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IN THE FAMILY COURT
SITTING AT
THE ROYAL COURTS OF JUSTICE
[2022] EWFC 62



No. ZZ21D47299

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 20 January 2022

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

DR

Applicant

- and -

ES

Respondent

MR J. EWINS QC and MISS A. KISSER (instructed by Hughes Fowler Carruthers) appeared on behalf of the Applicant.

MR C. HALE QC and MR J. COPLEY (instructed by Penningtons Manches Cooper) appeared on behalf of the Respondent.

(via Microsoft Teams Hearing)

MR JUSTICE FRANCIS:

1 I have before me today an application by DR, who is the wife in divorce proceedings. She has brought applications today for maintenance pending suit until decree and thereafter interim periodical payments on behalf of herself and the children of the family. There is also an application for what we call a “LSPO” order, that is for legal fees funding, which she brings pursuant both to the Family Procedure Rules and pursuant to Schedule 1 of the Children Act 1989.

2 I am not going to give very much of the background to this case. This has been a rushed hearing by definition - that is not a complaint - but what happens in these interim hearings, just so the parties understand, is that I, as the judge, have to do the best that I can on the information that is available. I do not make any findings of fact today, so anything that I say is not in any sense binding on me, if I am the judge that deals with this case, nor still less is it binding on any other judge.

3 The job of the judge in these interim applications is really quite a difficult one because the judge is normally faced with contrasting presentations as to value, as to income and as to need. Well, need, it is easy enough to resolve, but value, for example, in this case, we have a presentation on behalf of the wife which suggests that the assets in this case are in the region of £23 million; the husband says that the assets in this case are in the region of £8 million and illiquid. It is not my task today, and it is not possible for me today, to make any determination at all as to the veracity of either party’s presentation on that issue.

4 The very short background is as follows. The parties were married in 2008. This was, I am told, an arranged marriage, with DR travelling from India to be married to ES, who was

resident in England. The parties have lived since they were married with the husband's parents in a very fine property indeed just outside London. I have seen photographs of the property. It is impressive and I think it is fair to say a truly magnificent property. As far as I can tell, it is owned one-third by the husband and two-thirds by his parents. It is not right for me to go in any way behind that presentation today.

5 There are two children, FT, who is now ten, and GU, who is now seven. They are both at school locally in different private schools. As I understand it, it is not disputed that the husband is going to pay the school fees for the time being. Obviously by "for the time being" what I really mean, and that is the duration of the order that I am going to make today, that is until a final order is made in this case or until further order if there is an earlier order than that. It was suggested to me that my order would last only until the FDR. Well, I hope that this case will settle at the FDR, it should, and I will say a little bit more about that in a moment, but if it does not, it would be quite wrong for the funding, either of maintenance funding or legal fees funding, to be cut off at that date. Of course, it is open to either party to apply for a variation of the order that I am going to make today, but the reality is that the cost of making and preparing for and pursuing that application would almost certainly outweigh the benefit that either party might derive from making that application.

6 And so the sad background here is that the parties have become embroiled in expensive, bitter and really quite dangerous litigation. It is not for me to make any findings, again at this stage, about whose fault that is, but there are certain things that have happened which do not sit very easily, I would suggest, with any judge who looks at these cases. An example is the cutting off without warning of the wife's credit cards. This is a high-spending family. I am not going to get into hyperbole or adjectives about it, but it is fair to say, on any view, it

is a high-spending family, and the wife has had the use of credit cards and it is beyond my understanding how anybody could have thought that it was in any sense appropriate simply to cut her off without warning. It creates what Mostyn J described in a slightly different context in another case, something of a “nuclear winter” that descends over everybody. It causes a very bad feeling indeed.

7 Another curious thing that the husband, I am told, has done in this case and, again, I make no finding about it, was to sell the wife’s personalised numberplate on her high end SUV and replace it with an ordinary number. Well, given the assets in this case, selling a numberplate for £15,000, I bet it caused far more than £15,000-worth of legal fees and hot air generated as a result of that really rather horrible move. The husband may have a defence to that; he may say he had a very good reason for it; he may say that he told her about it. I reassure him, I am not making findings, but if he did do that, I really do ask him to examine his conscience as to what benefit he thought he could possibly gain from it other than something like an act of spite.

