

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. 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.

DP V DP (Rectification of Orders) [2020] EWHC 3188(Fam)

IN THE HIGH COURT OF JUSTICE

IN THE PRINCIPAL REGISTRY OF THE FAMILY DIVISION

AND IN THE FAMILY COURT sitting in the Central Family Court

Date: 4th November 2020

Before :

Her Honour Judge Evans-Gordon
sitting as a Judge of the High Court

Between :

DP

Applicant

and

DP

Respondent

Sassa-Ann Amaouche (instructed by **Sear Tooth Solicitors**) for the **Applicant**

Katherine Dunseath (instructed by **Michelmores LLP**) for the **Respondent**

APPROVED JUDGMENT

1. The issue before me is whether or not I have power to rectify an order dated 28 September 2017 (“the September 2017 order”) made by District Judge Aitkens, sitting as a district judge, (“the district judge”) of the Principal Registry of the Family Division (“PRFD”) by which she registered an order made by the Paris Regional Court on 16

November 2010 (“the French order”). The substantive case is being heard in the Central Family Court as it involves enforcement of maintenance obligations in the French order. Even though I am sitting in the Family Court as a judge of the High Court, I have no power, while sitting in that Court, to rectify or otherwise deal with orders made in the PRFD. However, I am authorised by Mr Justice Mostyn, to sit concurrently in the High Court in order to address the issues arising out of the order of the district judge.

2. The wife was represented before me by Ms Amaouche and the respondent husband (“the husband”) by Ms Dunseath, both of counsel. I am grateful to them for their assistance.
3. The question arises because the district judge registered the French order pursuant to Article 28 (2) of Council Regulation (EC) No. 2201/2003 (“BIIA”), which, to be fair to her, was what she was asked to do. The form used was C69 which was that designated for registration of parental responsibility orders under BIIA.
4. Following registration, as indicated, the applicant wife (“the wife”) made applications to the Family Court sitting at the Central Family Court (“the CFC”) for enforcement of the husband’s maintenance obligations, as set out in the French order. The enforcement applications were made on the basis that the order being enforced had been registered under BIIA. Notwithstanding this, some of the orders made in the CFC were marked as being made pursuant to Council Regulation (EC) No. 4/2009 (“the Maintenance Regulation”). I have not set out the full history of the procedure in this case, which is extensive, and helpfully contained in the Chronology provided by Ms Amaouche, for which I am grateful. It is now common ground that there was no jurisdiction to register the French order pursuant to BIIA because the French order concerned only maintenance obligations which are excluded under Article 1(3) of BIIA. The application should have been for a declaration of enforceability under Article 26 of the Maintenance Regulation or registration as it is usually called in this jurisdiction.
5. Unfortunately, nobody noticed that the French order had been incorrectly registered until 17 March 2020 when the respondent husband took the point and argued that the failure to obtain a declaration of enforcement of the French order in accordance with the provisions of the Maintenance Regulation means that the registration was made without jurisdiction and consequently all the orders made by the CFC are void *ab initio*. As these include costs orders running to over £76,000 in the applicant’s favour, one can see the importance of the issue to both parties. He argued that all the CFC orders should be struck out but it seems to me that if they are void *ab initio* they are simply ineffective and no action needs to be taken.
6. The applicant wife subsequently sought i) a declaration that she is entitled to apply to the Family Court sitting at the CFC for registration and a declaration of enforceability of the French Order; ii) a request/application that the court exercise its discretion under either FPR r.4.1(6) or under its inherent jurisdiction to correct an error of process, namely, the registration of the French order pursuant to BIIA rather than the Maintenance Regulation; and iii) to rectify the 2017 order in light of the court’s own responsibility to investigate and determine, of its own motion, whether jurisdiction lies with the court or not *Rogers-Headicar v Headicar* [2005] 2 FCR 1. Essentially, I am being

asked to rectify the order of the district judge to provide that it was declared enforceable pursuant to the Maintenance Regulation. As rectification would relate back to September 2017, it would render valid all the orders made in the CFC.

Legal Framework

7. Because the French order was made in 2010 it predates the coming into force of the Maintenance Regulation therefore its recognition and enforceability was governed by the transitional provisions of that Regulation as set out in Article 75 which reads as follows:

“2 Sections 2 and 3 of Chapter IV shall apply:

(a) To decisions given in the Member States before the date of application of this Regulation or which recognition and the declaration of enforceability are requested as on that date;”

‘that date’ being 18 June 2011.

