



Neutral Citation Number: [2024] EWHC 2372 (Admin)

Case No: AC-2023-LON-000795

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN LONDON**

Tuesday, 17<sup>th</sup> September 2024

**Before:**  
**FORDHAM J**

<b>Between:</b>	
<b>THE KING (on the application of XYM)</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>(1) WEST LONDON FAMILY COURT</b>	
<b>(2) KINGSTON FAMILY COURT</b>	<b><u>Defendants</u></b>
<b>- and -</b>	
<b>XTZ</b>	<b><u>Interested Party</u></b>

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The **Claimant** appeared **in person**  
The **Defendants** and **Interested Party** did not appear and were not represented

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Hearing date: 17.9.24

Judgment as delivered in open court at the hearing

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**Approved Judgment**

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FORDHAM J

Note: This judgment was produced and approved by the Judge.

## **FORDHAM J:**

### Anonymity

1. There is a Court Order dated 18 May 2023 in this case which orders that there be anonymisation. It orders that the Claimant and Interested Party be referred to as XYM and XTZ and that there be no publication of the name or address of them or the particulars of the case likely to lead to the identification of the Claimant or his family, without leave of the Court. There are also restrictions to protect access from unredacted documents from the court file. The approved transcript of the judgment of HHJ Willans (7 September 2022), a judgment delivered in private, has been made available on condition that anonymity of the children and the family members must be strictly preserved. The Claimant had sought in his notice of renewal (4 June 2023) to vary that Order, so far as his own name was concerned, but anonymity has been maintained in all subsequent Court Orders. I maintain it and, for the record, I decline to vary the Order. I am satisfied that anonymity remains necessary. A variation would undermine the anonymity protections which the family courts have put in place. So, the Court Order which I have described remains in force and must be complied with.

### Background

2. In the context of the breakdown of the marital relationship between the Claimant (XYM) and the Interested Party (XTZ) there have been Children Act 1989 proceedings in West London Family Court. In the course of those proceedings in that court there was a two day hearing on 10 and 11 May 2022 before DJ Saunders. The Claimant describes as a one-day hearing on the basis that it ran for day 1 and until lunchtime on day 2 at which point Judge Saunders retired before considering and then delivering her ruling, resulted in findings of fact embodied in her order dated 11 May 2022. Those findings related to allegations which had been made by the Interested Party (as the mother) and the Claimant (as the father). As the Claimant accepts, there had been a previous direction of a judge in West London Family Court regarding the identification by the two parents of the key allegations that they were making against each other in those proceedings. Those proceedings were concerned with arrangements regarding the couple's two children.
3. There have also been Matrimonial Causes Act 1973 (financial) proceedings in Kingston Family Court. In the course of those financial proceedings there was a case-management order of DDJ Waschkuhn (dated 20 April 2022) and then a so-called "final" order of DJ Armstrong (dated 6 July 2022) after a hearing (commencing the previous day, 5 July 2022). The Claimant has explained, and Judge Willans' judgment of 7 September 2022 records, that the Claimant had attended at the start of the hearing before Judge Armstrong (for what the Claimant says was 5 minutes), to state his position and then absented himself from the rest of that hearing.
4. The Claimant sought permission to appeal against all three of these orders. That is DDJ Waschkuhn 20 April 2022; DJ Saunders 11 May 2022; and DJ Armstrong 6 July 2022. Those applications were listed, on a rolled-up basis, before HHJ Willans who, after a hearing (7 September 2022), made orders refusing permission to appeal, giving an oral judgment. At a hearing in these judicial review proceedings in this Court on 21 March 2024, Farbey J adjourned the Claimant's renewed application for permission for judicial review, to allow him to obtain the transcript of the judgment of Judge Willans. Farbey J refused applications by the Claimant relating to other transcripts.

5. Permission for judicial review of Judge Willans' refusals of permission to appeal stands refused by DHCJ Padley's order on the papers (18 May 2023). The Claimant's attention has been drawn to lines of case-law relevant to judicial review of a refusal of permission to appeal. The Claimant himself describes the High Court's supervisory jurisdiction as being in the nature of a "safety net".

### Delay

6. If this claim for judicial review is properly arguable, I would not shut it out on grounds of delay or lack of promptness. I accept, on the face of it, that the Claimant attempted to file the judicial review claim on 6 December 2022.

