 years old and, as I understand it, in her second year at 6th form. Their younger daughter is 11. They were married in 2014. In 2017 or thereabouts, they bought a family homed that, I was told by the wife, was a three-bedroom detached property. Before that they had rented. At some point prior to their separation that property was sold, and the proceeds of sale were about £80,000.

5. There are various dates given for the separation. In the ES1 it is given as September 2021. In the wife's form E it is given as 25 February 2021, and the husband said it was February 2022. But in any event, in about 2021/2022, the parties' relationship broke down and of course the text that I have already referred to was dated 13 May 2021 - I infer that from that the separation was underway at that time.

6. The wife lodged a divorce application, which was issued on 13 April 2022. A conditional order of divorce was granted on 26 October 2022. It has yet to be made final.

These proceedings

7. It appears that there was an attempt, as one would expect, for there to be pre-issue exchange of Forms E, and certainly I have seen a Form E from the wife from about October 2022 setting out her financial position at that point. I am told that the husband simply did not engage with that process. Any attempt to deal with finances before issue of proceedings was unsuccessful, and so the wife lodged her form A on 7 August 2022.

The form that the court sends out to the parties on the issue of proceedings is called form C. That was sent out by the court on 21 September 2022, and it required forms E to be filed by the parties by 10 November and listed a first appointment on 15 December last year. The wife duly made her form E and filed it on 11 October. There was no form E from the husband.

8. At the first appointment, the husband was represented by solicitors. The order made by Deputy District Judge L Jones on 15 December records that they had only recently been instructed. The husband was directed to provide a form E and there was a penal notice attached. There were the usual directions for questionnaires, replies and housing particulars and mortgage capacity and the like, and there were two directions dealing with the specifics of this case. There was permission given for the joint instruction of a surveyor to provide a single joint expert valuation of land owned by the parties. That valuation was to be done by the end of January 2023. There was also to be a single joint expert valuation of the family business. The expectation was that the report would be available by the beginning of March 2023, and any questions put to the expert answered by the end of March. The FDR was to take place in April.

9. The husband duly filed his form E on 11 January. The parties did send a letter of instruction to the property valuation expert. The surveyor replied on 7 March, saying that they were not prepared to value the land in its current situation. That is an issue to which I will return later. My understanding is that there was no progress towards the instruction of the business valuer and that issue was unresolved. On 11 April 2023, the

FDR took place. It was ineffective. At that point the husband was in person, and the order recites the reasons why the FDR was ineffective. The order allowed the wife to serve an amended questionnaire. The husband was directed to provide replies by 16 May, and a penal notice attached was attached to that provision. There were directions for obtaining joint quotes from various companies for removing material from the land and restoring it to agricultural or equestrian use. There was an amended timetable for the instruction of the single joint expert to value the business. The husband was given until a certain date to sign the letter of instruction for that valuation; if not, it would be sent anyway by 18 April.

10. The expectation was that all the necessary information would be available by the middle of June. There were the usual updating disclosure directions, and the matter was listed for FDR at the end of July. The letter of instruction was duly sent to the expert accountant. The expert sent a letter on 17 May, containing a two-page shopping list of information required. Other than that, no progress has been made in relation to this valuation. The wife provided her replies to questionnaire on 11 May. That appears to be all that happened in the run up to the FDR on 28 July.

11. The order made on the FDR by Deputy Judge Thompson records that the husband was not present on that occasion, but that he had been present at the previous hearing, when the hearing was set up, and he was aware of the date. The court was informed that the husband had gone to Jamaica on holiday in the previous week and he was due to return the following day. The wife was only told of his absence a day or two before

the date of that FDR. The court was faced with what it described as wholesale non-compliance by the husband. The court made an order for maintenance pending suit at the figure of £1,039 per month to commence on 31 August until the date of the final order. The husband was warned about the possibility of adverse inferences being drawn against him if he did not comply with the directions or attend. There was even a warning that if he did not attend, the court might issue a bench warrant for his arrest so he could be brought to court. He was ordered to provide, by 4 August, evidence of his trip to Jamaica, including flight details and booking confirmation. He did not comply with that order and remains in breach.

12. The time for the business valuation was extended to 27 October, and third-party disclosure orders were made against accountants and banks. Other than that, directions were made for preparation for the final hearing, including directions for s 25 statements four weeks beforehand, updating disclosure and mortgage capacity, property particulars five weeks beforehand, and open offers two weeks beforehand. The matter was meant to be listed before a full-time district judge on 14 and 15 December, with permission for the wife to attend remotely, but otherwise the hearing would be in person. The husband was ordered to pay the costs of the July hearing, assessed at just under £5,860. As I say, third party disclosure orders were made on that day. I was told that those orders produced no evidence or no evidence of any utility.

13. Because of the husband's breach of the orders, in particular his failure to provide replies to questionnaire, the wife had made an application for

him to be committed to prison. That came before Her Honour Judge Walker on 15 August. On that occasion the husband admitted his breach, and he was sentenced to a custodial sentence of three months, but the sentence was suspended and the terms of suspension were threefold. First, that he complied with providing full replies to questionnaire by 25 August. Secondly, that he paid the maintenance pending suit order of £1,039 a month. Thirdly, that he paid the costs ordered at the FDR, and also the costs of the committal application, within three days. Those costs came to £10,344 and I am told that he did pay those funds. He has also paid the maintenance pending suit on the first day of every month from 1 September.