This is, in effect repeated in paragraph 5.1 of PD 34C which provides:

“(a) Where the maintenance decision was given in any Member State prior to 18 June 2011, but recognition and enforcement are sought after that date, the court will apply Sections 2 and 3 of Chapter IV.”

The importance of this lies in the fact that Section 1 of Chapter IV provides for the right to enforce Member State judgements directly without the need for any process or registration whereas Section 2 requires a declaration of enforceability prior to enforcement.

The relevant parts of the Maintenance Regulation are :

“Article 26 Enforceability

A decision given in a member state not bound by the 2007 Hague Protocol and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 27 Jurisdiction of local courts

1 The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 71.

2 The local jurisdiction shall be determined by reference to the place of habitual residence of the party against whom enforcement is sought, or to the place of enforcement.

Article 28 Procedure

1 The application for a declaration of enforceability shall be accompanied by the following documents:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29;

(c) where necessary, transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement

Article 29 Non-production of the extract

1 If the extract referred to in Article 28(1)(b) is not produced, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2

Article 30 Declaration of enforceability

The decision shall be declared enforceable without any review under Article 24 immediately on completion of the formalities in Article 28 and at the latest within 30 days of the completion of those formalities, except where exceptional circumstances make this impossible. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 31 Notice of the decision on the application for

1 The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2 The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party."

8. The party against whom enforcement is sought has a right of appeal under Article 32 but the grounds of the appeal are limited to those set out in Article 24, none of which are applicable in this case (Articles 32 – 34).

9. The procedure for applications for enforcement of maintenance orders is governed by FPR Part 34.30(c) and Practice Direction 34E paragraph 4. The relevant parts of paragraph 4 are as follows:

"4.1 Paragraphs 4.2 to 4.5 apply where the family court receives an application of a type referred to in rule 34.30 FPR.

4.2 The court officer will –

(a) take such steps as appear appropriate for ascertaining whether the payer resides within the area covered by the Maintenance Enforcement Business Centre to which the application has been sent; and

(b) consider any available information as to the nature and location of the payer's assets.

4.3 If the Court officer is satisfied that the payer –

- (a) does not reside within the area covered by the Maintenance Enforcement Business Centre to which the application has been sent; and
- (b) does not have assets in that area against which the maintenance order could be enforced,

the court officer will refuse the application and return the application to the Lord Chancellor stating the information the court officer has as to the whereabouts of the payer and the nature and location of the payer's assets.

4.4 Paragraph 4.5 applies if the court officer is satisfied that the payer-

- (a) does not reside within the area covered by the Maintenance Enforcement Business Centre to which the application has been sent; but
- (b) has assets in that area against which the maintenance order could be enforced.

4.5 Where this paragraph applies, then either –

- (a) the court officer must register the order; it
- (b)”

Arguments

10. Ms Dunseath says that, absent recognition in accordance with the Maintenance Regulation and FPR 34.30, the Family Court has no jurisdiction to enforce the French order. Ms Amaouche, at least implicitly, accepts this as, otherwise, there would be no need to rectify the September 2017 order. It seems to me that this is correct because Article 26 of the Maintenance Regulation provides that “A decision given in a Member Stateand enforceable in that State shall be enforceable in another Member State when it has been declared enforceable there” - no declaration of enforceability, no jurisdiction to enforce. If there is no jurisdiction to enforce then the orders made in the CFC were void *ab initio*.

11. Ms Amaouche argues that the court has the power to rectify the order either under FPR r.4.1(6) (“the Rule”), alternatively, the inherent jurisdiction. She says that the court should exercise its power in the wife’s favour because the husband delayed in taking the point on jurisdiction; the wife has incurred significant legal costs in the interim; the husband has not given proper disclosure, the wife was, in September 2017, entitled to a declaration of enforceability because the husband was habitually resident in the jurisdiction and the court can infer that he has assets here. She expressly disavows any argument based on estoppel.

The power to rectify

12. FPR r.4.1 (6) (“the Rule”) which provides as follows:

“A power of the court under these rules to make an order includes a power to vary or revoke the order.”