8 I hope that, following this hearing, the parties will press the pause button on everything they are doing in this case except trying to get the case ready to have a sensible negotiation. They need to instruct an accountant. The businesses need to be valued. There are two businesses, two companies. I am told that they are owned one-third by the husband and two-thirds by his parents. One of the companies, in particular, owns a vast number of extremely valuable properties, some commercial, some residential. I am told they are in the accounts at cost value. Some of them have been written down. I think, from an accounting perspective, that is allowable. I do not know whether these are properties that have gone up or down in value. I can well see that commercial property such as one engaged in events or a hotel might have gone down during the last extraordinary two years that we have had in

the world, and who knows where and when the pandemic will end. I can well imagine that residential properties, some of them dating back to as long ago as 2003, may well have gone up in value. And so the parties are going to have to find a way to have some sample valuations. It would be far too expensive to value all of them. It is not for me to advise on that, but when I was at the bar in cases like this, I would sit down with my opposite number, counsel or solicitor, or both, on the other side, and the instructed accountant, and have a discussion about it. How do we sensibly have a valuation of this portfolio which is proportionate and is appropriate? And, obviously, the husband and his parents are going to have to be involved in that exercise because they know the properties. They, of course, cannot have the last word, but there is no reason why they should not get on with this straightaway, and I am not at all clear why it has not already been started. Only when they have those sample valuations and then the accountant's report as to valuation can they start a sensible negotiation.

9 The other issue of some significance in this case is going to be the extent to which, if any, there is a discount for the fact that the husband has a minority holding in these two or more companies. Instinctively, a one-third shareholding might be said, well, it is obviously a minority shareholding, and one might therefore look at a discount, but it might also be said in this case that the husband holding shares in companies together with his parents (they each own a third), it might be seen as a quasi-partnership company, and that third, in reality, might be worth a third of the total value. After all, it is hard to see how there would be a sale except with the consent of all of them.

10 Well, those are all issues for another person on another day, but I strongly encourage the parties to put all of their efforts and all of their legal expense at the moment into moving towards the position where they can either have a court-based FDR or a private FDR.

Counsel, very experienced leading counsel, in front of me both know only too well the benefit, sometimes, of a private FDR. I say no more about that.

11 And so here we are, with the husband having given the wife £500 a week as spending money, and she is making an application now for provision for herself and for the children, for the time they are going to spend with her.

12 So far as the children are concerned, they have always lived in the large house which I have referred to, being looked after both by their parents and their grandparents, and that is an entirely lovely thing for them to have been able to enjoy. The parents have now, with the help of extremely experienced leading counsel, been able to negotiate a situation where they are going to transition towards shared care, by which I mean, of course, that the children will spend approximately half the time with their mother and approximately half the time with their father.

13 The mother, as part of that agreement, has agreed to move out of the home. The reason why it is appropriate for her to move out in this case is obvious: that is that it must be a very difficult environment indeed for all of them, living together, given the tension that there now is between the husband and the wife, and given that the property is co-owned by the husband and his parents, it is obviously the wife who is going to be moving out.

14 There is a dispute here about the cost of property which she should have. The wife has, and I can understand the frustration about this on behalf of the husband, the wife has put forward various figures for housing of £3,500 a month, £4,500 a month, £6,000 a month. I can understand the frustration of the husband and those advising him when the target keeps moving in that way.

- 15 The husband has put forward a number of suggested rental properties. One or two of them really do not do him justice, particularly one property which he put forward, we all know which one it was, I am not going to dwell on it. It is unreasonable to expect his wife and his children to move out from the grand property that they now live in to what is, by the standard of this case, a modest semi-detached house in an urban setting. I am not going to run through all of the properties that there are in this case. What I am aware of is that the wife needs to move imminently. She has found a very fine property in a gated community within a very short walk of the school. I can well understand why she wants to move to that property. It would be very hard on her for the children to see her living in a significantly different and reduced situation from the one that the father is living in. If the transition to shared care is to work, as I hope it does, and as I hope the parents want it to, then it needs to be on the basis that the children like both of their homes.
- 16 The property that the wife wants to rent I think is on the market at £6,300. The wife believes that she can secure it at £6,000. My guess is that whatever figure I alight upon today as a suitable figure for rent, she will actually decide to spend some of the other money that I am going to order that the husband pay her on her rent, because she particularly wants this property, and in a sense, the better her home situation, the less money she is going to need to spend on other things like going out to eat or going on holiday.
- 17 I have decided that the right figure to allow for rent in this case is £5,000 a month, which is £60,000 a year, and if the wife wants, as I suggest that she reasonably does, to rent the property that I have referred to, well then, she will have to pay an extra £1,000 a month from the budget that I am going to give her, and if she decides not to spend it on all sorts of other

discretionary items, and what most people would regard as luxury spending, then it would seem to me to be a very sensible choice indeed for her to make.