14. The husband did provide replies to questionnaire on 22 August. They at least purport to answer most of the questions, although there are some gaps. The wife complied with the directions. She provided a section 25 statement on 24 November. She also made an open offer, albeit one that was late, and provided up to date financial disclosure. The husband's record in terms of compliance with the order made at the FDR is less than impressive. He did provide replies, albeit under the threat of going to prison if he did not do so. He did provide some updating disclosure, which is described on behalf of the wife as self-serving disclosure, in that it seemed to establish that he was in debt, but there were, I am told, gaps in that as well. In due course the matter was listed before me on 14 and 15 December.

<u>The application to adjourn</u>

15. I will deal with the next part of litigation a little bit more briefly than I otherwise would do, simply because I dealt with it yesterday morning when there were applications to adjourn the trial made on behalf of the husband. I refused that application to adjourn. There were three limbs to it. The first was the allegation made by the husband acting in person on 8 December that, because the parties had used the wife's solicitors' firm for a previous land dispute, there was a conflict of interest and they could not act for the wife in this apparently unrelated matrimonial case. I did not consider there was any conflict of interest or that there was any reason to adjourn on that basis. The second limb was on the basis of his ill health. That was the subject of a separate application notice dated 11 December. The application notice itself referred to heart issues which were wholly unsubstantiated by any medical evidence. The sick note just simply referred to mixed anxiety and depressive disorder, stress, anxiety, panic attack, and had an undated request that he get some blood tests. In circumstances where he had already failed to attend one hearing, and had been in breach of an order to set out documentary evidence as to how he had failed to attend that hearing, and in circumstances where the medical evidence did not comply with the well-known observations of Norris J in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch), I refused that limb of the adjournment application to adjourn. There was no reason to suppose that the husband would be any better or any worse after 28 days - the period for which an application was sought.

16. The third limb was in relation to the fact that the husband has now taken up with his new partner. It had been well known that she was expecting a child and that the baby was likely to be delivered at around this time. I

was told that she had been booked in for the baby to be induced and delivered on this coming Saturday, tomorrow, but there were concerns about the baby and the birth was being brought forward to yesterday. I had some sympathy with the husband's request on this basis. However, I was told during the course of submissions that the husband had been at hospital the previous day for the same reason. It then became apparent that there had been a child arrangements hearing yesterday and the husband had not attended. The court had been told that the reason for the husband's non-attendance was that he was at hospital and was, I think the phrase was, 'attending NHS mental health crisis meetings'. Before me the very next day, that explanation was disavowed, and I was told that he was at hospital yesterday in connection with the impending birth of his child.

17. That sequence of events illustrates to me just how casually the husband is prepared to use his lawyers, who are blameless and acted on instructions, to mislead the court. He was prepared to say one thing to the court yesterday, knowing it was not true, and hide behind his lawyers. In the circumstances, and given the disparity in the explanations, I was not satisfied that there was a good reason to adjourn. The costs incurred in this case are £70,000, the costs of the trial are over £20,000, and it would not be a good use of the court's resources to adjourn this case off.

18. Ms Van Rol, who appears for the husband, was given some time to take instructions after I refused the adjournment. I appreciate that it must have been particularly difficult for her coming new to the case, because previous counsel had covid, having not had the opportunity to speak to

the husband prior to the morning of the first day of the trial. She had about an hour to take further instructions from him. The husband had not filed a s 25 statement and so would not have been permitted to give any oral evidence unless an application were made to me, effectively for relief from sanction. His open position prior to yesterday had been that the jointly owned land should be transferred to him and otherwise there should be a clean break. Ms Van Rol took some time to take instructions and provided a more developed proposal. Although I was told that the husband had been sent the wife's s 25 statement, he had been unable to provide any detailed instructions on it, and so her ability to cross-examine the wife was somewhat limited. In so far as that is unsatisfactory, the only person who is responsible is the husband. I heard some brief oral evidence from the wife and I asked a few questions of my own, and I heard submissions yesterday afternoon.

The parties and their credibility

19. The wife gave evidence in a calm, measured, somewhat flat manner. Her evidence was consistent with the objective, independent evidence, and I have no hesitation accepting her as an entirely honest and credible witness.

20. The husband did not give evidence. He has failed to comply with the orders of the court on numerous occasions. He has made assertions which are directly contradicted by the objective, independent evidence. He chose, it seems, to go on holiday at a time when he was pleading poverty, instead of attending the FDR. Shortly after the FDR, he began to be in receipt of universal credit, a means-tested benefit, in circumstances

where he has been able to meet the costs orders and the maintenance pending suit order. His explanation or justification for seeking an adjournment indicated, as I have said, that he was casual in his willingness and ability to seek to mislead the court. Where there is any conflict between the accounts that they give, I have no hesitation in preferring that of the wife.

The law

21. It is trite that I am required to reach a fair outcome. Under s 25(1) of the Matrimonial Causes Act 1973, the welfare of any minor children is my first consideration. I have to have particular regard to the factors set out in s 25(2). I have to have regard to all the circumstances of the case. I must consider fairness against the three strands of needs, sharing and compensation. Both parties are agreed that this is a needs case. I must have regard to the statutory steer in favour of clean break, and consider in particular whether any periodical payments for the benefit of a party of the marriage should be limited in time.

