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Case No.: OX15D00684

IN THE FAMILY COURT AT OXFORD

Date: 7th August 2020

Before: Her Honour Judge Vincent

Between:

JB

Applicant

and

MB

Respondent

Hearing dates: 23rd and 24th July 2020

Max Turnell instructed by Lightfoots LLP for the Applicant husband
The Respondent represented herself at the final hearing

JUDGMENT

Editorial note: this judgment has been edited so as to be anonymised for publication with assistance from counsel and solicitors for the Applicant husband

Introduction

1. This is the final hearing of the husband's application for financial remedy. The husband is 67, the wife is 59. The parties met around 1982/83 and married in 1988. They have an adult daughter. The husband has a son from his previous marriage. Although there were some happy times, sadly now both parties reflect on the thirty years or so they were together with bitterness and regret.
2. The marriage came to an abrupt end in March 2015 when the wife was arrested by police at the family home. She was subsequently convicted of an offence of actual bodily harm of the husband. She has been prevented from returning to the house first by police bail and then by the imposition of an indefinite restraining order. Over the past five years she has stayed in the homes of friends and family, but principally with her mother and step-father in Bicester ('the Bicester property').
3. Decree Absolute was made, following the husband's petition, in April 2016.
4. The wife has suffered from poor health over the past few years and most recently was admitted to hospital in May 2020 for ten days. A letter from her treating consultant dated 23rd June 2020 gives her diagnosis of alcohol-related cirrhosis of the liver. She is not a candidate for a liver transplant. Tests taken during her admission suggest that she is in a category of patients in which 45% survive more than a year and only 35% survive more than two years. A second liver test taken at the same time gave a score associated with a 19% mortality at 3 months. The wife was discharged to a care home where she is receiving palliative care, she told me that both treatment and accommodation are publicly funded.
5. Due to the Covid pandemic, she is isolating in her room, not even able to share meals with other residents or have visitors, but at only 59 years old she does not fit the profile of most of the other residents. She is claiming ESA although I suspect that at some points her benefits are likely to be reviewed as there would not appear to be any prospect of her being able to return to work.
6. On top of these difficulties, the wife has lately suffered significant bereavements; her mother died in 2018 and her younger sister died in June 2020.
7. The wife would wish to live her final years in dignity and in peace, ideally to have a home she could call her own, a car, and an income to enable her to have some small social life and pay for the necessities of life.
8. The husband has also suffered from poor health and remains unable to work at present due to ongoing heart problems. He is in any event at retirement age. Since separation he has continued to live in the former matrimonial home near Bicester. It is a small period, mid-terraced cottage, purchased jointly by the parties in 1983.

9. The husband would like the property to be transferred to his name only and for there to be a clean break between him and his ex-wife.

Issues in the case

10. A number of matters add complexity to the case.
11. There is not enough capital from the house alone to meet both parties' expressed needs. The net value of the former matrimonial home is £286,000.
12. The husband has two pensions with a combined CE of £104,369 (both in drawdown). The wife claims that she has no pension provision and her last employer of 16 years did not provide a pension.
13. There is a question as to whether the wife has (or has had) access to additional funds or assets which she has not disclosed to the husband or the Court. As to this:
 - a. the husband alleges that throughout the marriage and post-separation the wife has engaged in a sustained, complex and hidden campaign of financial abuse against the husband, siphoning money through forgery and deceit. The husband's case is that this has resulted in a doubly depleted asset-base because, he says, the wife has firstly had sole use of money over many years that was intended to be for the benefit of both parties and the family, and secondly, that she has incurred huge debts in his name – many fraudulently – which the husband has then used further capital to clear;
 - b. the husband asserts that the wife's disclosure has been incomplete and she has repeatedly failed to comply with orders requiring her to provide information relating to her income, assets and pension, and which might have enabled her to challenge the allegations that she has acted fraudulently and with the intention of siphoning off money for her own purposes;
 - c. the husband invites the Court to draw inferences that the wife has channelled significant funds into the Bicester property, the property previously owned by her late mother and step-father. The father invites the Court to draw a further inference from the wife's non-disclosure, that she has an interest in this property either from her investment in it or through inheritance;
 - d. alternatively, even if the Court finds itself unable to draw that inference or finds that funds have been dissipated, the husband invites the Court to find that the wife has effectively already had her share of the matrimonial assets. Though the share cannot be quantified, the husband says it is far in excess of half the disclosed assets in the case;
14. There is a question as to the extent to which the Court may or should have regard to the wife's limited life expectancy when assessing the parties' relative current and future needs.