13. Ms Amaouche relies on a series of cases to establish that the Court has power to rectify both interim and final orders in appropriate cases and, in reliance on the principles set out in those cases as applied to the facts of this case, argues that I should exercise my discretion in favour of the applicant wife.
14. It seems to me that a good starting point is the decision of the Court of Appeal in *Wilmot v Maughan* [2017] EWCA Civ 1668. The case concerned the issue of whether service of orders and documents on the husband out of the jurisdiction by email was valid and whether or not Mostyn J had properly exercised his discretion under the Rule when he refused to set aside the orders permitting service on the husband by email. In that case Moylan LJ reviewed relevant cases on the extent of the court's power to rectify orders both under the Rule and CPR 3.1(7), which is the same terms. He first noted that the Rule applies to orders made "under these rules" and that while it is not expressly confined to procedural orders, it clearly applies to such orders, as held in *Roult v North West Strategic Health Authority* [2009] EWCA Civ 444 [paragraph 85]. He then went on to set out the principles applicable to the exercise of the jurisdiction to vary, set aside or revoke orders in the light of the authorities. I acknowledge that Moylan LJ proceeded on the basis that Mostyn J had the necessary power to rectify and that what he said about the relevant principles was *obiter* in light of his decision that the FPR confer power to order service out of the jurisdiction by alternative means provided such alternative means were not contrary to the law of the place of service. Nevertheless, he considered the authorities carefully and his judgment carries great weight: the authorities to which he referred were not *obiter* and I have no difficulty in adopting and applying the principles he set out. I will come to the applicable principles later.
15. The next case is the decision of MacDonald J in *N v J, G & M* [[2017] EWHC 2752 (Fam)]. That case concerned the question of whether the court had power under the Rule (or otherwise) to vary or set aside an order made pursuant to the inherent jurisdiction of the High Court (a return order) even where no error had been made by the court. He concluded that the power in the Rule was wide enough for that purpose, that it could be exercised by a first instance court and it was unnecessary to resort to the inherent jurisdiction notwithstanding the nature of the original order.
16. Both the immediate past President and the current President have recently considered the width of the power in the Rule in relation to decrees nisi and absolute. In *M v P* [2019] EWFC 14, Sir James Munby P. varied decrees of divorce pursuant to FPR r.4.1(6) by altering the grounds on which the decrees were granted to unreasonable behaviour rather than two years separation by consent. He did so on the basis that non-compliance with s.1(2) of the Matrimonial Causes Act 1973 rendered a decree voidable not void. The relevant decrees could not be void because the petition had been presented more than 1 year after the marriage, it pleaded the appropriate ground, namely that the marriage had broken down irretrievably and there was a fact in existence at the date of the petition which, if pleaded, would have justified the grant of a decree nisi and decree absolute. In those circumstances the decrees were valid and the discretion would be exercised to vary them.
17. The following year, the President in *X v Y* [2020] EWHC 116 adopted the same approach. In that case (I omit irrelevant details) a decree nisi and decree absolute had been granted unopposed on the husband's petition in relation to an English marriage between the parties in 1994: the grounds were adultery. In fact, the parties had been validly married in Madrid the previous year. In 2020, the wife asserted that the parties were still married because the relevant marriage was the Spanish marriage not the English marriage. The husband sought

rectification of both decrees. The issue, as identified by the President, was whether the court had jurisdiction to make the alteration sought and, if so, whether it should exercise that jurisdiction. The President was satisfied that he had jurisdiction to vary the decrees and that he should exercise it to rectify them because the original orders were valid and rectification would simply “put right that which should have been the case all the way along.” He further stated that where the error is one of process the jurisdiction to rectify should be that provided by the rules as there is no need to invoke any higher inherent jurisdiction.

18. On the strength of these authorities and for the reasons there provided, I am satisfied that:
 - i) FPR 4.1(6) confers a very wide power to rectify any order made under the Family Procedure Rules 2010 (*Willmot*);
 - ii) the power applies to both procedural and substantive orders (*Wilmott*; *M v P*; *X v Y*);
 - iii) the power is wide enough to permit variation of orders made pursuant to the inherent jurisdiction therefore there is no need to resort to the inherent jurisdiction in order to rectify an order (*N v J, G & H*).