22. In relation to allegations of non-disclosure, I must consider that, where someone has failed to comply with their duty to give full, frank and clear disclosure, what was the reason for their doing so. Some parties are truculent and bloody-minded and refuse to give disclosure for that reason. Others are more calculating and do so because they consider that they will be financially better off if they do not disclose their financial position. The husband was warned expressly in the recitals to the order made on 28 July that, if he failed to comply with court orders and did not give full and frank disclosure, the court might infer against him that he

had more assets or resources than those that he had disclosed. The law makes it quite plain that someone in his position cannot complain if the court infers that he has assets or resources when he fails to take part properly in the proceedings and gives the explanation that would allow a court to reach a conclusion on more full evidence. Nevertheless, the inferences I draw have to be founded on the evidence and in particular on my assessment of the evidence as a whole.

23. The other matter I want to refer to on the law is indemnities. The wife's open position sought an undertaking from the husband that he give indemnities, firstly in relation to the land and secondly in relation to the now soon to be defunct business. Ms Van Rol, very properly, when addressing the court, having taken some limited instructions from the husband, indicated that she did not think that the husband was in a position to give undertakings. She did not consider that he could properly sign the statement on the undertaking form given the limited time that she had with him. The beauty of undertakings is that the court can accept promises which are not constrained by the limitations on the court's powers under ss 23 and 24 of the Matrimonial Causes Act 1973. But where a party does not give an undertaking, it seems to me that the ability of the court to order an indemnity is far from clear. In *CH v WH* [2017] EWHC 2379 (Fam) [2017] 4 WLR 178, Mostyn J considered that the High Court and the family court had the ability to require a party to give indemnities. That has been doubted, in particular by decision of Mr Recorder Allen KC in *G v C* [2020] EWFC B35 (OJ).

24. In my judgment, outside two particular contexts, the only way in which a party can be required to indemnify the other is by way of what might be called a contingent or conditional lump sum. In this case, it would be perfectly permissible for me to order the husband to pay, or cause be paid to the wife, the amounts, if any, which she is required to pay to any third party in connection with, for instance, the land or the business. The order for a lump sum need not be for a specified or liquidated amount, and the courts have made contingent lump sums in other cases, in particular where the consequences of tax in the future are yet to be finally resolved. The two circumstances where I consider an indemnity could be imposed other than by way of a lump sum order are (i) where there is a transfer of jointly owned property into the name of one party subject to a mortgage: the transferor would be a trustee of that land and would therefore be entitled under the general law to an indemnity from the trust fund or the beneficiary; and (ii) where there was a genuine relationship of agent and principal, because under the law of agency, an agent is entitled to be indemnified by his or her principal.

25. In other words, unless there is a cause of action independent of the Matrimonial Causes Act 1973 that will allow the court to impose an indemnity, it seems to me the only way to give effect to an indemnity is by way of that contingent and unliquidated lump sum. The wife's case is that her entire capital claims should be adjourned for a further period. But if I make a lump sum order for an indemnity, her lump sum claims cannot be so adjourned. The law is clear that the court can only make a lump sum order on one occasion. However, it is perfectly possible and permissible

for her property adjustment claims and pension sharing claims to be adjourned, even if such orders are made on this occasion.

The s 25 factors

*The assets*

26. I will start by considering the ES2. The only significant asset that appears to be left is the land. We know that it was bought in August 2019 for £133,000, there is an interest only mortgage of about £62,000 and, all other things being equal, the equity is therefore around £70,000. The difficulty with this land is that it was sold as equestrian land with stables. The permitted use of that land, I am quite satisfied, is for equestrian use. It is quite clear from the photographic evidence, the evidence in the email from the valuer in March this year, and the wife's oral evidence, that what has happened is that the husband has decided to use the land, in effect, as part of the business. The husband's case, through counsel, does not descend to particulars, but he says that there is nothing to see here, that all the activities that his company have carried out on this land are all above board, that the relevant authorities know all about them, and there is no difficulty. I am simply unable to accept that assertion.

27. The wife's evidence was that advice was taken about this land when the husband wanted to use it for the business. She said that she envisaged that the land was going to be bought so that she could keep horses and their daughters could ride ponies. When the husband took advice about using the land as part of the business, she tells me, and I accept her evidence, that he was advised that there was no point applying for

planning because he would need to obtain permission to change the use of the land and given that the surrounding plots were all equestrian and therefore non-industrial or non-commercial, it was very unlikely that permission for change of use would be given. In my judgment the husband, aware of that advice, nevertheless decided to go ahead and to use the land for the purposes of the business. He either hoped that he would not be found out or that if he was, he would apply retrospectively for planning permission, presenting the planning authorities, as it were, with a fait accompli and daring them to take enforcement action.

28. We can see how the land is being used from the surveyor's email dated 7 March, at page 242 or E5 in the bundle. The surveyor's email says that he went out on that day, 7 March, to visit the site. Put simply, he says it is not land and stables anymore. He says, 'the topsoil has been stripped back to create an earth bund and a hardcore base has been created in a large proportion of the site, I assume it is imported and there are two large piles (of I assume building material) the amount, quantity and type is unknown. The menage that was there is now no longer a menage, it is covered in hardcore base which again I assume has been imported. The stables … from the outside look slightly dilapidated from when we sold them a few years ago.' He then went on to say that he was unable to provide a valuation of the property in its current state. He did not know what the materials were on the land, and he did not have any experience to be able to provide confirmation of the cost of removal of those materials and reinstatement to agricultural and equestrian land.

