



Neutral Citation Number: [2024] EWHC 538 (Fam)

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/03/2024

**Before :**

**MRS JUSTICE KNOWLES**

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**Between:**

**X**  
**- and -**  
**Y**

**Applicant**

**Respondent**

**Re X (Financial Remedy: Non-Court Dispute Resolution)**

**Simon Webster KC** for the Applicant  
**Alexander Thorpe KC** for the Respondent

Hearing date: 17 January 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 8 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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.

**Mrs Justice Knowles:**

1. The adversarial court process is not always suited to the resolution of family disputes. These are often best resolved by discussion and agreement outside of the court arena, as long as that process can be managed safely and appropriately.
2. This short ruling is being given today not because the parties are opposed to the course I have invited them to take but because I consider it might be helpful for those involved in family proceedings, whether concerning money or children, to understand the court's expectation that a serious effort must be made to resolve their differences before they issue court proceedings and, thereafter, at any stage of the proceedings where this might be appropriate. Furthermore, I want to signal that, at all stages of the proceedings, the court will be active in considering whether non-court dispute resolution is suitable. Changes to the Family Procedure Rules 2010 ("the FPR") which are due to come into effect on 29 April 2024 will give an added impetus to the court's duty in this regard.
3. I have not identified the parties in this short ruling because they have a young child who is also the subject of proceedings in the family court. This ruling focuses on that which is pertinent to the subject of non-court dispute resolution.
4. I am concerned today with a pre-hearing review in financial remedy proceedings in relation to a 15-year marriage which came to an end on 7 June 2022. The final hearing is due to take place before me in June 2024. The parties have an 11-year old daughter and there are separate Children Act proceedings listed for a three day hearing on 25 March 2024.
5. The financial asset base is somewhere between £27m to £29m. This is a needs based case and the parties have made open offers to each other - the husband in July 2023

and the wife in November 2023 – in an effort to resolve the financial remedy proceedings. The parties participated in an FDR in July 2023 which regrettably did not settle their dispute. I learned today that the parties never engaged in any form of non-court dispute resolution before issuing either financial remedy or children proceedings. I regard their failure to do so as utterly unfathomable.

6. The costs relating to the financial remedy proceedings amount to £581,000 to date. The projected costs going forward amount to £511,400. Therefore, the total amount spent, if this matter proceeds to a final hearing, will be close to £1.1m. That sum excludes the cost of the children proceedings, which will cost at least another £300,000 on a conservative estimate. Using the lower of the two valuations of the matrimonial assets, those legal fees in total would represent about 5% of the total assets.
7. Rule 3.3.(1) of the FPR mandates the court with a duty to consider if non-court dispute resolution is appropriate **at every stage in proceedings** (my emphasis). When considering whether non-court dispute resolution is appropriate, rule 3.3.(2) states that the court must take into account whether (a) a MIAM (a family mediation information and assessment meeting) took place; (b) whether a valid MIAM exemption was claimed or mediator's exemption was confirmed; and (c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process. Rule 3.4.1(a) states that, where appropriate, the court may direct that proceedings or a hearing in the proceedings be adjourned for a specified period in order to enable the parties to obtain information and advice about, and consider using, non-court dispute resolution. Rule 3.4(1)(b) states that adjournment for a specified period may also be appropriate where the parties agree to participate in non-court

dispute resolution. The court may make such directions on application of the parties or of its own initiative.

8. All the above rules are to be read in the context of the court's overriding objective to deal with cases justly having regard to any welfare issues (rule 1.1(1)). Rule 1.1(2) states that dealing with a case justly includes, as far as practicable, the saving of expense and the allocation of an appropriate share of the court's resources. The court also has a duty of active case management (rule 1.4(1)), amongst which is encouraging parties to use a non-court dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure (rule 1.4(2)(f)), and helping the parties to settle the whole or part of the case (rule 1.4(2)(g)).
9. The FPR does not, at present, give the court power to require parties to engage in non-court dispute resolution. Rule changes on 29 April 2024 will promote the court's ability to encourage parties in financial remedy and children proceedings to use natural gaps in the proceedings' timetable for the purpose of non-court dispute resolution or to adjourn the proceedings, if necessary, to encourage the parties to try non-court dispute resolution. Amendments to the costs sanctions the court can impose in financial remedy proceedings will take into account conduct relating to a failure either to attend a MIAM or to attend non-court dispute resolution.
10. These rule changes in family proceedings have resonance within the wider litigation landscape in civil proceedings. The court's general powers to compel parties in civil proceedings to engage in non-court dispute resolution was highlighted by the case of *Churchill v Merthyr Tydfil County Borough Council and Others* [2023] EWCA Civ 1416 (29 November 2023) ("*Churchill v Merthyr Tydfil*").