15. The husband has applied for costs orders from the wife, including in respect of committal proceedings which were issued in April 2020 (and which led to the case being re-allocated to me by a District Judge).

The law

16. In deciding what if any orders should be made the Court must have regard to all the circumstances of the case, and in particular to the matters listed at 25(2) of the Matrimonial Causes Act 1973 (MCA 1973).

Financial Misconduct/adding back

17. Mr Turnell has helpfully taken me to the relevant authorities. Under section 25(2)(g) of the MCA 1973, the Court may regard as relevant to its decision making a situation where a party has severely depreciated or destroyed the matrimonial assets. As Baroness Hale makes clear in *Miller/McFarlane* such conduct must be '*gross and obvious*' (at [145]). But where it is so, as Lord Justice Cairns said in *Martin v Martin* [1976] 3 All ER 625 at 342G:

Such conduct must be taken into account because a spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably.

18. See also Bennett J in *Norris v Norris* [2003] 1 FLR 1142 and *R v B and Capita Trustees* [2017] EWFC 33, in which Moor J said at paragraph 84:

'[If] a spouse has created unnecessary debt or incurred unnecessary liabilities, this detracts from his or her contributions as well as meaning that the assets have been reduced. Moreover, provision needs to be made for liabilities that have not yet been discharged.'

19. For the court to 'add-back' assets that have been spent, the court has to be satisfied that there has been '*wanton dissipation of assets*': *Vaughan v Vaughan* [2007] EWCA Civ 1085, [2008] 1 FLR 1108; *MAP v MFP* [2015] EWHC 627.
20. Mr Turnell refers me also to the case of *H v H (Financial Relief: Conduct)* [1999] 1 FCR 225, [1998] 1 FLR 971, where it was found that in the later years of the marriage, the husband had concealed/siphoned funds and deceived his father-in-law into paying him more money which he spent on his mistress.

Non-disclosure/non-compliance

21. *Barton v Wright Hassell LLP* [2018] UKSC 12 considered the extent to which the Court should give latitude to a litigant in person who has not complied with the rules.

22. At paragraph 18 of the leading judgment, Lord Sumption said:

'.... [S]ome litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. ...

The rules provide a framework with which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights ...

Unless the rules and practice direction are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.'

Adverse inferences

23. In *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 (Fam), Mostyn J considered the impact of non-disclosure on financial remedy proceedings and the basis upon which the Court could or should draw inferences:

*'1. The law of financial remedies following divorce has many commandments but the greatest of these is the absolute bounden duty imposed on the parties to give, not merely to each other, but, first and foremost to the court, full frank and clear disclosure of their present and likely future financial resources. Non-disclosure is a bane which strikes at the very integrity of the adjudicative process. Without full disclosure the court cannot render a true certain and just verdict. Indeed, Lord Brandon has stated that without it the Court cannot lawfully exercise its powers (see *Livesey (formerly Jenkins) v Jenkins* [1985] FLR 813, HL). It is thrown back on inference and guess-work within an exercise which inevitably costs a fortune and which may well result in an unjust result to one or other party.*

16. Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:

i) The Court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.

ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the Court is satisfied he has not got.

iii) If the Court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.

iv) In making its judgment as to quantification the Court will first look to direct evidence such as documentation and observations made by the other party.

v) The Court will then look to the scale of business activities and at lifestyle.

vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.

vii) *The Al-Khatib v Masry technique of concluding that the non-discloser must have assets of at least twice what the Claimant is seeking should not be used as the sole metric of quantification.*

viii) *The Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that than that the Court should be drawn into making an order that is unfair to the Claimant.'*

What impact does a reduced life expectancy have on needs - if at all?