19. The relevant principles I draw largely from Moylan LJ’s analysis of the relevant cases in *Willmot* and the decisions of the respective Presidents. They are:
 - i) the application must be made promptly *Tibbles v SIG plc (trading as Asphaltic Roofing Supplies)* [2012] EWCA Civ 518;
 - ii) the need for finality and the undesirability of allowing litigants two bites of the cherry means that there ought normally to be something to take the case out of the ordinary before variation, especially in the absence of a change of circumstances in an interim situation (*Tibbles*);
 - iii) the discretion should normally only be exercised where there has been a material change of circumstances since the order was made or, where the facts on which the original decision was made had been misstated or where there had been a manifest mistake on the part of the judge in formulating the order (*Thevarajah v Riordan & Ors* [2015] UKSC 78, *per* Lord Neuberger quoting *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 (at para [44]) which had been citing *Tibbles*);
 - iv) A misstatement of facts may include omissions as well as positive misstatements, may be conscious or unconscious, the relevant facts may have been known, unknown, knowable or unknowable. Where the correct facts were or should have been known at the time of the original order, this may result in a refusal to rectify (*Tibbles*);
 - v) the court should only rectify an order if the court could, and probably would, have made the order as rectified at the time the original order was made (*M v P*; *X v Y*).

Decision

20. Applying the above principles to the facts of this case, I am satisfied that, sitting in the High Court, I have power to rectify the September 2017 order because that order was made under the FPR, in particular, Part 34. I agree with Ms Dunseath that whether the court had jurisdiction to register the French order in September 2017 depends on whether the wife can establish “local jurisdiction”, within the meaning of Article 28(2) of the Maintenance Regulation. This involves satisfying the court of the matters required by Part 34 and PD 34E of the FPR, as set out above. I do not agree that the FPR and PD34A conferred jurisdiction on the court: in my judgment, that is confusing process and practice with jurisdiction. The latter is conferred on the court by the Maintenance Regulation itself, the former is addressed by the FPR. The fact that the district judge was asked to recognise an order pursuant to BIIA does not, in my judgment, deprive her of the power to recognise it under the Maintenance Regulation, if she had been satisfied of the matters necessary to confer local jurisdiction. This is in accordance with *Rogers-Headicar*.
21. Should I exercise my power to rectify in favour of the applicant? There has undoubtedly been some delay in seeking rectification however, that is explicable by the fact that no-one, including the parties, their lawyers (at least one notable silk) and various judges noticed that error in recognition/registration. Ms Amaouche criticizes the husband for not promptly raising this issue. Notwithstanding the husband’s unacceptable conduct in relation to the enforcement proceedings, I feel it is somewhat harsh to condemn him for not noticing the error in circumstances where that error was overlooked by so many on both sides and by the courts. There is no suggestion that the husband has acted deliberately in this respect. Once the parties became aware of the problem, the (informal) application to rectify by the wife was made reasonably promptly given the need to consider the technicalities of the EU Regulations and the history of this particular case. Arguably, the issue of finality is somewhat moot as the applicant can immediately issue a new, properly constituted application for registration/a declaration of enforcement, if my decision goes against her. In any event, she has another application on foot in relation to lump sum orders – the current enforcement application relates only to periodical payments, although I am not aware of the basis of that application. Finality is not, therefore, necessarily achievable.
22. In my judgment, on balance, the September 2017 order was not an interlocutory order as usually understood by that term – the High Court was *functus* once it had made the order, subject only to any appeal. While it was certainly a necessary step to take in seeking enforcement of the French order, in my judgment it was not a purely procedural order either. The order was substantive in that it conferred jurisdiction on the Family Court to entertain the enforcement application. However, in my judgment the type of order it was is neither here nor there: as *N v J, G & H; M v P* and *X v Y* make clear, the power is exercisable in relation to substantive and final orders too.
23. Both parties have undoubtedly changed their circumstances since the September 2017 order. Both have incurred significant legal costs. If my decision goes against her, the wife will also lose the benefit of the costs orders made in her favour. Those costs have been driven up by the husband’s failure to comply with court orders, hence the adverse costs orders. I have some doubt as to whether there was any mistake of fact made, as opposed to a mistake of procedure, unless it can be said that the district judge made a mistake of fact in believing that the order sought to be enforced was a parental responsibility order, or ancillary to such an order, and thus registerable under BIIA. It seems to me rather that the

true error was a manifest mistake by both the applicant and the court in failing to appreciate that the order to be registered/enforced was a maintenance order and required registration and enforcement under the Maintenance Regulation and not BIIA. The copy of the C69 with which I have been provided is partly illegible so I cannot see what was said about the reasons for the application but I assume that they included enforcement of periodical payments. In any event, the translation of the French order provided to the district judge made it clear that enforcement of a parental responsibility order was not sought as the youngest child was born in 1997 and was 20 years old in September 2017. I am satisfied, therefore, that there is a proper basis, namely manifest error, for rectification, so the final issue is whether or not the district judge could and would have declared the French order enforceable under the Maintenance Regulation if she had appreciated the true nature of the application.

