Neutral Citation Number: [2019] EWHC 2765 (Fam)

Case No: TN99D00733

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/10/2019

Before :

MR JUSTICE MOSTYN

- -

Between :

Viki Natasha Wilmot (now Maughan)	**Applicant**
- and -	
Richard Michael Edmund Wilmot	**Respondent**

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- -

Jonathan Swift (instructed by **Thomson Snell & Passmore**) for the **Applicant**
Stephen Meachem, (solicitor-advocate of Law Tribe) for the **Respondent**

Hearing date: 16 October 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was delivered in private. The judge gives leave for the judgment to be reported in this form. However, in any report the names of the children of the family must not be revealed. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Mostyn:

1. Some of the background of this extremely long-running case can be found in the judgment of Lloyd LJ of 25 July 2013[1]; in my judgments of 15 April 2014[2], 13 January 2016[3] and 25 January 2018[4]; and in the judgment of the Court of Appeal dated 27 October 2017[5]. These judgments tell some, but by no means all, of the story of the ill-fated marriage of the parties which ended as long ago as 1999, when divorce proceedings began in the Canterbury County Court. Since then there have been dozens of hearings before numerous judges, many of whom are now retired; some are now dead.

2. There is no doubt that the respondent is an exceptionally vexatious litigant. I made the original extended civil restraint order on 15 April 2014. It has been extended by orders made by me and the Court of Appeal and is currently scheduled to expire on 24 January 2020. The order has not been effective to restrain the respondent's vexatious conduct, as I will explain. The respondent has not confined his vexations to these proceedings. For example, an extended civil restraint order was imposed on him by Gilbart J in 2017 as the culmination of an extremely protracted and toxic dispute with his local planning authority where he had made wild allegations and was found to have litigated totally without merit[6].

3. I had hoped that my judgment of 25 January 2018 would bring closure to this case. After all, I reasoned that following the implementation of my order made on that occasion there would be nothing left to litigate about. That was, predictably, a hope built on sand. Since then the respondent has continued his campaign against his wife, his children, and his wife's legal representatives unrestrained. He has continued to bombard the court with emails and spurious applications. He has widened the scope of his barrage to include an utterly meritless application to the Administrative Court, seeking judicial review of my decision to appoint a receiver back in 2014. We have counted at least 50 emails sent by him to the court since my order was made. He has bombarded the applicant's solicitor with emails. Paragraph 19 of my principal order made on 25 January 2018 provided that he was restrained from communicating with the applicant's solicitor via her domestic email address. The respondent has been in blatant breach of this injunction and has sent to the applicant's solicitor dozens of messages to her domestic email address.

4. His activities have caused the applicant to incur costs of £42,098, inclusive of VAT. This figure includes £10,381 costs that she was forced to incur in Germany where she had to defend a grossly irresponsible allegation made by the respondent that she had fraudulently procured the DNA result referred to in my judgment of 25 January 2018. The applicant's solicitor estimates that a further £2,040 will be needed to bring everything to a complete conclusion. The receiver and his legal representative have incurred costs since my judgment of £4,613. They estimate that a further £21,000 of

[1] https://www.bailii.org/ew/cases/EWCA/Civ/2013/1160.html
[2] https://www.bailii.org/ew/cases/EWHC/Fam/2014/1288.html
[3] https://www.bailii.org/ew/cases/EWHC/Fam/2016/29.html
[4] https://www.bailii.org/ew/cases/EWHC/Fam/2018/273.html
[5] https://www.bailii.org/ew/cases/EWCA/Civ/2017/1668.html
[6] See R (on the application of Wilmot,) v Taunton Deane and West Somerset Magistrates' Court & Ors [2015] EWHC 1595 (Admin) and [2017] EWHC 2622 (Admin)

costs will be incurred in finally concluding the receivership. The receiver's solicitors hold £1,443 of the respondent's money on client account for which they will give credit. The applicant and the receiver seek an order that covers these actual and prospective costs.

5. The response of the respondent to my judgment of 25 January 2018 was to unleash a torrent of emails alleging, among other things, that my orders were made without jurisdiction; that the wife and her advisers were guilty of fraud; and that he would seek to recover over £1 million to cover his alleged losses. By March 2018 he was stating that he had reported the applicant's counsel to the Bar Standards Board, her solicitor to the Solicitors Regulation Authority and both of them to the police on suspicion of perjury and fraud. In August 2018 the respondent instructed a firm of solicitors, RFH Solicitors, who wrote to the applicant's solicitors challenging the validity of the principal financial remedy orders made in 2006; alleging that the recovery of funds by the receiver from the respondent's pension was unlawful; and alleging that in relation to the applicant's Form E there had been material non-disclosure and that therefore the principal financial remedy orders should be impeached.