18 Now, I have a very helpful schedule which I think was prepared by Mr Ewins or someone on his team, which is called “DR Interim Budget Comparison”, and I am going to run through that document because it sets out, helpfully, the figures contended for by both parties, and I am going to give you my view on those figures.

MR JUSTICE FRANCIS: Before I do, I have reminded myself that I have one query, because this is a matter of fact: what is the council tax for the highest band property in this borough? Somebody must know that.

MR EWINS: Somewhere between 3,000 and 4,000, but I do not have the figure to hand.

MR JUSTICE FRANCIS: Well, rather than take time over it now, it does not matter who thinks what, this will be a matter of record, and I agree that it is going to be almost certainly a Band H property whatever it is. So the figure under council tax is the actual figure that it is, please. That is the one to be inserted in that column, and bear in mind I think that they go up in March normally, so you might want to allow for, I do not know, a 5 per cent increase, but that figure will not be a made-up figure, it will be an actual figure according to what the---

MR EWINS: The figure is 3,578, currently.

MR JUSTICE FRANCIS: Right. Well, that is the figure that---- Let me put that in now then. Thank you very much. That is the figure that I will put in. I think in terms of an inflationary increase, it is just going to have to be absorbed. I mean, it is, in the context of this case, a 5 per cent increase in that is not an amount of money to make too much difference.

19 The figure I am going to put in for electricity and gas is the figure contended for by the wife, of £4,000. The difference between the two parties on water rates I simply do not understand. Does anybody understand the difference between £540 and £600? There is no point in that disagreement in this case. I suppose it might be metered, might it not, so yes. Well, I will just take the figure of £540. The difference is *de minimis*.

- 20 I really have no idea whether this property is going to have a water softener in it, and I am going to remove that figure.
- 21 The mobile phone, the wife should pay for her own contract. It is demeaning for her to be told that he is going to pay for her contract for her. Having said that, if there is an existing contract in his name which he is paying, then the parties may decide to continue that. So I am not going to say any more about that, I need common sense between the lawyers, please, to sort out how that mobile phone is to be sorted.
- 22 The TV licence, obviously, is £159. The telephone cable, etcetera, the £1,300 claimed is right. The DVDs featured unreasonably in this case. The cost of them is *de minimis*, but the reality is people will download films these days. I would have thought, for Netflix and Amazon, £20 a month is more than likely to cover Netflix, Disney Plus, and I bet the wife already has an Amazon Prime account but, anyway, I am going to call it £240, £20 a month.
- 23 Contents insurance, yes, £1,000. The husband says the wife should not have a gardener but, I am sorry, she should have a gardener. There is going to be a covenant in any lease that she has to keep the garden in good repair, and I do not think the figure of £2,000 is unreasonable. But then there is garden plants and supplies, so I delete that and put nought in.
- 24 Window cleaning, it seems to me that £750 a year is excessive, and I am going to put in £350. House plants and cut flowers, I am including in the overall “Other” budget. It is not realistic to have a separate budget for those items these days.

- 25 So far as the car is concerned, the husband is going to agree to pay for all of the items except for fuel. When I asked about how many miles the wife did, the simple conversion that we had was actually it is not £7,000 a year, but £3,500 a year. It is an irrelevant difference in the context of these cases, but I do please urge lawyers, when they draw up these budgets, to have a figure not from, “Here is one I did yesterday”, but from what actually people spend in the real world. It is not difficult to say, “Well, what is the reading on the odometer of your car? How many miles have you done in the past year?” Just pull out the two MOTs or whatever, if it is old enough to have one of those, it is a simple calculation. So that is my figure in relation to fuel.
- 26 Housekeeping. The wife seeks £10,000 for a cleaner or housekeeper. Well, I worked out, if it is ten hours a week at £15 an hour, it is £7,800 a year, and that is the figure I am going for.
- 27 I thought that the husband’s suggested figure for food and groceries appeared to have no understanding at all of what food costs, and I am going to allow the wife’s claimed figure of £13,000 a year for herself and sometimes the children. I think, when we get to it later, she did double count, because I think she might have put food back in again for the children but, again, it is a small amount.
- 28 Dry cleaning, I think, for an interim basis, £1,500 is a lot. I am going to halve it and call it £750.
- 29 The chemist items really are going to be included in the food and groceries and other items, and I knock that out. Newspapers and magazines, I do not know whether the wife really spends much money on those things, but it seemed to me that that would be included in the