29. He reported that he had a brief conversation with the husband on the site and the husband informed him that the council had requested that the earth bund be removed along with the piles of waste. The husband told the surveyor that as at that time no planning enforcement action had been taken, but the council were aware of what was happening and had asked him to deal with it. There is a small steel frame and concrete pad structure on the site which the husband confirmed the council had requested be removed. The surveyor went on to say that it was therefore highly unlikely that if the property were to go on the market in its current state, that any purchaser would come along and be willing to acquire it, unless it had previously been cleared and returned to agricultural or equestrian use, or that there had been consent obtained for the HGVs to be parked on the site, and tipping of building material in a storage yard. The surveyor said that was extremely unlikely, given the land is within the green belt which prevents most development. He went on to say that if the land were in the exact state as it was when it was purchased back in 2021 (by which he must mean in 2019 when it was purchased for £133,000), the valuation figure would be very similar.

30. In my judgment, that is clear evidence which contradicts the husband's assertion to me. I do not believe for a moment that the position has changed since 7 March. There are significant issues with the use of this land and the activity on the land has been taken place without permission. There is also reference to the fact that the materials stored in the land, which appear to be building waste, soil and rubble, are matters of concern to the environment agency as well. In my judgment, this land is not essential to the husband's continued running of a business in

rubble and soil removal – the activity that the business was engaged in. It also seems to me that the only thing that realistically can be done with this is that someone makes the effort to restore it to as it was and then sell and recoup the investment. Clearly, there is the risk of enforcement action from the planning authorities, as well as the risk of enforcement action and fines from the Environment Agency.

31. The other matter that is relevant to this piece of land is that the wife became aware earlier this year that the mortgage, which is about £700 a month, was in arrears and the husband had failed to pay it. She told me that there was about two months of arrears. Her parents cleared the arrears on her behalf and she has now been paying for several months the £700 monthly interest instalment in order to protect the land and stop it being repossessed.

32. Going down the ES2, there is nothing to speak of in any bank accounts. In terms of business assets, there is a new company incorporated last year. The husband has provided no information other than to say that it is simply a shell of a company that has not traded and is entirely dormant. In terms of the business, there were directions for a single joint expert. None of the information that the expert needed to value was provided. In his replies, the husband says he has not got a single piece of paper relating to this business, that the bank accounts are somewhere else, that he is in dispute with his accountants, and that he cannot provide a single scrap of paper in relation to it.

33. I was not taken to the historic accounts but information from them was in the wife's s 25 statement and quoted in her counsel's note. The turnover in the 2019 calendar year was £234,000; in 2020 it was £354,000; in 2023 it was a mere £40,000. The evidence is that the company is going to go into liquidation. I was told that it was set up in 2014, that it was well established by the time that the land was bought in August 2019, and obviously, for a good chunk of 2019 (in which there was turnover of £234,000), the business was able to trade without needing that land. Of course, to the extent that it needed two premises to store vehicles and previously had used the wife's parents' property to park vehicles, if that were not available, there would be costs incurred. Obviously, if the business was going to dispose of the waste legitimately at a public tip, there would be a cost incurred in that, and therefore there would be a reduction in its profit margin. It does not seem right that the company should be able to flout environmental regulations and undercut competitors who are complying with the regulations and operating legitimately. I was also told by the wife that the husband has land where he is storing vehicles at a site near a motorway. My understanding of the business is that it is involved in the digging out, removal of soil and rubble from building sites and disposing of them, and that waste therefore needs to be disposed of responsibly and in accordance with all the regulations. I am of course aware of the recent decline in activity in the construction sector, but nevertheless, in my judgment, there is no reason why this business could not still be operating and making a substantial profit and doing so legitimately without using the land.

34. I will come back to debts in a moment. I've already referred to the fact there is about £20,000 pounds of debt, credit card debt or finance debt on each party's column, and I will also deal with chattels in a moment. The husband has a defined contribution pension, with a fund value of £14,470.

*Income and earning capacity*

35. The wife receives personal independence payment and I think a mobility allowance. The PIP comes to just over £550 a month. She has child benefit of £173 a month or so, and she is currently receiving the maintenance pending suit of £1,039 a month. That totals roughly £1,770 a month. It was suggested to me that there was no medical evidence that the wife was unable to work. I reject the suggestion that she has an immediate earning capacity for a number of reasons. I accept her evidence that she has been, frankly, traumatised by these proceedings. I do not need to make any further comments or findings about the non-financial conduct, and I will return to that in a moment, but I accept her evidence that, for instance, she has lost a great deal of weight (down from a size twelve to size six). I also take notice of the fact that the benefits agency had to be satisfied of her health problems before making these payments. I accept her evidence that the benefits agency had been in touch with her doctors. I am also satisfied, though, that in due course, once the dust has settled and the blizzard of litigation has cleared, that she will be able to recover and be able to undertake some work. I understand that she has no formal skills, but she told me that she had worked in retail before having the parties' eldest daughter. She envisaged doing office work and I

consider that in three to five years' time, she would be able to work and earn between £15,000 and £20,000 a year.