6. On 18 January 2019 the respondent made a formal application pursuant to FPR PD4B paras 3.3 – 3.5 for permission to make an application to "vary" the order of Ryder J on the ground that it was vitiated by nondisclosure. Such permission is necessary because, of course, the respondent is the subject of an extended civil restraint order. I gave the applicant permission to file evidence in response and in my ruling on 7 March 2019 I rejected the application as "wholly unmeritorious". I commented that the application was "a yet further example of the wholly unreasonable and punitive approach of Captain Wilmot to this very extensive litigation which has been detailed in my many judgments and those of my predecessors".

7. Shortly after my ruling the applicant's German lawyers, who had incurred significant costs as set out above, confirmed that the state prosecutor in Bonn had terminated potential criminal proceedings against her arising from the respondent's allegation of fraudulent procurement of the DNA result. They also informed the applicant that the tester had been bombarded by emails from the respondent and, further, that the respondent remained under criminal investigation for false accusation and defamation.

8. On 8 April 2019 the applicant made the instant application before me. I will set out the scope of the relief that she seeks a little later in this judgment.

9. On 26 July 2019 the respondent made an application which is largely incoherent. Inasmuch as I can understand it, he seems to be seeking that the original application for a financial remedy made nearly 20 years ago should be relisted on the ground that the court had no jurisdiction to hear this case, and never has. Further, he asserted that the order empowering the receiver to collect the judgment debt from his pension was unlawful. He stated: "the hearing must be in a higher court and not in the UK Family Division". That application was placed before me and I treated it as an application for permission pursuant to FPR PD4B paras 3.3 – 3.5. On 31 July 2019 I refused the application. The respondent repeated the application, or something like it, on 24 September 2019 which I refused on 4 October 2019. On this occasion I directed pursuant to FPR PD4B para 3.3(b) that the decision was final and that there was no

right of appeal. Notwithstanding that direction the respondent has applied to the Court of Appeal for permission to appeal my decision on 4 October 2019.

10. Meanwhile, on 2 September 2019 the respondent applied to the Administrative Court for permission to seek judicial review and for urgent interim relief. His application named the applicant's solicitors and the "Family Court of England and Wales" as defendants and cited the receiver as an interested party. It was a bizarre application seeking to "strike out" my orders of January 2018 and to return all the funds recovered from his pension. It alleged, as is his habitual refrain, that this court had no jurisdiction.

11. Obviously, this application was going to be given very short shrift. Notwithstanding the terms of articles 2 and 3 of the Crime and Courts Act 2013 (Family Court: Transitional and Saving Provision) Order 2014, SI 2014 No.956 this case has been retained in the High Court since 22 April 2014. All the orders made since then have been made in the High Court. It is elementary, not to say blindingly obvious, that the High Court cannot be the subject of judicial review by the High Court. Predictably, therefore, the application was rejected by Lang J on 9 September 2019. I understand, however, that the respondent is seeking to renew his application at an oral hearing in open court.

12. On 8 October 2019 the respondent emailed the receiver stating that he had filed an application with the European Court of Justice asserting that the seizing of his pension funds was illegal and that all the orders were a nullity.

13. In effect there are two applications before me by the applicant and the receiver respectively which have been rolled into the single application made by the applicant. The following relief is sought:

    i) An order that the applicant' actual costs incurred since 25 January 2018 be summarily assessed and ordered to be paid to her and that provision be made to cover her anticipated implementation costs.

    ii) An order that the receiver's actual costs incurred since 25 January 2018 be summarily assessed and ordered to be paid to him and that provision be made to cover his anticipated implementation costs.

    iii) An order made at the behest of Scottish Equitable plc trading as Aegon permitting and authorising it to transfer the respondent's pension held by Aegon to Curtis Banks where the respondent's SIPP is held, and which is under the authority of the receiver.

    iv) An order permitting the receiver to disinvest and pay out the sums necessary to satisfy the costs orders referred to above.

    v) A general civil restraint order to last for two years from the date of the order.

    vi) An order pursuant to the Protection from Harassment Act 1977 restraining the respondent from harassing the applicant, the children E and L, the applicant's solicitor and the applicant's barrister.

vii) An extension of the existing freezing order.

I am completely satisfied that the respondent has been validly served with the application as well as with the schedule of costs and the court bundle. These were all sent by post to his four physical addresses in Somerset, the Isle of Man and Turkey as well as by email to six different email addresses.

