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IN THE FAMILY COURT  
SITTING AT THE ROYAL COURTS  
OF JUSTICE  
[2019] EWFC 46



No. FD12D03916

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 23 July 2019

Before:

MR JUSTICE HOLMAN  
(sitting throughout in public)

B E T W E E N :

LI QUAN

Applicant

- and -

WILLIAM STUART BRAY

Respondent

\_\_\_\_\_

MR JOSEPH SWITALSKI (instructed by Vardags) appeared on behalf of the applicant.

THE RESPONDENT appeared in person via telephone from Colorado, USA

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**J U D G M E N T**

( A s a p p r o v e d b y t h e j u d g e )

MR JUSTICE HOLMAN:

- 1 This is yet another hearing in the very protracted divorce proceedings between these parties. As recently as 20 December 2018, Mostyn J made a financial order. It required the former husband (whom I will, for convenience, call “the husband”) to pay arrears of maintenance to the wife forthwith in the quantified sum of £10,000. It further required him to make payments in the sum of £1,000 on the first days of January and February 2019, that is, in aggregate, a further £2,000. It further required him to pay £5,333 on 1 March 2019 and on the first day of each month thereafter. Between then and now five payments have been due, namely on 1 March, 1 April, 1 May, 1 June and 1 July. In aggregate, five times £5,333 is £26,665. Accordingly, since 20 December 2018, the husband has been required to pay in total the sum of £10,000 plus £2,000 plus £26,665, namely £38,665. He himself has agreed and accepted on the telephone today that he has not paid one penny of those sums.
  
- 2 As a result, the wife, who has battled for a long time to obtain any financial provision from her former husband, issued an application dated 24 June 2019 in a prescribed standard form of “Notice of application for enforcement by such method of enforcement as the court may consider appropriate”. That application was placed before Mostyn J (sitting in his private room) for directions, which he gave on 26 June 2019. Those directions included that the respondent (the husband) shall attend the court sitting here at the Royal Courts of Justice, with the full address given, on 23 July 2019, which is today. The husband has not personally attended today, but earlier today he sent an email to the wife’s solicitors in which he stated that he could not attend today but wished to attend by telephone, giving a stated mobile phone number. I caused that number to be rung and it transpired that the husband is in fact currently at an address in Colorado, USA, which he says is the home of a member of his family.

3 I wish to stress that nothing I have said or done today in any way whatsoever condones the fact that, in flagrant disobedience to the order made by Mostyn J on 26 June 2019, the husband has not personally attended this hearing today. Clearly, once the court assembled this morning (and I waited until about 11.10 BST to afford an opportunity for the husband to attend in person) I was forced to do the next best thing, namely permit him to participate by telephone, as he has done. The result is that the husband has participated throughout this hearing by telephone, and is able to listen to these words as I speak.

4 It seems to me important that there should be an official record of this hearing today, and I shall direct that an official transcript be made. It seems unconscionable that public funds should have to bear the cost when these parties have spent phenomenal amounts of money litigating over the years, but as I desire and intend that a transcript shall urgently be made available, I have little alternative but to say that the court will pay for it.

5 The husband has told me on the telephone that until 19 July, which is about four days ago, he was still in Bangkok where it appears he currently lives. Starting on 19 July, he travelled via Tokyo and Los Angeles to Colorado and the place where he now is. Clearly, that travel was funded, and it is unlikely to have been less expensive than travelling non-stop from Bangkok to London, which it is possible to do on regular scheduled flights. I asked the husband how it is that he was able to fund travel via Tokyo and Los Angeles to Colorado but not to London, and he said that his family had been willing to pay for him to travel to see them, but by inference that they were not willing to pay for him to travel to London for an important hearing to resolve financial difficulties with his former wife. I make no further comment about that.

6 Having formally issued on 27 June 2019 their “Notice of application for enforcement by such method of enforcement as the court may consider appropriate”, the wife’s advisers

have effectively accepted today that none of the means of enforcement contemplated by an application in those terms are effectively or realistically open to the wife.