overall budget, and so I put zero in there, but I will allow the figure for stationery and stamps of £100, which the husband did not challenge either.

30 Holidays and travel. I have no doubt this is a family that had very lavish holidays. Having regard to the lavish wedding and the way that they have lived, and the handbags and the shoes, but we have fallen into different times. The parties are going through a crisis. That crisis is divorce, litigation and expensive solicitors, and £20,000 this year on a holiday, it seems to me, is unaffordable. I am going to put in £8,000 for a holiday. That is for the wife and the children. If the wife says to me, “Well, the husband is going to spend that”, then I have some sympathy with her. All I can say is if he does spend that and the case comes back before me, then I will be pretty unimpressed. He really does need to accept that one of my tasks is to level the playing field, equality, not exact equality, but equality of arms and equality of expenditure during this interim period, and if he does decide to treat himself and the children to a holiday worth more than £8,000, then I am quite sure, having heard what I have said, he will give the difference to his wife to make sure that she has the same holiday that he has.

31 Travel insurance surely is going to be included in the holidays budget. Weekend breaks of £8,000 are a pipedream at the moment; there is not the money to afford them. Nil for that. It is going to be included in the holiday money.

32 Taxis after evenings out, on holiday. £1,000 seems to me to be an awful lot of money. With some reluctance, I have put in £500, but I am not going to put in car hire on holiday as well if that much money is being spent on taxis. You cannot have it both ways. If there is a car hire figure, in Europe, it is not expensive, and they can be included in the holiday budget.

- 33 There are no pet costs at the moment.
- 34 Clothes. Well, this is always a bugbear in these cases. A litigant cannot file a statement telling me about how many designer clothes she has got, and 150 pairs of designer shoes, and then want a budget for more shoes. So the overall budget I am going to allow for clothes, shoes and accessories is £7,500 for the year. That is just for this year. I am not saying forever, but surely if you have got 150 pairs of shoes, you have got enough shoes to wear for the year, and if you have all those handbags, you have got enough handbags, and I am really not bothered whether they are fakes or real, they are still handbags. For the purposes of an interim hearing, there is no need to buy any more, and nor is there a need at the moment to buy any more jewellery. How can one not pay one's solicitors and then want to spend £8,000 on jewellery, which is an ultimate luxury.
- 35 Cosmetics. I am going to allow £8,000, as the wife has asked for, but that is going to include hairdressing, beautician and massage, so the whole lot, £8,000, for this year. The wife can spend as she pleases in different times when she is not funding expensive solicitors in the way that she is at the moment. Gifts I will allow at £4,000.
- 36 The husband is going to pay the medical insurance. That is extremely important in this case, given the wife's medical difficulties, and I do want here to have an undertaking, please, by the husband, and if he will not undertake it, I will order it, but I am sure, I can see Mr Hale nodding, I am sure the husband will undertake to maintain the current policy of medical insurance. If and when the time comes when the wife moves on to her own policy, she does need to be able, I think, to move seamlessly from one policy to the other, or perhaps insure

herself separately with the same company, otherwise she might run into all sorts of underwriting difficulties because of her particular medical circumstances.

37 I am going to allow the GP and gynaecologist's costs claimed at £500 and £200 respectively. I am going to allow the Pilates of £1,200 and the reiki of £2,500. I think that the wife has particular issues that she does need to have these things which are more important for her. They are not just luxuries; they are part of her general fitness regime.

38 Obviously, I am not going to argue with the optician figure, £50. I am not sure why the husband knocked out the dentist figure. It seems to me that she must go and see the dentist and the dental hygienist during the course of this phase, and I would have thought £500 is the right amount for that, not £1,000 as claimed.