*Other resources*

36. What of the suggestion that the wife has access to other resources? She accepted that her parents help her out. Her evidence was that, given how straightened her financial circumstances are and the standard of living that the children had become accustomed to, her parents were funding nearly all the discretionary spend for the children and helping her out as well. She accepted in her replies to questionnaire that she had paid some money effectively to do some building work at her parents' house, so that living there was actually practical and feasible. For instance, there was money spent on bathroom extensions and the like. However, it is clear to me that she is not paying rent and nor is she in position to do so. She accepted that she had been helping out her father when he was short staffed by fielding some telephone calls, but she said she was not being paid and would not have expected to have been paid given the help that her parents had provided. Whilst she accepted that they would help in any way they could, I am satisfied that there is no commitment by them or expectation from her of being provided with thousands of pounds for her to be housed independently. The reality is, for the foreseeable future, the wife (aged 39) is likely to have to stay living with her parents.

37. I am satisfied that the husband continues to have a substantial earning capacity. He has chosen, in an attempt to prevent this court making proper financial provision for his wife, not to utilise his earning capacity, and to try to bring everything crashing to the ground. In my judgment he

incorporated the new business as some kind of cunning plan, but when it was discovered, he decided instead to operate as a sole trader, either using cash or using other people to bank money on his behalf. That is a continuation of a pattern of behaviour that existed during the course of the relationship.

38. The wife gave evidence, that was not challenged, that she has seen the husband in recent weeks and months driving lorries. That was something that he used to do, as it were, for other people. At the very least he could do that. I am satisfied that he has the connections and the resources and the practical equipment to carry on the business that he was operating through other entities and other means. In terms of his resources, the bank statements show substantial sums coming into his account. The reference on the payments is invariably 'loans'. I am far from satisfied that those are genuine loans to him or that he is being bailed out by his friends. There are numerous examples of him asking questions of the wife, where her explanation in her replies to questionnaire is along the lines of: this is money into my account, paid either by someone I do not know or by someone who I do know, that the husband wanted to transfer the money to me so that I could then funnel it back to him. I am quite satisfied that this way of operating is very likely to be continuing now, but with other people acting as his banker.

39. The husband's legal fees in these proceedings, according to the Form H1, are about £24,000. £19,500 of this has been paid. His case was that a friend has generously paid all his legal fees. Given what I have said already and am about to say about undisclosed assets, as well as the

paucity of detail in this explanation, I do not consider this is a genuine account of how he has funded this litigation. There are so many assets that appear, on his account, to have been sold since the separation, and so much money swilling through his personal account, that I conclude that the husband has access to significant resources that he has not disclosed.

40. I set out my reasons on this in more detail. First, there is his lifestyle. I cannot go through it all, but there is continued expenditure on lifestyle consistent with a greater degree of wealth than he has disclosed. He spent thousands of pounds at Selfridges. One debit of over £3,500 is explained as clothing for his forthcoming holiday. There are entries showing thousands of pounds being paid to his partner. In the course of 18 months since the breakdown of the marriage, he has taken three overseas holidays, one to the Maldives and two in Jamaica. The second Jamaican holiday was the reason why the second FDR was ineffective. The husband was ordered to show when that was booked and how it was funded, and he has not complied with that order. The only inference I can draw is that he chose not to comply with that order because to do so would show he has other accounts or access to other funds which would demonstrate how he funded it. Very soon afterwards, in August 23, his bank statements show the receipt of universal credit. The impression that he wants to give is that he is on his uppers and reliant on the charity and goodwill of others. I reject that - such an impression is simply not accurate.

41. The ES2 contains a great many chattels. I cannot deal with them all. There is reference to a toolkit which the wife says is worth £25,000, called the Snap-on commercial toolbox. Interestingly, in his replies to questionnaire, the husband says it was stolen and he has got a crime reference for it. In his counsel's note, it was suggested that the wife had retained it, such that she was preventing him from working. I make no criticism of Ms Van Rol, given the shortness of time she had to prepare for this case, that this point was not put to the wife. I view the husband's scattergun approach as redolent of someone who is seeking to use attack as the best form of defence. I find that he retained this and either still has it or has sold it and retained the sale proceeds. He has been in occupation of the land, he was perfectly able to secure the shipping containers in which those assets were stored, and it is wholly implausible that this item asset would have been stolen.

42. There were several vehicles about which he was asked in the questionnaire. In reply 9, he said two vehicles had been sold for about £3,500 each, but no documentary evidence in support was provided or bank transactions provided to substantiate this assertion. The ES2 then lists further vehicles which can be seen in the photographs attached to the email from the surveyor dated 7 March. At page E8 of the bundle, page 245 electronic, there are two photographs. The first photograph, at the top half of the page, shows that there are four containers on the land. There is a caravan. There is a lorry for which I cannot see the registration plate, but it looks like some form of transporter. It has a cab at the front and then space behind the cab for items to be conveyed. There are big piles of rubble and tyres and pallets. There is a white Ford Transit. It looks

to me behind that there is some form of grab that would be used to do large scale excavation and digging. On page E10, page 247, there are photographs taken from a slightly different angle. There is a silver car. There is a Kia, a blue grey car, and there is some sort of small JCB or tractor, as well as the other vehicles that I have already mentioned. In fact, one can see that the grab that I was talking about on the earlier photograph is on the back of a very large transporter type lorry, there is no visible registration on that. There is another transporter vehicle.