24. Pursuant to FPR Part 34.30 and PD34E, paragraph 4.3 the application must have been allowed if the district judge was satisfied the husband was habitually resident in the jurisdiction or had assets here (paras 4.4 & 4.5). It should have been refused if the district judge was satisfied that the husband was not habitually resident here and did not have assets in the jurisdiction against which the French order could be enforced (paragraph 4.3). Arguably, if she could not be satisfied either way, the district judge could have directed relevant evidence to be filed.
25. There is no basis for asserting that the district judge would have been satisfied that the husband was habitually resident in England and Wales in September 2017. The C69 gave his address as being in Paris, France while the French order recorded him as living in Italy. The wife was the only person recorded as living in London on those dates.
26. Nor was there any direct evidence before her as to what assets the husband had in this jurisdiction, if any. The only reference to potentially relevant assets, is found in the translation of the French order or extract. These were:
 - i) £310,832 held in escrow by Payne Hicks Beach (“PHB monies”) in summer 2010 which was to be paid to the wife;
 - ii) a Deutsche Bank International Pension (“the DB Pension Fund”) governed by English law;
27. In my judgment, it is not likely that the district judge would have been satisfied that the PHB monies were still held by them in 2017 because the wife has not complained anywhere that she did not receive that money. It is inconceivable that she would have waited until 2017 to enforce against assets in this jurisdiction when she has lived here since before the date of the French order and the money was readily available.
28. Nor am I satisfied that the district judge would have been satisfied that the DB Pension Fund constituted an asset in England and Wales in 2017. Many pension funds held by international organisations such as Deutsche Bank are governed by English law, irrespective of the location or seat of the pension trust which could, and usually is, in off-shore jurisdictions such as the Channel Islands, the Isle of Man or further flung tax havens. The use of English law is not a sufficient basis, in my judgment, to draw an inference that the DB Pension Fund is based in England and Wales: indeed, I would be very surprised if it was, given Deutsche Bank’s origins and its likely eye to the fiscal advantages of off-shore pension funds.

29. Notwithstanding the position before the district judge in September 2017, can I be satisfied that the husband was habitually resident in the jurisdiction and/or had assets here against which the French order could have been enforced? If I can then I could and, in my judgment should, rectify the September 2017 order on the basis that the district judge should have noticed the error and taken appropriate steps to ensure the correct procedure was followed, whether that would have been by refusing the application on the basis of no evidence of habitual residence or assets or by seeking the relevant evidence which would have been provided.
30. No evidence has been adduced before me on the issue of the husband's habitual residence in September 2017 or on the issue of assets he may have had in the jurisdiction at that time. In her skeleton arguments Ms Amaouche says that she is instructed that the husband and his current wife had or have a periodic tenancy on a flat in Cadogan Gardens where, it is common ground, the husband was subsequently served with the enforcement proceedings. She submits that I can infer that the husband was habitually resident in this jurisdiction in September 2017 by virtue of that tenancy. With regret, I cannot accept that submission in the light of the address given for the husband in the C69 and in the absence of any evidence as to when the tenancy arose or when existence of the tenancy was discovered. The C69, in response to Part 6, on mediation, did not state that the husband's whereabouts were unknown but simply stated that he could not be reached for mediation purposes. In Part 9, it was not suggested that the husband's address, as given, was his last known address, it simply stated that it was not known how long he had lived there, with the clear implication being that he lived there at that time. The D50 dated 11 September 2018 asserts that the husband's address is in Budapest, as do the committal applications of 29 November 2018, 8 January 2020 and 4 June 2020. The wife plainly knew when the husband was in the Cadogan Gardens flat, perhaps via her children, as he was served there; but that does not establish habitual residence, particularly in light of the addresses she gave for him in her subsequent applications. None of the witness statements made by her assert that the husband is habitually resident in England and Wales. In the circumstances, I am not satisfied that the husband was habitually resident in England and Wales in September 2017 or, indeed, at all.
31. There is no assertion, even in Ms Amaouche's skeleton argument, that the wife did not receive the PHB monies in or around 2010 pursuant to the French order nor did she submit, in terms, that there had been no such receipt. In the statements in support of her various applications and the Scott Schedules of sums said to be due from the husband, there is no mention of the PHB monies. Indeed, there is no evidence even now that the wife did not receive those monies.
32. No evidence as to the seat of the DB Pension Fund has been adduced. This information is almost certainly in the public domain. If the wife truly believes that the DB Pension Fund is based in the UK, I have no doubt that she would be able to produce evidence to that effect but she has not done so.
33. A periodic tenancy of a flat does not constitute an asset against which a maintenance order can be enforced. If it is held in joint names with the husband's wife, as is suggested, it cannot be appropriated and rented out for the benefit of the wife, even if the lease permitted such. In any event, there is no evidence in relation to this tenancy existing in September 2017.