39 Yes, club membership of the gym is obviously important for her but, at the moment, I am afraid £12,500 for a personal trainer is not a figure which I can subscribe to, again, in the circumstances where so much money is being spent on other things, and so, for the time being, £1,000 a month for a personal trainer, I am sorry, I am going to knock that down to zero.

40 Sports expenses, I do not understand. I mean, I am assuming the wife has sports and running and yoga kit that will see her through for this year, and I would have thought she has almost certainly got enough books. I am going to knock that down to zero. Again, you know, if she wants to spend money on books instead of other things, well, she can do so, but, for the time being, she can manage with what she has downloaded or bought already. DVD I have knocked out for the reasons indicated.

- 41 Theatre, £500, seems entirely reasonable, and the counselling/therapy of £3,120, obviously she needs to continue.
- 42 Cinema and concerts I am going to knock out altogether. I have already allowed £500 for theatre. This house that the wife is going to rent is going to, I am sure, have a widescreen TV and the children can watch films there or, otherwise, she can take it out of other discretionary spending.
- 43 Museums, I think, generally, are free, so I am going to knock that out, down to nil, and restaurants I am going to knock from £7,000 to £5,000.
- 44 Entertaining others, I did not really understand whether that is taking them out to restaurants or entertaining them at home. I understand the wife, who probably does not drink, will need to purchase alcohol for people that she entertains, and I should have thought £1,000 is enough for that.
- 45 Christmas at £2,000 I am leaving as claimed. Bars and pubs slightly surprised me, and I am going to knock that out and it can just be included in other discretionary spending.
- 46 Then we get into the children, an awful lot of which the husband is going to pay, and that needs to be recorded as a recital on the face of the order. The figures that I am going to alter are birthday celebration costs; well, £1,500 may be what they spent, but I think if each of the parents spend £300 on each child, just for this year - there is only going to be one birthday during this interim phase - and, again, if the father puts on a lavish party for the children at more than that, well then, I expect him to allow the mother to do the same thing. So he

needs to be careful in that he is saying the figure should be reduced, I have reduced it, but it has to be equality here.

47 Theatre for the children I have knocked from £300 to £100, cinema from £500 to £50, concerts from £500 to £100, museums and exhibitions, well, I have left them in at £50, but I could have put it to nought for the reason previously stated. Books, £100 each. I mean, £500 each on books for children in a year does seem to me to be excessive, unless they are schoolbooks, but, as I understand it, they are going to be covered by school expenses that the father has already agreed to pay. Stationery, well, do children really use stationery these days? They might write the odd card or letter, but I am going to knock that out. It can be included in other household expenditure. DVDs for the third time are now featuring, this time with an apostrophe. Magazines, I will allow them £25. Computer expenses, well, various things that the father is then paying. Holidays. Well, I have put an £8,000 budget which was intended for the wife and the children to have one really good holiday, but I will put in £750 each for them for a little bit over, and then the hair I will leave as is. Apparently, the father is going to pay for the dental and orthodontic treatment.

48 The pocket money allowance, instead of £700, which is put forward by the wife, why do the husband and the wife not each give them £350, so the husband can give the wife money so that she can give them an allowance. It is right that the children should receive money from each of their parents. I have already heard reference to controlling expenditure. Now that the parties are separating, the father has got to let go and realise that the mother is just as entitled to give the children money as he is, but he is going to have to give her the money to give them because she does not have any income.

49 In relation to her earning capacity, I simply say this: she is not working at the moment; that is the arrangement the parties have agreed. I am not going to assume any earning capacity for her at the moment. It may very well be different at the final hearing.

50 Now, the revised figure, which is slightly different because I have altered just two things, is £158,937, which I am going to call, I am going to round that up to £160,000 a year, which is £13,333 a month, which is significantly less than the wife was asking for. I need to say this. The wife was asking for £323,000 net. It may well be the figure that the judge at the final hearing will decide is an appropriate figure for her to be spending a year, and I do bear in mind that that includes rent, which the husband does not have to pay, but, as I said at the start, one of my tasks here is to provide for need, not just ordinary basic food and clothing need in a case like this, but to claim on an interim budget where the income seems to be incapable of meeting it, £323,000 is an unrealistic pitch.