- 7 There cannot be an attachment of earnings order as there is no evidence that the husband is in receipt of any regular income from an employer in England and Wales to which such an order could attach. There is no clear evidence of any significant third-party debt against which a third-party debt order could be made. There is apparently a possible payment of £20,000 due to the husband from a man called Mr Nilson, but in effect, at paragraphs 20 to 21 of his very helpful “Note on Behalf of the Applicant Wife” dated yesterday, 22 July 2019, Mr Joseph Switalski has accepted that the prospect of enforcing against that particular sum is likely to be disproportionately expensive and protracted.
- 8 There is no evidence of any property in England and Wales against which a charging order or other orders could be made. There is no evidence of any assets or personal property in England and Wales against which a writ or warrant of execution could be made, and there seems little utility in the appointment of a receiver.
- 9 The upshot is that, having issued that application as recently as 27 June 2019, the wife currently no longer seeks to proceed with it. It is arguable that I should, therefore, have dismissed that application entirely, but I am willing in the particular circumstances of this case to stay it generally, but with the added provision that it may not be restored without the permission of a judge. It is clear that this wife has faced a Titanic struggle to obtain any financial provision from her former husband. She will have paid a fee to issue the application on 27 June 2019, and the least I can do is spare her another fee if ever it should later become appropriate to revive that application and seek some substantive order upon it.

- 10 Instead of proceeding on that application, the wife and her advisers now contemplate following a different tack, namely seeking to proceed by way of a judgment summons for the committal of the husband to prison for up to the statutory maximum of six weeks for non-payment of the amounts ordered by Mostyn J last December. A judgment summons requires to be proved to the criminal standard, namely so that the court is sure. As well as proving the arrears (which are unlikely to be disputed), the wife will require to prove that, as at the date of the hearing of the judgment summons, the respondent has, or has had the means to pay all or, at any rate, part of the amounts in arrears.
- 11 The wife has not, as of today, issued a judgment summons. In a desire to be practical, Mr Switalski suggested, in complete good faith, that if the wife were to undertake today that she will issue tomorrow a judgment summons, I should, in anticipation of that, make various directions. He proposed also that I should make directions as to the method of service of the judgment summons. I am not prepared to do that. The judgment summons procedure is quasi-criminal, having as its objective the imprisonment of the debtor. It requires to be proved to the criminal standard. It is very well-established that all the procedural steps specified by the Debtors Act 1869 and the rules of court must be strictly followed, and there cannot be short cuts.
- 12 For that reason, I have declined, and do now refuse, to make any of the suggested anticipatory orders and directions that Mr Switalski seeks. It is entirely a matter for the wife to decide after this hearing whether she does wish to proceed by way of a judgment summons, and whether, in relation to arrears of £38,000-odd, she considers that the inevitable costs that she will then incur are cost-proportionate. That is entirely a matter for her, but if she does wish to proceed by way of judgment summons, then she must strictly and accurately follow all the prescribed rules, both as to the form and content of the judgment summons itself, and the required supporting evidence, and as to service. If ever

there comes a time when it may (I stress *may*) be open to her to seek some order as to alternative methods of service, she must seek that on proper evidence within the four corners of her judgment summons, once issued.

- 13 For those reasons, the only substantive order which I am prepared to make today is, as I have indicated, that the application which she issued on 27 June 2019 will be stayed and may not be restored without the permission of a judge. I will permit today's order to be served by alternative service upon the respondent husband by email to the email address with which he regularly communicates with the wife's solicitors, Vardags, and from which he sent a long email to them today. I am quite content that this order (which is not an order on an application for a judgment summons) may be served in that way, not least because the husband has participated throughout this hearing by telephone. I have read out the substance of the order to him and he understands it. For those reasons, that is the order which I make today.