24. In *M v M (Property Adjustment: Impaired Life Expectancy)* [1993] 2 FLR 723, CA, the Court of Appeal upheld the first instance decision that the award of the wife, who was suffering from cancer and had a life expectancy of ten years should be reduced to reflect that:

'If the judge had decided this part of the case on the grounds that the wife's needs would reduce to nil on her death, then I accept that this might be a legitimate ground for criticism. As Mr Mostyn for the wife said in his skeleton argument, this contention, if taken to its logical conclusion, would mean that no wife should ever receive more than a life interest in the property. See Schuller v Schuller[1990] 2 FLR 193 at p 198; Smith v Smith (Smith intervening)[1992] Fam 69, [1991] 2 All ER 306 at p 437. However the judge did not base her decision on this ground. She said that of course the wife was entitled to a share of capital in order to dispose as she chose, but that in order to provide for her satisfactorily during her life, her share would have to be less than it might otherwise have been.'

The proceedings

25. The husband instructed solicitors shortly after separation in 2015 and on 5 May 2015 they invited the wife to submit a voluntary Form E. A number of follow-up requests were sent over the years but eventually the husband issued his Form A, in July 2019, hoping then to get disclosure from the wife within these proceedings.
26. The wife did not provide her form E by 9 September 2019 as initially directed.
27. She did not provide any documents for the first appointment. She did not attend the first appointment on 14 October 2019 and the Form E had still not been filed.
28. It should be noted that according to the letter from her treating consultant, the wife was in hospital in October 2019 having treatment for her liver disease. At that time she had a transjugular intrahepatic shunt stent (TPSS) placed through her liver.
29. She did file a Form E on 4 November but it was incomplete in material respects. Over the next few months the husband's solicitors asked her to respond to their requests for information to fill the gaps, but nothing was forthcoming.
30. At a hearing on 20 January 2020 before District Judge Devlin, the wife did attend and was ordered to reply to the husband's schedule of deficiencies by 17 February 2020. She did not do so, and despite agreeing three separate extensions with the husband's solicitors, had still not complied by the time of a further hearing before

District Judge Jenkins on 18 March 2020. He ordered that she do so by 3 April 2020.

31. She failed to do supply any more information and the husband applied for a committal order on 17 April 2020.
32. The letter from the wife's treating consultant suggests that the wife self-reported that she been abstinent from alcohol throughout the period of the proceedings, but started drinking again in April 2020. This led to a further deterioration in her liver function which eventually led to her admission to hospital between 14th and 26th May 2020. She was extremely unwell at this time.
33. The matter came before me on 10 June 2020 for directions on the committal application and to assess whether a trial listed for the following week could be effective.
34. The wife filed a response to the husband's schedule of deficiencies dated 9 June 2020, but which had not been received by the Court nor the husband by the time of the hearing. Her response is unsigned and the husband would say, significantly sketchy on detail and falling short of what is required.
35. The husband's solicitors have helpfully prepared a composite colour-coded schedule which shows the process of questions put, answers received (or not), further questions and answers.
36. At the hearing on 10 June I made some further directions for filing of evidence, including the letter from the wife's consultant and re-timetabled to this final hearing which took place over two days.

The final hearing

37. The hearing took place remotely. There were some technical issues with the Cloud Video Platform so I gave permission for us to continue using Teams. I am grateful to the Applicant's solicitor for setting up this up very quickly. The hearing was recorded by my clerk. The wife attended remotely from the room in her care home, the husband was in an office with his instructing solicitor. Both parties had access to full paper bundles and both were well able to navigate their way around them, in fact they seemed to get to the relevant document faster than I did using a pdf bundle.
38. Once up and running, audio and visual quality of the video call was generally good, with the odd glitch here and there. Due to allegations of domestic abuse, the wife's questions were put to the husband by me on her behalf. The questions came from three sources; (i) as directed by me the wife had filed a list of questions in advance; (ii) she added further to the list by e-mail following the husband's evidence in chief; and (iii) I put some questions trying to ensure that all points where the wife challenged the husband's evidence in her statement were put to him. I gave the wife a further opportunity to reflect following the husband's cross-examination and she said she did not want any more questions to be put.

39. The wife gave her evidence over the course of the second day. It was a long day and the process had some limitations because we were not all in the same room together and there were some distractions from outside noises or losses of connection. However, we took regular breaks and I was satisfied that all questions were fairly put, heard and understood, and answers clearly given. I considered the hearing was as fair as it could have been. In the particular circumstances of this case, the availability of a video link connection direct to the care home enabled the wife's full participation in circumstances which would have been difficult to imagine at the start of the year.