43. I am quite satisfied that the husband has those assets. He has failed to explain why those vehicles should be on his land if not owned and controlled by him. With regard to the Ford transit vehicle and a transporter, his reply was simply a bare denial that they were owned by him. He should have given but did not give a full and frank explanation as to why those vehicles or similar vehicles should be on his land. In relation to a question about a Range Rover, his response was that was just a rental vehicle, but again he provided no documentation and support to substantiate that. Earlier in his replies, he explained a payment that he had made on 16 May 2022 to his partner as a down payment on a car - he said he paid the money to his partner and then she paid it. That suggests to me that either he is funding the purchase of a car for someone else, or he is buying a car with his money and having it held by another person. Those are illustrations of the type of vehicle to which he has had access and to which he continues to have access.

44. I have no reason to believe that any of the vehicles that I have referred to on the land in March 2023 are not still owned by him or available to him.

In this context, I should just mention the concern raised by the wife in her s 25 statement about a caterpillar excavator digger, about which she said that she had been contacted by a finance company, who wished to repossess that vehicle. One can see attached to the husband's replies bank statements which show £25,000 coming in on or about 19 August 2022 and other transactions, such as £10,000 in on 15 July, which were stated to be in connection with the sale of a vehicle. What is wholly absent from his explanation is any suggestion that he has used the proceeds to repay the finance company and cleared the debt. There is nothing in the bank statements to show any such payment. I therefore infer that he had a vehicle either personally or through the business, that he has sold it, but that he has left the company with the debt, in the knowledge that the debt is subject to a personal guarantee from both him and his wife. He has simply walked away with the proceeds for his own benefit. In addition, at page 196 the bundle, there was a credit into his account of £5,000 from another company. The reference looks to me like a registration number. There is also a payment to Land Rover of £5,000 on 13 October 2022.

45. For all those reasons I am quite satisfied that the husband has access to the commercial vehicles that he needs in order to run a business, some of which are likely to have been the property of the business, some of which he has sold and has obtained the money or retained the money for his own benefit so he can carry on his business.

*Needs*

46. The wife produced an income schedule with total income needs of over £4,000. She rightly accepted that this was not a reflection of what she was spending now, but was a reflection of what the parties had spent during their relationship and was therefore aspirational. The figure of £1,039 a month maintenance pending suit was simply a direct replacement of the wages that she had previously been paid by the business. At the moment she is spending about £700 a month just on the mortgage for the land. In all the circumstances, painting with a very broad brush, I am satisfied that the figure she seeks of £1,500 a month is a reasonable figure which would take her total income to approximately £2,200. Bearing in mind that that mortgage commitment, this is a reasonable income need.

47. In terms of capital needs, the housing particulars I have seen start at £160,000 to £190,000 for two-bedroom properties put forward by the wife for the husband, and the properties for herself range from £280,000 to £325,000. Even with the best will in the world there simply is not the money for these to be achievable, especially for the higher range. I bear in mind that the former matrimonial home was likely to have been in or above the second range (given that there had been net proceeds of sale of about £80,000). In her form E the wife's housing needs were put at £375,000. Her housing needs are now put at a more realistic level than in her form E.

48. In my judgment, the wife needs the land. She is going to be on the receiving end of some claims in relation to the family business. Even if, as I intend, she will have the benefit of an order for an indemnity from the husband, she needs to be able to make sure that she can actually pay the

money when those third parties come calling. The only source of funds for her is the land. If there is anything left over, it seems to me that she will be able to use that towards housing herself in the future. With a mortgage capacity of about £100,000 in a few years, and some capital, she might be able to get herself on the housing ladder. It may only be something like shared ownership, but it seems to me that her predominant need is for money to clear her debts. Even if, as is suggested, she sells her Rolex, that is only going to cut her credit card debt in half.

49. Obviously, the husband too has needs. He needs to support his new baby when that child is born. His partner, who I understand works in a family business, may need to take some time off to bring up the child. He needs somewhere to live. He is currently renting and has been able to pay his rent without difficulty since he took that tenancy on. In an ideal world, there would be enough money for him to buy somewhere as well, but in my judgment, his needs are not the priority in this case.

*Other s 25 factors*

50. In terms of the standard of living, although the family only bought their family home in about 2017, in fact, this family enjoyed the trappings of wealth. It was a high standard of living, there were designer clothes, there were expensive foreign holidays and those, continued, at least on the part of the husband, following the breakdown of the relationship.

51. As for s 25(2)(d), the duration of the marriage etc, although the marriage was only contracted in 2014, this followed seamlessly from ten years of

premarital cohabitation. This was a 17-year relationship. It is medium to long, and I take that into account.

52. In terms of any physical and mental disability of the parties, I have already set out that the husband had claimed that he was suffering from stress. There is no evidence of any heart issue. In my judgment, he is able to work and, indeed, is working at the moment. The wife is in receipt of personal independence payment, but long-term I expect her to be able to work.

53. Under s 25(2)(f), I must consider contributions. Of course, both parties made a full contribution to this marriage, and the wife will continue to make a contribution to the welfare of the family.