14. Shortly before the hearing before me on 16 October 2019 the respondent instructed Mr Meachem to represent him. Mr Meachem produced a witness statement dated 16 August 2019 (which I think must be a mistake and should have been dated 16 October 2019). It asserts that the respondent has been diagnosed with "acute reaction to stress" and has been prescribed antidepressants. It asserts that he has now retired from flying, having failed a medical, and now has no income as he has no access to his pension funds. It asserts that he lives in the Isle of Man but that his children and wife live in Somerset during term-time. It asserts that he has been unable to pay his monthly mortgage instalment on a property in Somerset. He produced a prescription for Citalopram but there was no medical report as to his alleged condition.

15. When the hearing commenced Mr Meachem made an application which was that the case should be adjourned to allow the respondent's application of 26 July 2019 to be given an oral hearing. Mr Meacham did not apply for an adjournment on medical grounds, perhaps recognising that the inadequacy of the medical evidence was such that it would inevitably be refused (see *Levy v Ellis-Carr & Ors* [2012] EWHC 63 (Ch)).

16. I refused the application for an adjournment to allow the respondent's application of 26 July 2019 to be heard orally. It was completely misconceived. The scheme of FPR PD4B paras 3.3 – 3.5 is that where a civil restraint order is in force the prior permission of the nominated judge is needed before a substantive application can be made. By virtue of para 3.6(c) the application must be determined <u>without a hearing</u>. This is what happened. If the applicant for permission wishes to challenge a refusal, then his only remedy is an appeal – see para 3.8. That right of appeal can be curtailed by a direction under paragraph 3.3(b). I made such a direction in relation to the application made on 24 September 2019; but I did not do so in relation to the application made on 26 July 2019. Therefore, if the respondent wished to challenge my decision, he had 21 days from 31 July 2019 to file a notice of appeal. He did not do so and is now well out of time.

17. I therefore proceeded to hear the applications. I will deal first with the order sought at para 13.iii) above. I grant that order. It was not opposed by Mr Meachem. It does no more than to allow Aegon to move the fund to Curtis Banks Ltd without risk of being in breach of the freezing order.

18. I now turn to the costs applications.

19. Section 51(3) of the Senior Courts Act 1981 provides that "the court shall have full power to determine by whom and to what extent the costs are to be paid". This gives me a very wide power. By virtue of CPR 44.2(4)(a) I must have regard to the parties' conduct when exercising that power. In my judgment the respondent's conduct has been the top end of misconduct for the purposes of CPR 44.2(4)(a). It has been abysmal and an order for costs is fully justified. Mr Meachem sought to argue that I

should not summarily assess the costs. The applications were listed before me with a time estimate of one day. Therefore, CPR PD44 para 9.2 applies. This provides:

> "The general rule is that the court should make a summary assessment of the costs –
>
> (a) …
>
> (b) at the conclusion of any other hearing, which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim,
>
> unless there is good reason not to do so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily."

Therefore, the general rule stipulates that I should make a summary assessment, and even if this steer had not been given to me, I would conclude that this is a case that cries out for closure at the earliest opportunity.

20. I am satisfied that the costs incurred by the applicant have been incurred reasonably and should be fully paid by the respondent. This includes the German costs which in my judgment fall within the ambit of what is recoverable. Therefore, the sum of £42,098, inclusive of VAT, is awarded to the applicant. Further, the sum of £2,040 will be extracted by the receiver from the funds under his authority and frozen in respect of future implementation costs incurred by the applicant. If the implementation costs exceed £2,040 then the surplus will be down to the applicant. If they fall short of that figure, then the surplus is to be accounted to the respondent.

21. I adopt much the same approach in respect of the costs of the receiver. These costs are his own direct costs and the cost of his legal representation. Those costs total at present £4,613 in respect of which they must give credit for £1,443 held on client account giving a net award of £3,170. I allow the sum of £21,000 for future implementation costs to the conclusion of the receivership. In contrast to my order in respect of the applicant, I give the receiver liberty to apply for a further order if his implementation costs exceed £21,000. If they fall short of £21,000 then the balance must be accounted to the respondent.

22. I grant the receiver authority to disinvest and pay out from the funds under his authority the sums referred to above in respect of past and future costs. My order will provide that once these final payments have been made, and all other matters implemented, the receivership will be finally concluded.