### Viability

7. The Claimant has advanced a large number of wide-ranging arguments, relating to the decisions of the Judges in these family proceedings in both family courts, and making points about the operation of the legal system in family proceedings. He says his claim raises arguable points of public law, on which basis the judicial review Court would be entitled to overturn the decision of HHJ Willans refusing permission to appeal. I have had the advantage of detailed written submissions made by the Claimant which I have read and considered. In particular there are his original judicial review grounds, the grounds filed with the notice of renewal for permission for judicial review, and his skeleton argument filed for today's hearing. I have been able to consider the judgment of Judge Willans, the transcript of which has been provided. It is a 76-paragraph, 13-page judgment. I was able to remind the Claimant that that is the judgment in the decision which he is seeking to judicially review. I was able to invite his assistance in identifying what, within that judgment, is specifically said to constitute a public law error; and one capable of arguably constituting a "complete disregard of duties" or an "important point of principle or practice" or raising some "other compelling reason", for the purposes of the two lines of case-law which the court drew to the Claimant's attention and on which Judge Padley's paper refusal of permission relied. The key cases mentioned were the case of Sivasubramaniam v Wandsworth County Court [2002] EWHC 1738 (Admin) and Cart v Upper Tribunal [2012] 1 AC 663.
8. Having considered the papers and with the benefit of the written submissions, and the oral submissions carefully and courteously made this morning by the Claimant here in Court, I have been unable to identify any viable ground for judicial review of Judge Willans's refusals of permission to appeal. Even if I leave to one side the Sivasubramaniam and Cart case-law, I cannot find within Judge Willans's reasoned judgment – or within the submissions that are made by the Claimant about the background context and circumstances of this case – any arguable error of law or unreasonableness or procedural unfairness. There is, in my judgment, no realistic prospect that this Court at a substantive hearing would grant judicial review and overturn any of the 3 refusals by Judge Willans of permission to appeal. The position is yet stronger when I have regard to the Sivasubramaniam and Cart lines of authority which, for reasons of principle, restrict the scope of judicial review, in circumstances where a claimant has exhausted the appeal rights afforded to him within the family court process and where the statutory scheme and rules deliberately give no right of further appeal to the High Court. It is in those circumstances that the supervisory and secondary jurisdiction of judicial review is regarded as especially limited. Judicial review is not a forum which simply enables a party dissatisfied with orders made by courts like the

family courts, to rerun arguments and maintain that findings directions and conclusions were wrongly arrived at.

9. I am not going to go through each and every one of the points which have been advanced by the Claimant in writing and orally. But I can give the flavour by way of some illustration. One of the points which the Claimant advances is that it was wrong for the financial proceedings to continue to the July 2022 hearing and Judge Armstrong's order, in circumstances where there were in parallel the children proceedings with the May 2022 findings of Judge Saunders (which the Claimant was seeking to appeal) and the children proceedings were not finally determined. In his judgment, Judge Willans addressed, first, the question of whether there is any 'jurisdictional' bar to the financial proceedings continuing through to resolution. Then, secondly, he addressed the question of the family court's exercise of power and discretion, depending on the circumstances, to proceed with financial matters when children-related matters are underway in parallel proceedings. Judge Willans first rejected the Claimant's argument that there was a 'jurisdictional' bar. The Claimant criticises that aspect of the judgment for failing to identify the law which permits proceedings to continue through to resolution in circumstances where it is unfair to do so. But the Judge was not finding that proceedings can continue through to resolution in circumstances where it is unfair to do so. The Judge was explaining that there is no 'jurisdictional' bar but that there is instead a power as a matter of judgment and discretion in the particular circumstances. As to "the law", the Claimant was unable to point to any provision of law in support of the supposed 'jurisdictional' bar. The circumstances and the appropriateness of continuing were dealt with by Judge Willans in the subsequent discussion, where he found that it was open to DDJ Waschkuhn and DJ Armstrong (in April and July 2022 respectively) to proceed as they did, with the case management directions and then the oral hearing in relation to the financial matters. None of that engages any arguable point of public law error.
10. By way of further illustrations, there are these. There are arguments advanced by the Claimant about Article 6 ECHR and the need for courts to give reasons addressing material arguments. As to that, the detailed judgment of Judge Willans plainly does give the Judge's reasons, addressing the material arguments that were being advanced by the Claimant. Then there are references made by the Claimant to a "criminal" standard of proof and the "presumption of innocence", as well as the Article 3 ECHR positive investigative obligation in the context of "inhuman and degrading treatment". But, in my judgment, it is quite impossible to say that any of those were or are engaged in the decisions that are sought to be impugned. Next, criticism is made of Judge Willans for recording in a recital to his orders, that he "heard" from the Interested Party. The judgment makes clear that he did not reach the position of needing to hear from the Interested Party. That was because he was quite satisfied that the Claimant's proposed appeals were not arguable, for the reasons that he gave in refusing the applications for permission to appeal. Next, the Claimant criticises Judge Willans for not asking the Interested Party questions. But the Judge has given a reasoned basis for why, having considered all the submissions advanced by the Claimant, it was not necessary or appropriate to do so. Next, a criticism is made of Judge Saunders, and the previous directions made in the Children Act proceedings, for continuing to deal with allegations made by parents against one another, which the Claimant says were not a matter relevant to considering the position of the children. This, again, is a point with which Judge Willans specifically dealt in his judgment, explaining why it was open to the judges of the West London Family Court, and ultimately Judge Saunders, to consider that these