54. What of the husband's conduct? The conduct relied upon by the wife has three main limbs. The first is litigation conduct, and that speaks for itself. But, in my judgment, although some of the authorities say that litigation conduct is also conduct to which the court can have regard under s 25(2)(g), I consider that there is a risk of double counting if I were to bring this aspect in here. The husband has already been condemned in costs to the tune of £11,000, and has paid that costs order. I will hear further submissions, but there may be more cost orders coming his way. So I do not consider that I need to reflect litigation conduct as part of the s 25 exercise.

55. The second limb is financial conduct, and that will be clearly apparent from this judgment so far. I will say one more thing about that. There was

a reference in Ms Fox's position statement at page 13, paragraph 69, where it was said that the husband had assaulted the wife and stolen her mobile phone. He then screamed at the parties' daughter to give him the mother's passcode, and then transferred £40,000 to himself. I had been unaware of this allegation, as it did not feature any of the papers in the court bundle. I was told that it had been raised in the child arrangements proceedings and the Family Law Act injunction proceedings. I asked for some information and documentation about this and I was told by representatives for the wife yesterday afternoon, after the close of submissions, that there was a joint account ending 2840, which was asserted that the husband controlled. The wife had a savings account ending 1844, and the balance on 10 December 2021 of that account was some £93,000. On 13 December, a transfer was made to the account ending 2840 and, if what I am told is right, the inference is that the wife was transferring to her husband his £40,000 of the share of the proceeds of sale, and it has the reference 'house'. Sixteen days later, on 29 December, there was another transfer of the same amount to the same account, £40,000 to the 2840 account reference 'mobile channel', and on the same day there is a payment back of £31,000 reference 'mobile channel.'

56. I do not consider it appropriate for me to make a finding that this transfer arose because the husband wrenched the phone from his wife and made the payment. I observe that the narrative I have been given is entirely consistent with the documentary evidence and the reference 'mobile channel', but it is also consistent with the wife herself making the transfer on her mobile phone. The question might therefore be asked - why would

she, having already transferred about half the proceeds on 13 December then gone on to make a further transfer of £40,000 on 29 December (and why would £31,000 come back on the same day). What it does show to me, beyond any measure of a doubt, is that instead of the proceeds being divided equally, £40,000 / £40,000, it seems that the husband got £49,000 and the wife got £31,000.

57. I do not need to make any findings other than this, and the other financial misconduct. Where, as here, there are competing needs and limited resources to meet those needs, and where the resources cannot meet the needs of both parties, the impact of the husband's conduct is such that his needs must be given a lower priority. In the hierarchy of needs, his needs come second. I therefore need not say any more about this £40,000 transfer.

58. The third limb relied on is non-financial conduct. For the same reasons, I decline to make any specific findings about that. My view is that, as a consequence of the financial conduct, the husband is already, as it were, down the pecking order in terms of how the assets should be deployed to meet his needs, as opposed to his wife's needs. There is also the procedural issue in relation to this. The issue of non-financial conduct issue was raised for the first time by the wife in her s 25 statement. There were no directions for pleading conduct, there were no separate conduct statements, there were no sequential filing of statements in relation to conduct. Therefore, even if the husband had availed himself the opportunity to file a s 25 statement, he would not have known that he had to respond to these allegations. Although the non-financial conduct

allegations are quite serious, I simply do not consider that it would be useful for me to extend this judgment any further by considering whether that conduct gets over the threshold that is required before I can take it into account. Even if it did meet that threshold, I would then have to decide what effect it should have, in a case where I am already going to have to prioritise the wife's needs over those of the husband.

The parties' proposals

59. The wife made an open offer on 13 December. In that, she sought:

a. the transfer of the land into her name, subject to the existing mortgage, with her procuring his release from that mortgage as soon as practical and in any event indemnifying him pending release;

b. an undertaking in relation to any adverse consequences on account of the unauthorised use of that land and the wording in Ms Fox's position statement was slightly wider than the open offer. It was an indemnity from the husband in the wife's favour in respect of any potential enforcement application by the Environment Agency, local planning authority or other authorities, agencies or persons in respect of any wrongful use of the land or any contamination or damage;

c. a 100% pension sharing order in respect of the husband's pension, with him paying the pension sharing costs;

d. the return or the making available to her of the green shipping container which is on the land, which has in it the contents of the former matrimonial home after its sale, which amounts to her personal effects and the children's personal effects;

e. an undertaking indemnifying her in respect of liabilities arising from her involvement with the family business, including to taxes, levies, claims and indeed claims under the personal guarantees;

f. the adjournment or deferring of her capital claims for a period of five years;

g. a global maintenance order in the amount of £1,500 per calendar month, until the younger child attained the age of 21 or finished university.

60. The husband's position was initially that contained in the ES1, at page 5 of the bundle, page A3. In summary, this states that he sought the transfer to him of the land. He objected to any other order. He sought the dismissal of the maintenance pending suit order and effectively a clean break. So his proposed outcome was that he get the land and then the wife got nothing at all. Ms Van Rol was able yesterday to take some instructions in the brief time that she had between the dismissal of the adjournment application and the case resuming at about 12 noon. The proposal she made on the husband's behalf was that he have the land, and it was stressed on his behalf that the other provisioins of his offer were conditional on that. He was unable to give an undertaking or formally to indemnify, but there was an acceptance that if he got the land that he would bear any negative consequences in relation to the use of the land. He said the same in relation to the business. He was content for the contents of the container to go to the wife, but he wanted to exempt three particular items from that. He agreed to the pension sharing order on condition that he got the land, but gave no proposal as to how the pension sharing charges should be met. In terms of maintenance, he

sought the continuation of the existing order for a period not more than one or two years. He also sought to adjust the day of the month on which it was paid - the middle of the month was better for him on what he said were cash flow reasons. He also opposed the adjourning of the capital claims.