11. The Court of Appeal was constituted of the Lady Chief Justice of England and Wales, Sir Geoffrey Vos, Master of the Rolls, and Lord Justice Birss, the deputy head of civil justice. The issue in *Churchill v Merthyr Tydfil* was whether the court could order the parties to court proceedings to engage in a non-court-based dispute resolution process, and, if so, in what circumstances it should do so.
12. I note that there has been considerable debate as to whether the Civil Procedure Rules (“the CPR”) contain a specific power to oblige litigants to use non-court dispute resolution against their will. The case of *Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576* decided there was no such power, Dyson LJ stating that, to oblige truly unwilling parties to mediate, would be to impose an unacceptable obstacle on their right of access to court. However, in *Churchill v Merthyr Tydfil*, the Court of Appeal concluded that the *dicta* of Dyson LJ were not a necessary part of the reasoning that led to the decision in *Halsey* and were therefore *obiter* [see paragraphs 18-19].
13. Following extensive review of domestic and international case law, the Court of Appeal held that the court had the power to compel parties in civil proceedings to engage in non-court dispute resolution and/or stay proceedings to allow for non-court dispute resolution to take place. How a court should exercise its discretion to compel the parties was set out by the Court of Appeal in paragraph 65:

*The court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.*

14. Drawing on the submissions made by the Bar Council, the Court of Appeal listed in paragraph 61 of *Churchill and Merthyr Tydfil* a variety of matters which the Bar

Council suggested that a court may wish to take into account when determining whether or not to exercise its discretion to compel parties to engage in non-court dispute resolution. However, the Court of Appeal ultimately concluded that it would be undesirable to endorse such a checklist for judges to operate, as the judiciary was well equipped to decide how to bring about a fair, speedy and cost-effective solution to disputes in accordance with the overriding objective.

15. It may be thought that the decision in *Churchill v Merthyr Tydfil* is of limited relevance to family proceedings. To make that assumption is unwise. The active case management powers of the CPR mirror the active case management powers in the FPR almost word for word and both the civil and the family court have a long-established right to control their own processes. The settling of cases quickly supports the accessibility, fairness and efficiency of the civil, and I emphasise, the family justice system. As Sir Geoffrey Vos, MR stated in paragraph 59 of *Churchill v Merthyr Tydfil*:

*“...even with initially unwilling parties, mediation can often be successful. Mediation, early neutral evaluation and other means of non-court based dispute resolution are, in general terms, cheaper and quicker than court-based solutions. Whether the court should order or facilitate any particular method ... is a matter for the court’s discretion, to which many factors will be relevant.”*

Though the FPR rule changes due on 29 April 2024 do not go as far as compelling parties to proceedings to engage in non-court dispute resolution, the agreement of the parties to an adjournment for that purpose will no longer be required. Instead, the family court may – where the timetabling of the proceedings allows sufficient time for

these steps to be taken – “*encourage*” the parties to obtain information and advice about and consider using non-court dispute resolution and “*undertake non-court dispute resolution*” (rule 3.4(1A) with effect from 29 April 2024). The accompanying Practice Direction 3A has been amended and makes clear that the court may also use its powers to adjourn proceedings to encourage the use of non-court dispute resolution (rule 4.1). In financial remedy cases, the power to encourage even unwilling parties will be reinforced by an amended rule 28.3(7) which will make the failure, without good reason, to engage in non-court dispute resolution a reason to consider departing from the general starting point that there should be no order as to costs.

16. Non-court dispute resolution is particularly apposite for the resolution of family disputes, whether involving children or finances. Litigation is so often corrosive of trust and scars those who may need to collaborate and co-operate in future to parent children. Furthermore, family resources should not be expended to the betterment of lawyers, however able they are, when, with a proper appreciation of its benefits, the parties’ disputes can and should be resolved via non-court dispute resolution. Going forward, parties to financial remedy and private law children proceedings can expect – at each stage of the proceedings - the court to keep under active review whether non-court dispute resolution is suitable in order to resolve the proceedings. Where this can be done safely, the court is very likely to think this process appropriate especially where the parties and their legal representatives have not engaged meaningfully in any form of non-court dispute resolution before issuing proceedings.
17. In this case, with the assistance of their legal teams, the parties recognised that it was desirable to try to resolve their financial dispute by means of non-court dispute resolution in advance of the financial remedy hearing in June 2024. There was time to

do so without adjourning the final hearing. To concentrate minds, I approved directions for valuations and the like which would not take effect until mid-March 2024 so that energy and costs would not be expended on litigation whilst the parties were trying to resolve their differences. Though I was not seised of the children proceedings, I expressed the hope that the parties might also resolve these given that it was agreed that the child concerned should see, visit and stay with both her parents.

18. If the new FPR rules had been in place, this case would have justified an adjournment to encourage the parties to engage in non-court dispute resolution, applying the factors more apposite to family disputes from the list set out in paragraph 61 of *Churchill v Merthyr Tydfil*. Thus, both parties were legally represented and an adjournment would not have prejudiced either party's case for financial relief (or incidentally their respective cases on how their child's time should be divided between them). In those circumstances, non-court dispute resolution was likely to be effective and appropriate. Moreover, the costs of non-court dispute resolution were undoubtedly cheaper than those of litigating to a contested hearing and there was a realistic prospect that settlement might be reached given the very narrow difference between the parties' respective open offers. Any imbalance between the parties as to resources and bargaining power was not so significant that it might be a source of prejudice to the weaker party. Finally, neither party had ever tried non-court dispute resolution and so could give no convincing reason not to engage in that process.
19. The parties will inform me by mid-March 2024 as to whether they have managed to resolve their dispute or have narrowed the issues between them. I very much hope that they can. This would be to their emotional and financial benefit as well as to the benefit of their child. I urge them to engage meaningfully in this process – very



belated in this case - and to recognise the real advantages that will flow from resolving their dispute away from the courtroom.

20. That is my decision.