Witness evidence

40. Both parties' evidence was coloured by their different perspectives of the marriage. Even so, they seemed to agree about a lot of basic facts although they were coming from different angles. For example the wife said that during the marriage they often had arguments about money in which the husband would perhaps try to use his bank card to fill up his car with fuel and it would be declined. He would call her and say words to the effect, 'why isn't there enough money, I make enough money to cover our expenses, what has happened?' She told me that she would repeatedly tell him that they did not between them earn enough to cover all the family's expenses but that he just didn't want to hear it. The husband independently recalled as an example of arguments they had times where he would try to use his card at the garage and calling her. Where he thought his ex-wife unreasonable because – from his perspective - he had left all the money management to her and expected sufficient funds to be available, she thought him unreasonable because – from her perspective - he took no interest or responsibility for their finances, wanted only to be able to have the things he wanted, and was unwilling to discuss the details without the matter deteriorating to an argument.
41. Both parties worked throughout the marriage. The husband described himself as the main bread-winner. The wife accepted that he had earned more than her but stressed that she had worked throughout the marriage and had also been responsible for the home and looking after her daughter and step-son.
42. I found the husband to be a compelling witness when he described particular events or conversations. I am satisfied that he was doing his best to assist the Court and to give a true and accurate recollection of the facts. Consistent with his ex-wife's description of him, he did not come across as someone who was at all interested in the detail of the family finances. Even after discovering that there were significant mortgage arrears he was happy to take his wife's word that everything had been resolved. He did not seem to have been particularly curious to find out what had gone wrong or to investigate their financial situation further.
43. It is right to note however, that the wife accepted she had gone to some lengths to prevent him from finding anything out. She accepted for example that she had arranged for the post office to redirect all the family's mail for her attention only and that if the post man did come to their house, she would go out to meet him so that she got to all letters first.

44. The wife in this case presented as intelligent, articulate and who listened to the questions put to her. When cross-examined she answered in a straightforward manner, and fairly made a large number of significant and uncomfortable admissions. For example, she accepted that she had practised writing her husband's signature. She accepted that she had not told him about the mortgage falling into arrears or about the very great number of debts incurred and chasing letters received. She did not dispute that they had slept in separate bedrooms from around 2011 and did not challenge the husband's evidence that he had slept with the two family dogs, barricaded the door with a back pack filled with weights, although she said it was because of his fear of burglars and not of her.
45. However, at other times in her evidence she said no she did not accept something, or no, a point put to her was not correct, but then stopped. She was not forthcoming with an alternative version of events or an explanation. In her statement, it seemed to me that she chose her words quite carefully, focusing on a specific detail, but side-stepping around the real substance. For example, referring to the husband saying that both of the wife's sisters had told him that she had been funding her mother and step-father with money stolen from the husband. She denies that such conversations ever took place, but doesn't say anywhere in the statement that she denies stealing money. In another place in her statement she says, *'JB has made statements which suggest I have been dishonest and my behaviour unacceptable. I have also experienced personally that JB has been dishonest with me in our marriage.'* She makes reference to a Nationwide Building Society account he opened. She does not say in her statement that she denies being dishonest.
46. I formed the same impression from the way she gave her oral evidence. At too many points the situation was crying out for an explanation that only she was in a position to give, and we drew a blank, because she was unable or unwilling to assist, or she gave an answer that skirted round the substance of an issue. The husband alleged that he had throughout the marriage been subject to verbal and physical abuse from the wife, that she would pinch him, hit him. She was asked about this and said, *'it wasn't on a regular basis.'*
47. It is for the party making an assertion to prove it, and not for any party to disprove it. However, the Court has to assess all the evidence and where a question is asked and no answer given, the Court is entitled to have regard to that. In this case it was made absolutely plain to the wife from an early stage that there were questions about her interest in her mother and step-father's property. The wife's step-father was not invited to intervene, and it is unlikely to have been proportionate to ask him to do so in all the circumstances of this case. The wife was in a position to provide basic information about her mother's estate and her interest in the property but has given only the bare minimum of a response. She has provided a letter dated 14 January 2020, 'ref, the Bicester property':

Dear MB,

This is to certify that you have no entitlement to or interest in the above property. The property is under equity release with an insurance company. in the event of my death or moving into a care home it becomes the responsibility of them to administer the property.