Decision

61. My decision is as follows. I do not consider that the land is essential for the husband's continued business activities. The business was an established, profitable business, well before the land was used in the way it was, and I do not consider it would be appropriate for that state of affairs to continue. My order is that the land should be transferred to the wife, that she gives the undertaking to indemnify and procure release as soon as possible. She has told me, and I accept, that she has contacts who will enable her to restore the land or to remove what is there, and she is prepared, if she gets the land, to bear the costs of removal.

62. I am going to make a contingent lump sum to require the husband, in effect, to indemnify her in relation to any enforcement activity along the lines set out in Ms Fox's position statement. I am going to make a pension sharing order. I know that the husband's agreement to that was conditional to him getting the land. Nevertheless, that is my decision, albeit that it is a relatively small amount of money, as it seems to me that the wife's future earning capacity is going to be considerably lower than his, and he is in a position to make good the loss of £14,400 in a pension. In terms of the land, I am going to give the husband until 31 January 2024 to give vacant possession to the wife and to remove any items such as

lorries, the steel structure and any containers from the land. But he must not remove any structure on the land that was there when it was purchased and must not remove any other soil or any other feature of the land that was there when it was first purchased.

63. I am going to make an order along the lines that the wife seeks in relation to the shipping container. The husband will be permitted to remove from the shipping container the three sets of items that he seeks, but otherwise must deliver the shipping container with all its contents to the wife's parents' address and do so within a date range to be notified by the wife. I am going to require that the shipping container itself be collected within a period of three months after its delivery, again on a date to be notified. Given what I have said in particular about the transactions relating to the excavator and the finance company, I am going to order the indemnity sought by way of a contingent lump sum (as per (e) above), and I am going to adjourn her capital claims, those that are capable of being adjourned, namely property adjustment claims and pension sharing claims, for a period of five years from now.

64. I then come to maintenance. I am entirely satisfied that the husband has the ability to pay not only the interim provision of £1,039 a month, but in fact the sum sought of £1,500 a month. I am going to order global periodical payments by way of a Segal order, with a pound for pound deduction basis if there is any child maintenance calculation made, in the sum of £1,500 pounds a month. The first payment will be £750 and that will be payable on 19 December. The MPS order will be discharged and thereafter the payments will be £1,500 on the 15th day of every month.

That seems to me to be the fairest way to accommodate his desire to move the payment date. When the land has been sold and there is no longer a mortgage on it, the amount of money will go down to £1,000 a month. The order will end, without a s 28(1A) bar, at the end of the school year when the parties' youngest daughter is 16 (broadly speaking once she has done her GCSE's), in about in five and a half years' time. Having regard to all the factors and the duty of the court to consider what term is appropriate, I consider that that is an appropriate length of time for the wife to recover and to develop her own earning capacity to be independent and self -supporting.

65. There will be a pension sharing order as asked and the husband will pay those charges. If he fails to do so, then the wife may do so on his behalf, and I will add that to the contingent lump sums.

(After hearing submissions on costs)

66. I am asked, following my substantive judgment, to order that the husband, pays the costs of the trial. The wife has filed a form H1, which pre-judgment comes to about £47,000, of which the husband has already been ordered to pay £11,000. There are the costs of producing a s 25 statement that are not within the form H1 as the statement was done after the form H1 was prepared. The estimated costs for trial in Section D of the form H1 are £6,624, but the two N260s provided are roughly £8,000. Ms Van Rol, on behalf of her client, valiantly suggests that no order should be made, based on the principle that no order is the usual rule and that the wife was late herself in filing a s 25 statement and her open offer was only produced yesterday. I bear that in mind, but I also

bear in mind that the husband's conduct has made it much harder for the wife to formulate a case, and I also bear in mind that his only substantive proposal, other than he should have the only remaining asset and she gets nothing, was made after the trial started. It seems to me, in circumstances where I have acceded to her request and the fact that the husband has failed to make any sensible, reasonable, open offers, that I should order him to pay the costs of the trial and I summarily assess those costs in the sum of £8,000, payable in 21 days, by 5th January 2024.

67. I am also satisfied, given the history of non-compliance to date, that it is permissible and appropriate for me to include a direction under s 39 of the Senior Courts Act 1981 for someone to sign the transfer in place of the husband if he fails to do so.

(After hearing submissions as to the publication of the judgment)

68. I intend to have my judgment published, but on balance I have decided it should be in an anonymised form. I think that, had there already been a published story about the committal proceedings or the names were already in the public domain, I would have been inclined for the judgment to be published without anonymisation, given the findings I have made about the husband's conduct. However, I am conscious that there are ongoing family proceedings relating to the children, and there are children who are blameless in this situation whose welfare would not be advanced by their parents' names being published. That may change if there are criminal proceedings relating to this family, but for the time being the judgment should be anonymised.

*15th December 2023*