were allegations and findings which were relevant, because they did impact on the form of contact between the parents and the children.

11. In addition to all the points which the Claimant makes about the particular facts and circumstances and the issues raised in these Children Act and financial proceedings, there are a number of ‘system’ points which have been raised by him in the skeleton argument and again orally this morning. These are central to the Claimant’s submission that, notwithstanding the restrictions of Sivasubramiam and Cart, this is a case where the High Court “safety net” is needed and warranted. The ‘system’ points that are made by the Claimant include the following. It is said by the Claimant that the legal system in family proceedings incentivises parents who live with children (and particularly, says the Claimant, mothers) to break contact with the other parent, contrary to the interests of the children, in order to maximise the prospects in upcoming financial proceedings. The Claimant explained, when I asked, that what he alleges is that legal advisers advise parents who live with children to take that course. The Claimant’s other ‘system’ points range to alleging that the system “completely disregards” the interests and welfare of children; that judges are “desensitised” in family proceedings; that they act “punitively”; that there is a failure of “governance” in relation to financial orders that are made and intended to benefit children; and that judges in family cases are unable, when challenged, to identify the legal basis on which they are acting. The Claimant also submits that no hearing is capable of being fair unless the hearing “starts” with a “finding” about the nature of a “break in contact” with the children. He says there are “norms” of family law which require ventilation in the present case so that they can be “supervised by the King’s Bench Division”. I have not found any viability in any of those suggestions and contentions. There is, in my judgment, no basis whatsoever for allowing this claim for judicial review to proceed as a vehicle for system-based criticisms of these kinds.
12. This is, in my judgment, from start to finish, a case which concerns particular facts and circumstances. These have been addressed within the family proceedings. They have been considered by Judge Willans in the context of the viability of any appeal within those family proceedings. It is certainly the case that the background context of the present case involves a “break in contact” between father and children. The Claimant has explained the position to me. However, as he accepts, one of his allegations against the Interested Party which was being made at the May 2022 fact-finding hearing before DJ Saunders, and which was addressed by Judge Saunders at that hearing and in her findings of fact, was about the circumstances of that “break in contact”. It could not possibly have been right for that hearing to have “started” by a judge taking an adverse position to one party (the Interested Party) on that topic. What a fair hearing required was that the allegations that were being made would be ventilated and considered, as they were. So far as Judge Armstrong’s July 2022 hearing is concerned, Judge Armstrong was aware of the findings that Judge Saunders had made two months earlier. Again, it could not possibly have been a precondition for a fair hearing that Judge Armstrong should effectively have started with a predisposition that reversed one of those very findings. But all of this illustrates the fact-specific nature of the arguments that have been raised. It also illustrates the fact that these were the very points which were considered and addressed by Judge Willans, in the judgment to which I have referred.
13. In all these circumstances and for all these reasons I will refuse the renewed application for permission for judicial review.

17.9.24