Therefore unfortunately you become homeless once again.

Lots of love,

[name redacted] (stepfather)

48. The letter is presumably written for the purposes of these proceedings, but is not in witness statement form or certified by a statement of truth. It raises rather more questions than it answers. It doesn't answer the question about whether the wife's mother left her anything in her will (the wife has said that she died intestate). There is no valuation of the property nor indication of the extent of the loan taken out on it. There is a copy of the land registry document recording that it is subject to an equity release charge dated 28 March 2003. I have no information about the stepfather's state of health and whether the move into a care home is in prospect. The stepfather has not been made available to speak to the truth of the contents of this document.
49. To challenge the husband's evidence about conversations he had with the wife's sisters, the wife relies upon a handwritten letter from her sister *[name redacted]*. Again this is not in witness statement form and, consistent with the wife's witness statement, the phrasing makes it unclear whether what is being denied is the fact of having had a conversation, or that the wife had been providing financially for her mother and stepfather.

"To whom this may concern

It has been brought to my attention that my ex-brother-in-law [JB] has made a statement to his solicitors stating that I have approached him and informed him that my sister [MB] was providing my mother and stepfather financially out of [JB]'s money. This information that [JB] has stated is false and untrue information. If my presence is required in court to testify I am more than willing to do so.

Yours sincerely,

[MB]'s sister"

50. The handwriting appears similar to examples of the wife's handwriting seen throughout the papers, in particular the information given in support of the application to suspend a warrant back in February 2011.
51. Characteristics would appear to be writing in capitals generally but then reverting to lower case for odd words. She writes the number 2 often with a loop. It is perhaps of note that her sister signs herself '*MB's sister*', similar to the signature '*[name redacted]* (step-father)'.
52. I am of course not a handwriting expert, the original documents are not available and have not been reviewed by any expert witness for the Court.
53. But even if the letter was typed and I had no concerns about its handwriting it would be of little evidential weight. It is a bare denial, consistent with the wife's

denial given in her witness statement, but no more. Very unfortunately, the mother's sister died recently and so the wife was deprived of the opportunity of her giving evidence to the Court to speak to the truth of this statement.

54. By contrast, the husband gave vivid and clear evidence of his recollections of the conversations he had with both his sisters-in-law. He was expressive, showed by words, tone and facial expression his reaction to what he remembered being told. He told me first that when he and the wife first separated he was talking to the wife's sister [*name redacted*] and he said expressing a mixture of astonishment and bewilderment, words to the effect of '*where has all this money gone*' and she replied that there was a good chance it had gone into the Bicester property. He said that twelve to eighteen months later he bumped into the wife's other sister [*name redacted*] and her husband [*name redacted*] in a pub in Bicester. He said [*she*] told him that money had been '*pouring into the Bicester property ever since she left there she's never stopped paying for it*'. The husband said he replied, '*that cannot be true*', but she said, '*that's what happened.*' He told me that in the last few weeks before the separation they were at the Bicester property together, the wife had been drinking and they were arguing. He says she was shouting at him, saying '*you see these curtains, carpet, sofa and chairs, you've paid for that.*' He recalled that the wife's stepfather said to the wife, be careful what you are saying and that the wife's mother who had been sitting in a chair observing this all, then stood up and went upstairs, not saying anything.
55. On a balance of probabilities, I am satisfied that the husband's recollection of these conversations is reliable.