23. The freezing order application seeks to freeze £100,000 to allow some headroom over the overall figure of £68,307 caught by my costs orders. I grant it in that amount. It is reasonable to allow some headroom as I must pessimistically apprehend that the respondent will engage in more vexatious conduct generating further costs on the part of the applicant and the receiver. The freezing order will endure for two years or until the earlier complete payment of the further sums I have awarded herein.

24. I turn to the application for a general civil restraint order. FPR PD 4B para 4.1 permits the court to make such an order where the party against whom the order is made persists in making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate. I am fully satisfied that this criterion is satisfied in this case given the fact I have set out above. This is one of the worst cases of vexatious litigation misconduct that I have ever encountered. The extended order just has not worked. Therefore, a general order is amply justified. This restrains the respondent from making any application in any court without first obtaining the permission of the nominated judge. As before, the nominated judge will be me. The order will last until 23:59 on 21 October 2021.

25. It must be apprehended that the respondent will persist in making wholly vexatious applications far into the future. In my judgment it is not reasonable to expect the applicant to return to court every two years to renew the general order. This is a case which in my judgment cries out for an indefinite civil proceedings order made pursuant to section 42(1) of the Senior Courts Act 1981. Such an application is made at the suit of the Attorney General and would be heard by a Divisional Court of the Queen's Bench Division. I direct that a copy of this judgment is supplied to the Attorney General and I ask that he give careful consideration to making that application.

26. Finally, I turn to the application for an order under the Protection from Harassment Act 1997. There can be no doubt that the respondent has grossly harassed the applicant, their children, and her legal representatives. Section 3(1) and (3) of the Act allows the High Court to grant an injunction for the purpose of restraining the respondent from pursuing any conduct which amounts to harassment. Under section 3(6) breach of such an injunction would amount to a criminal offence.

27. CPR 65.28(b)(i) provides that an application under section 3 of the Act must be made in the Queen's Bench Division. The application before me was in fact issued in the Family Division. I have full power to validate an application which is technically issued in the wrong division of the High Court. After all, there is but one High Court which is merely administratively divided into different Divisions – see *In re Hastings (No 3)* [1959] Ch 368 at 377–378, *Whig v Whig* [2007] EWHC 1856 (Fam), at [57] - [60] and *Hashem v Shayif & Anor* [2008] EWHC 2380 (Fam) at [98] – [99]). The High Court does not lose its power because an application has been issued in the wrong office. It would be absurd were this court not to have power to deal with this application; to despatch it to the Queen's Bench Division to be heard by another judge would be directly contrary to the terms of section 49(2) of the Senior Courts Act 1981 (re-enacting section 43 of the Judicature Act 1925) which provides that:

> "Every … court shall … so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided."

Mr Meachem did not argue that this application could not be heard by me.

28. I therefore grant the application in the terms sought.

29. Since this judgment was distributed in draft, I have received from Mr Meachem an application for "amplification" of the judgment together with an application for permission to appeal. The former application is presumably made pursuant to FPR PD 30A para 4.6 which provides:

> "Where a party's advocate considers that there is a material omission from a judgment of the lower court … the advocate should before the drawing of the order give the lower court which made the decision the opportunity of considering whether there is an omission and should not immediately use the omission as grounds for an application to appeal."

This provision does not entitle an advocate to seek further and better particulars of a judgment. Rather, the provision is confined to permitting advocates to draw attention to material omissions or obvious errors in the judgment so that they may be repaired before the matter proceeds to an appeal. I recently considered this provision in my decision of *AR v ML* [2019] EWFC 56 at [13] – 14]. After analysing the relevant principles and the applicable authorities I concluded:

> "Under this procedure material omissions and perceived deficiencies would normally extend no further than an obvious numerical error (for an example of which see *H v T (Judicial Change of Mind)* [2018] EWHC 3692 (Fam)), or an accidental failure to take on into account some evidence before the court which showed the existence of a material fact. There is no example in the reported cases, however, of the material omission in question being evidence which was not placed before the judge, but which could have been."

30. None of the matters raised by Mr Meacham fall into either category. Rather, he seeks to take points which he did not argue before, but which he should have done; alternatively, he seeks to reargue points which have already been rejected by me. Basically, he is dissatisfied with the judgment and wishes that have numerous further bites at the cherry in re-arguing it. This is another example of the seemingly ineradicable syndrome to which I referred in my judgment in *AR v ML* at [38].

31. Accordingly, the application for "amplification" is rejected. Mr Meecham must take his complaints to the Court of Appeal.

32. I reject the application for permission to appeal as in my judgment it discloses no prospects of success and there is no other good reason why an appeal should be heard.

33. That concludes this judgment.