34. To be fair, Ms Amaouche points to two other bases from which she asks me to infer that the husband had assets in the jurisdiction at the relevant time. Firstly, she asks me to infer that he has other assets in the jurisdiction from the fact of the tenancy. Secondly, Ms Amaouche points to a second pension, a JP Morgan pension which the husband has disclosed in his Form E [B174] but which, it is said, is international. She relies on *Moher v Moher* [2019] EWCA Civ 1482 in inviting me to draw such adverse inferences against the husband because of his delays in providing inadequate disclosure.
35. The difficulty with drawing inferences from the 'fact' of the tenancy is that it is not a fact that I can find absent some sort of evidence that it existed in September 2017. A mere assertion in a skeleton argument is not enough, nor is the fact that it existed in October 2018. If it was held in September 2017, it may be capable of giving rise to an inference that the husband had, at least, a UK bank account out of which he could conveniently pay rent, bills etc. However, such a bank account could equally have been held in his now wife's name. Alternatively, the husband might have had a sterling account in France or in some other jurisdiction out of which he paid the bills. However, in my judgment, too much speculation is required for me safely to infer that the husband had an English bank account in September 2017 or any other connected assets even were I satisfied that the tenancy existed in September 2017.
36. As far as the JP Morgan pension is concerned, I do not know whether it was in existence in September 2017 or started since that date. Further, I do not know where it is located, whether off-shore or not.
37. I recognise that the husband has used every means possible to avoid making payments to the wife. He asserts that nothing is payable. He has also dragged his heels in providing a signed Form E and appears to have provided inadequate disclosure. In addition, he has launched numerous appeals both in France and in England. I note that the original Schedule 1 proceedings issued by the wife were withdrawn because the children were all adults at the date that application was made. However, in order to draw adverse inferences from non or defective disclosure, there must still be some evidence on which such inferences can be based. This is not a case of establishing that the husband has assets, he plainly has, as he acknowledges in his Form E. It is a question of establishing that he has assets in this jurisdiction and that he held them in September 2017. The wife has not put forward any evidence to support those basic findings nor much evidence that the husband currently has such assets notwithstanding filing three witness statements.
38. While it is correct that the object of the various regulations is to ensure obstacle free enforcement of judgments, as set out in *MS v PS (Enforcement Procedure Under the Maintenance Regulation: Reference to CJEU)* [2016] EWHC 88 (Fam), the fact remains that the French order is not governed by Article 17 of the Maintenance Regulation but by Article 26 *et seq.* I cannot properly overlook that. While there is, at first blush, some tension between Article 30 of the Maintenance Regulation which states that a judgment "shall be declared enforceable immediately on completion of the formalities in Article 28", and PD34E, the former is subject to Article 27 which, it seems to me, confers local jurisdiction only on Member States in which the creditor is habitually resident or in which he holds assets – hence the requirements in PD34E.

39. On the evidence and material before me, with great regret considering the conduct of the husband, I am not satisfied that he had any assets in this jurisdiction in September 2017 therefore I decline to rectify the order of September 2017.
40. As far as the other declarations sought are concerned, I am satisfied that the wife is entitled to apply for registration/a declaration of enforceability of the French order. Whether she will succeed depends on her ability to satisfy the court that the husband is either habitually resident here or has assets in the jurisdiction. That I simply do not know.

HHJ Evans-Gordon

4th November 2020