Findings in respect of financial misconduct

56. The husband's legal team has comprehensively analysed the evidence, tried to make sense of it, and prepared a number of very helpful schedules and tables which summarise their conclusions. I have been taken to a very large number of documents and had heard both parties give their evidence. I am satisfied to the standard of a balance of probabilities that throughout the marriage the wife did conceal information about their finances from her husband, and that without her husband's knowledge, she used his name, personal details and at times copied his signature in order to obtain money. In doing so she was deceiving both her husband and the financial institutions from which she was receiving money.
57. The husband earned around £2,000 a month and the wife about £1,100 a month. He worked as a technician in [*name redacted*]. She worked for an electrical company between 1993 and 2008. They had a joint account and the husband understood that the wife was managing their joint funds so as to pay the mortgage, bills and contribute £100 a month to his pension. They repeatedly had arguments about money but in general, not dealing with specifics.
58. I find that the wife was not just in charge of the finances, but kept them a closely guarded secret from her husband. She accepted that she set up a Keep safe service with Royal Mail (including her husband's and her daughter's mail) to divert all mail to their safekeeping and for her collection. She accepted that she had sent a

number of letters to phone companies and banks purporting to authorise her to act on her husband's or daughter's behalf.

59. When questioned about this she suggested that this had only happened when her husband was on a fishing trip in France and had needed her help to access credit cards. That does not explain how his signature would have appeared on the document, nor why authorities were sought for her daughter's accounts. I did not find her answers to be credible.
60. The husband first became aware of some sort of financial trouble in late 2008 when he discovered the mortgage was in arrears. By that time there had been possession proceedings which the wife had not told him about. He was not aware at that stage of any other debts.
61. The wife had attended two Court hearings in February and March 2006. Notice of eviction was given on 16 January 2007 and she attended Court and obtained a suspension of the warrant. There were further hearings in August and October 2009 and in February 2010.
62. On 27 August 2008 the bank issued a fact-find report, which was prepared following meetings only with the wife. The notes taken at the time suggest she told them her husband had a heart problem and she did not wish to tell him about the arrears or her unsecured debts. The wife accepted she would have said words to this effect at the time.
63. From at least 2005, arrears were mounting in respect of utility bills. A liability order for unpaid council tax in the sum of £957.49 was issued on 21 October 2005. There was also unpaid electricity, car insurance and house insurance.
64. In February 2011 the mortgage was once again in arrears and the wife issued an application to suspend another warrant for eviction. The husband says he did not know about this but at around this time he obviously did find out about the arrears because he was involved in the solution. The husband's mother died in June 2010. She had previously transferred ownership of her home in Wales to the parties and they planned to sell the property to raise funds. In the meantime, they borrowed £60,000 to clear the mortgage arrears from [name redacted] which provides charitable assistance to individuals working within the [husband's] industry.
65. The proceeds of sale from the Welsh property were £145,571. £60,000 was paid back to the [name redacted] Trust and the balance was paid into a joint Nationwide Building Society account on 3 May 2011. On 9 May 2011, £84,500 was transferred to another joint Nationwide account. This account required two signatures to withdraw money.
66. However, over the next eighteen months, almost all the money was withdrawn. The husband gave clear evidence about some items that were paid for with money from this account, including a second hand Ford Focus, a VW Polo car for their daughter, and a subsequent replacement as the first one was written off, a holiday for the wife and their daughter to go to New York, funds to upgrade by part-

exchange one of his guns, a shooting course for the husband. The remainder of the funds he maintained he had no knowledge of what they had been spent on.

67. The husband's solicitors have provided detailed analysis by schedule. Over an eighteen month period, £23,225 was withdrawn in cash, £13,663.18 in cheques and £47,400 transferred back to the original account where cash withdrawals were usually made immediately (totalling £41,045).
68. The husband complained to Nationwide in 2015 that they had allowed monies to be withdrawn without his authority. They admitted fault to an extent, recognising that up to £19,389 had been provided on the wife's signature alone, but maintained that the husband too was at fault because he had access to the passbook had he wanted it and that during this period funds had been taken using both signatures so he had opportunity to see what was going on if he had chosen to. The husband maintains that he did not have access to the passbook and, apart from the expenditures outlined, he did not give his authorisation for the withdrawals.
69. I find that apart from the items listed by the husband in his evidence, the remains of the funds in the account were withdrawn by the wife without the husband's knowledge either on her sole authorisation or because she found a way to persuade the bank that the withdrawals had been authorised by both account holders.
70. I find that the wife also encashed without the husband's knowledge policies that were in joint names. In her evidence she said they were policies to do with the mortgage, suggesting they never came to fruition, but I am satisfied from the evidence I have seen that they did mature, payments were made and she had use of the monies without informing the husband. Those policies included:
- An Irish Life policy which was to mature with a premium of £24,778 on 1 July 2005;
 - A Clerical Medical Endowment Plan started in 1988 and due to mature at £5,500 on 28 February 2008;
 - A Barclays policy due to mature in 2009 of £4,886.06;
 - an endowment for £5,948 referred to in the Barclays fact-finding document;
 - Premium Bond Wins
71. The wife accepted that she had incurred a number of debts in joint or single names of which the husband had no knowledge, including:
- a. In the wife's name:
- Lombard Direct £15,284.50 as at 14 April 2005 later enforced by Spratt Endicott;
 - Goldfish £10,821.97 as at 16 September 2005 later passed to Westcot;
 - Capital £10,158.31 as at 17 June 2005 passed to Fire;
 - Viking Debt Enforcement £5,371.74 as at 31 August 2005
 - First Nation £2005.46 as at 13 September 2005 passed to Aktiv Kapital
 - Tesco Personal Finance £2446.09 as at 19 September 2005 passed to Intrum Justita