#### **LATER**

- 14 This is my decision and ruling as to costs. Unusually, I first look at the amount of the solicitors' statement of costs. This shows that the solicitors have incurred a billed amount of £13,801 of their own fees, costs and disbursements, and an additional £1,750 on counsel's fees. I say at once that a brief fee of £1,750 to Mr Switalski does not seem to me to be excessive, given that he was coming in, almost for the first time, to a complex case with a long history with which he has had to familiarise himself and upon which he has obviously done considerable work in advance of, as well as during, today. So far as assessment of the

quantum of this statement of costs is concerned, I would allow Mr Switalski's fee of £1,750 in full.

15 So far as the solicitors' own expenditure is concerned, they have allowed themselves to run up expenditure in the gross amount before VAT of £13,801, currently in an enforcement of an amount that was stated at the time of the issue of this application to be about £32,000 exclusive of interest. I have to say that it seems to me that incurring costs of over 40 per cent of the actual arrears in issue at the time of issue of this application is the kind of profligate legal expenditure which discredits the practice of family law and is out of all proportion. It is simply not proportionate to incur these sorts of costs on behalf of a client, who claims herself to be penniless, in pursuit of the amount of arrears as they were at the date of issue.

16 For those reasons, I propose to treat the assessable, reasonable costs of the solicitors of and incidental to this application as £6,000 rather than the £13,801 claimed. I will allow counsel's fees of £1,750. Those two figures aggregate to £7,750. VAT on those figures at 20 per cent is £1,550. So I assess the reasonable costs of and incidental to this application, not in the amount claimed of £18,711, but in the sum of £9,300 inclusive of VAT.

17 The next question is whether I should order the husband to pay all or any part of those costs. In my view, it is right that he should be ordered to pay part of those costs. The fact of the matter is that as recently as last December Mostyn J, in a very full and detailed judgment, concluded that the husband does have the means to make maintenance payments in the sum ordered. Between then and now the husband has not paid a single penny. In other words, he has not even made the slightest attempt to show some obedience to, or compliance with, the order.

- 18 I am not today considering a judgment summons, which, as I have said, requires to be proved to the criminal standard. I am, at this point, considering whether or not to make an order for costs in a context in which the ordinary civil standard of the balance of probability applies. In the light of the judgment of Mostyn J, it seems to me probable that the husband could certainly have made some attempt to obey, and make payments in obedience to the order. So the starting point is, we are here today because of the complete failure of the husband to pay a penny.
- 19 Secondly, Mostyn J made his order, which the husband has had in his hands for over two weeks, that he must attend here today. If he had attended here today, he could have been examined on his oath as to his means. I do not know in what direction that might have led, but it might, of course, have yielded at any rate some help to the wife in her quest for payment. I find very unconvincing the fact that four days ago he was able to travel from Bangkok via Japan and Los Angeles to Colorado, but not able to travel to London and prioritise appearing before this court, which he knows very well he must respect.
- 20 So for those two reasons, in my view, the husband must pay some costs of and incidental to this application. On the other hand, I do bear in mind that although the application which was issued might have yielded to the wife the prospect of some help from evidence given by the husband on oath in oral examination if he had attended today, the fact is that it seems very forlorn that there would ever have been an attachment of earnings order, a third-party debt order, a charging order, a writ or warrant of execution, or the appointment of a receiver. So she issued an application which does not seem to me ever to have been a promising one, and which, in the end, has been stayed.



21 Balancing these competing considerations, I have decided, and will order, that the husband must pay one-half of what I have assessed to be the fair and reasonable costs of the wife of and incidental to this application. The full amount, it will be recalled, was £9,300. Half of that is £4,650. Therefore, I will order the husband to pay the wife's costs of and incidental to this application in the sum of £4,650 inclusive of VAT, but I will add that that order is not to be enforced without the leave of a judge. I say nothing as to the occasion when that leave might be applied for or given. In principle I make that order, but for the time being it cannot be enforced.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**\*\* This transcript has been approved by the Judge (subject to Judge's approval) \*\***