51 But I do want to say something about the husband's income. I know very little about it really other than the presentation that I have been given respectively by both counsel, but I am told that the dividends that his parents used to get used to be given to him, and now they are not. Well, there could be any number of reasons for that, but one can understand the wife being suspicious that it has suddenly stopped now. Against that, it may very well be that ES's parents have decided that, given that their son is spending so much money on legal fees and other things that they just do not want to go on giving him that amount of money. Time will tell as to what the reasons were and whether this will be reinstated, but the only way that the husband, as far as I can see, is going to be able to fund the orders that I am going to make, because I have not come on to the legal fees funding part of it yet, is by borrowing. There is no evidence that he has enough income to pay for his own expenses

and for the order that I have just indicated of £13,333 a month without resorting to borrowing.

52 Well, there is already a history of borrowing in this case. The husband has very recently taken out a loan through the company. The system seems to be that the company borrows the money, in the existing case, over a five-year term, the interest is 5 per cent a year, paid once a year, as I understand it, and if it is money borrowed through the company, well then the company can make a loan to the husband, and it is a matter for the company as to what the right commercial rate would be but 5 per cent would seem to me to be likely to be regarded by most as a reasonable commercial rate in the current market with interest rates as historically low as they are.

53 I asked the question, what the loan to value ratio was of these companies and, slightly surprisingly, nobody, at the time I asked it, knew the answer to that question. It seems to me that it is going to be an extremely important issue for the parties to look at because the only way that this case is going to be resolved is either by a sale of company assets and distribution or by borrowing. I cannot see another route, but there may be one. It seems to me those are the most likely ones and, at some stage, the husband and the wife, and ES's parents, are all going to have to sit down together, probably in the same building if not the same room, and sort this out, because every pound they spend on their excellent legal teams is a pound they are never going to get back, and they know what they have already spent.

54 I was told by Mr Ewins, on behalf of the wife, that the loan to value ratio of Company A is 17 per cent. I think it is more complicated in respect of the other company, but a loan to value ratio of 17 per cent for a property-holding company seems to me to be low, in fact, it seems to me to be incredibly low, and that loan to value ratio is what is reflected, as I

understand it, in the accounts. If the values of the properties are more than the historic or written down values in the accounts, well then, the loan to value ratio will go down. I, of course, equally have to accept that if the properties have gone down in value, then the loan to value ratio will have gone up, but it seems to me that there is clear evidence of the husband's or the company's ability to borrow money in order to fund this crisis, and it is a crisis; it is a temporary crisis, but that is where the parties are, and if this was a crisis that they had met together as a family, that is husband, wife and paternal grandparents, they would all have sat around the same table in the same room together and found a way to pay for the crisis, but because the crisis is one where the husband and wife are pitched against each other, it is obviously going to suit one side to say it cannot be done, and the other side to have to find ways that it can be done.

55 Ultimately, if they look upon this as a commercial deal and not a bitter family dispute, that is the way that they are going to find a way to navigate through this. It seems to me that the father's parents, either or both of them, are extremely sophisticated businesspeople to have built up the company empire that they have, and if they apply their sophisticated business skills to this problem, this crisis, as a commercial crisis rather than as a personal crisis, I suspect they would find their way through it reasonably quickly.

56 Now I turn to the question of legal fees funding. Both counsel properly agree that I have the jurisdiction to deal with this, both in terms of a lump sum to clear previous costs incurred if I think it is appropriate, and to deal with future costs to be incurred. One of the problems here is that there are unpaid bills. Two other London firms were previously briefly instructed by the husband, and now we have got Penningtons Manches and we have got HFC, two of the best-known firms of solicitors doing family law in the big money cases in

England and Wales. I am completely satisfied, until somebody establishes otherwise, that all of the bills that they have rendered are bills for time that has been properly incurred.

57 Now, I know from my own experience when I was at the bar that, sometimes, a vulnerable or anxious or talkative client can spend two or three hours doing something that should have taken one, and sometimes I would have said to my client, “You know, this is quite expensive social work”, but sometimes you have just got to do it, and it is important for the husband that the wife is properly advised and that she understands what she is doing. He is a commercially aware sophisticated businessman dealing with property and companies in England. The wife came to England in the circumstances that I identified, and she is not commercially aware, she does not understand the husband’s business circumstances, she has to ask the questions through her lawyers, and it does not surprise me at all that she incurs greater costs than he does in the initial phase. It may be, of course, that the time will come when his costs will be greater because his team have to spend a lot of time preparing detailed answers to questionnaire and all of the documents that go with those answers but, at the moment, I am not prepared to accept the criticisms made of the lawyers’ bills.