- Barclays Loan £11,816.66 as at 26 September 2005 passed to Chelmer Collections then CDCS/Lowell
- Lloyds TSB £5,204.65 as at 24 October 2005 passed to Arrow Global
- CL Finance passed on to Lowell Financial £4,270.87 as at 14 June 2020
- Idem Servicing passing to Arden Credit Management £14,822 as at 3 May 2012
- Barclaycard £832.78 passed on to Lowell as at 18 June 2012 then Scotcall Limited and Fredrickson International;

These figures round up to £83,000.

b. In the husband's name:

- Barclaycard £5,157.92 as at 5 September 2005
- Creation Financial Services passed to Moorcroft £3,921.76 as at 25 August 2006 then Lowell Financial then Fredrickson International leading to a County Court claim;
- Barclays loan passed to CDCS £2,263.26 as at 19 May 2006 then Credit solutions and Red then BWG
- Thames Credit £5,873.49 as at 22 September 2008
- Aktiv Kapital £6,702.56 as at 3 April 2012 passed to CCS Collect

These figures round up to £23,916.

72. Several of the husband's debts resulted in Bailiff enforcement which the wife dealt with, and did not inform her husband.
73. I am satisfied that the monies the husband thought he was paying into the joint account every month to pay for his pension contributions and the expenses of their daily life including the mortgage and utility bills, ended up being used towards staving off enforcement of these debts or for other expenditures not revealed by the wife.
74. Following the separation the husband has used his sole income to pay off utility bill arrears including council tax arrears, British Telecom, Thames Water and Southern Electric.
75. I am satisfied to a standard of a balance of probabilities that in September 2001 the wife re-mortgaged the house in joint names to borrow £25,001. I accept the husband's evidence that he had no knowledge of this until December 2019 and I accept his case that the paperwork was completed by the wife alone. She accepted it was completed in her handwriting. Only her contact details are provided and the husband's mother's maiden name is spelled incorrectly. She accepts that it was her handwriting that put the date by both signatures. She was unable to describe to me in either her written or oral evidence of the circumstances in which the decision to apply for a mortgage was made, the reasons, the discussions taken place or the process.

[pdf document of signatures on mortgage application removed for purposes of anonymisation]

76. There is some resemblance of the signature on the mortgage application to the wife's efforts at copying her husband's signature which she accepts can be seen on a letter dated 13 July 2010.

[pdf document removed to anonymise]

77. This is the husband's signature on his witness statement:

[pdf document removed to anonymise]

78. I have seen within the bundle evidence of the terms of a prospective mortgage offer dated 1 June 2010 for the sum of £55,995 in the husband's name only with Abbey building society. This is the signature on the offer apparently indicating acceptance which looks identical to the signature above.

[pdf document removed to anonymise]

79. The mortgage offer was received on 23 June 2020 and was repayable over 12 years with the total repayment amount £87,440 over 12 years. It would appear that the mortgage was not in fact taken out. Around this time the husband's mother died and the liability to the mortgage company was paid off with the proceeds of sale of her property the following year in the sum of £60,000 so it may be that this loan was applied for but then never required. I am not satisfied that it could be established to the standard of a balance of probabilities that this loan was applied for by the wife alone without her husband's knowledge.