58 Mr Hale, on behalf of the husband, made the very valid point that when one goes through an assessment of costs, you get about 30 per cent knocked off. Well, that may be true in civil litigation, it may be true where one party is ordered to pay the other’s costs in some family litigation, but my job at the moment is not assessing costs in that sense of somebody being made to pay an order for costs, it is dealing with debt. The wife’s debt to her solicitors is a debt that she has to pay, and if she does not pay it, there is a serious risk that they will not continue to act. There is no reason why solicitors should act as creditors or bankers to litigants, and many firms are unable or unwilling to do so, particularly when the numbers are in six figures, as they are here.

59 The law in relation to the payment of solicitors' costs is very well known to all of the lawyers in this case. I have been referred to in the very helpful documents prepared by counsel, but I am not going to repeat them for the purposes of this judgment and, as I have indicated, everybody agrees that I have the jurisdiction to deal with it in the way that is requested by the wife. The question is whether, on the facts, I should do so.

60 The starting point is, on the one hand, debt, a need to pay fees, and, on the other hand, a lack of liquidity and ability to pay those fees. I have indicated already that the husband is going to have to borrow money, I suspect, to pay the order that I am going to make, and therefore there is going to have to be some time to deal with this.

61 The wife seeks a legal services provision order, first of all, of £433,700 in respect of outstanding and estimated future costs of the financial remedy proceedings up to and including the FDR. It is essential that she is fully funded so that she can conduct the FDR with the benefit of her experienced solicitors and counsel. I am going to make an order for that figure.

62 The figure sought in relation to future costs of the Children Act proceedings are £224,380. I am very troubled indeed about the Children Act proceedings. The parties were on the brink of a three-day fact-finding hearing. It is not for me to comment on whether it was the right decision to order such a hearing. Some cases cannot be progressed without one. If there are really serious allegations of assault or, heaven forefend, sexual assault, then sometimes it is absolutely essential to have a fact-finding hearing. Whether this is one of those cases, it is not for me really to question further but, mercifully, with the aid of Mr Hale on behalf of the husband and Mr Verdan QC on behalf of the wife, two extremely experienced leading

counsel, the parties were able to save themselves from jumping over the cliff, as it were, and to enter into what seems to me to be a thoroughly sensible consent order. There is going to be a review hearing where that consent order will be looked at again. I would have thought the sensible thing to do is for Mr Hale, if still instructed in relation to the children matters, and Mr Verdan, or whoever it is who is instructed in relation to children matters, to meet. I think that in this case there should be an advocates meeting before brief fees are delivered for this next Children Act hearing so that they can do their best to hammer out an agreement, because an agreement is what is needed. I am going to say that, in respect of the outstanding and estimated future costs of Children Act proceedings, the figure to be paid is £150,000.

63 I know that is not as much as the wife wants, and I know that is far more than the husband says that he can afford to pay, but the fact is, for reasons I have indicated, the wife has a large debt to her solicitors, and she has an estimated bill to her solicitors for the future. The lawyers in this case will be only too familiar with the provisions for a legal services funding order. There has to be the proper understandings that any money that is paid and not used will be reimbursed, that proper accounts will be kept by the solicitors; all of that will go into the order which counsel are going to draft, and you do not need me to say more about it.

64 I really want to end with this, and I hope it does not sound like too much of a lecture but, DR and ES, you have two wonderful children and you both love them, and you will share the care of them, you will, one day, hopefully, go to their wedding; you will, one day, hopefully, be grandparents to their children. So I would really say you have to stand back and try and resolve now the dispute in relation to your children, which I think you have largely done, and with the expertise that you have, both with your counsel and your solicitors, once you have the figures, you will be able to resolve the financial aspect of this

case. If you go to a final hearing, probably in about a year's time, you will spend at least as much again in costs as you have spent already, and probably more and, as I have said before, every pound you spend on your lawyers is a pound that is lost to you. You cannot get it back. So please bear that in mind.

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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