80. The wife accepted that she ran up large debts with other people including a friend called *[name redacted]*. I accept the husband's evidence, not challenged by the wife, that non-payment of this debt resulted in threats to the family leading to the wife's mother paying £3,800 but either that did not fully settle the debt or further sums were borrowed.

81. The wife also borrowed money from a *[names redacted]*. They wrote to her on 27 February 2010 reminding her that it was eleven weeks since they had written to her and if she did not repay the debt they would be seeking legal advice.

82. I find that by these various means, the wife did throughout the marriage either use money that was intended to be used for the benefit of both parties and the parties' children for her own purposes or caused the parties to incur debt which then depleted the assets of the marriage further.

83. In assessing the value of the matrimonial assets, I take account sums of money which the wife has on my findings taken and used for her own purposes to the detriment of the husband, as follows:

- taking out a mortgage in September 2001 for £25,001 without the husband's knowledge;
- first £60,000 from sale of Welsh property went to clearing the mortgage account and arrears which included the £25,001 mortgage. Half this

money was the wife's but she had effectively had the benefit of it already from monies obtained from the mortgage;

- using round figures and after discounting for items listed by husband, £70,000 of funds from the Nationwide joint account. A further discount could be applied because half the money is legitimately regarded as the wife's;
- £40,000 life insurance policies (discounted as she had some entitlement to half);
- £24,000 debts in husband's name;
- £83,000 debts in her name – arguable that husband not liable for these;
- £22,800 unpaid pension contributions.

84. I find that the wife through her actions caused the loss of no less than £160,000 to the husband in this way. I have used the above figures as a starting point, tried to avoid double-counting and acknowledging that the wife would have had an entitlement to fifty percent of some of these monies. I have added the full £60,000 from the Welsh property used to clear arrears, £35,000 from joint account, £20,000 life insurance policies, £24,000 debts in husband's name and the unpaid pension contributions.

Inferences about available assets to wife/dissipated assets

85. The wife has not dealt in any sort of detail with the allegations of financial misconduct in her statement, responses to questionnaires or disclosure. In cross-examination, she did not throw any more light on the situation. It remains unexplained what she did with the sums of money that I have found came into her possession throughout the marriage and without the knowledge of the husband. I accept to a certain degree that some of the monies went on the cost of living. The husband was paying maintenance for his older son and they supported their daughter to go to university. They did not live a lavish lifestyle, rarely went on holiday and if they did it appeared to be trips associated with the husband's work as a [name redacted] technician. They did not drive expensive cars. They did not carry out extensive home improvements.

86. The wife accepted that she has not given full disclosure of her financial situation or responded fully to the questions asked of her. She told me that it was not that she had been unwilling. She highlighted that she had not been in a position to get legal advice, and then she had found it overwhelming to deal with it herself. She said she had felt a bit concerned about putting things down in writing for fear of using the wrong terminology. She stressed that in the five years since separation she had not been allowed to return to the former matrimonial home and had been moving from home to home. She told me, and I accept, that at times her serious health issues have made it very hard to cope with the proceedings.

87. I acknowledge that for all these reasons she has found the litigation difficult. However, she is an intelligent person and the questions put to her were very straightforward and required straightforward answers. Although she did not attend every hearing, it now appears sometimes because she was physically unable to, the orders were clear and she did attend enough hearings at which the process

was explained to her and the information she needed to provide was set out very clearly.

88. The context of the non-disclosure is not just from the wife's more recent circumstances but from the findings of many years of the wife deliberately concealing information about her financial dealings from the husband.
89. The wife's disclosure about her current financial situation has also been unsatisfactory.
90. In her Form E she said she had no pension provision. When questioned by the husband she first ignored the question, then admitted she had a small pension but said she had drawn it down. She says the employer she worked for between 1993 and 2008 did not provide her with a pension. More recently she produced evidence suggestive of three different Aviva policies but all with a CE of nil.
91. The husband provided evidence of a Prudential pension which had a CE of £19,330 as at 10 July 2009, but the wife has not provided any evidence about what happened to it. Nor has she provided any evidence of her Additional State Pension entitlement or Basic State Pension forecast. She has provided a copy of an application for a state pension dated June 2020.
92. The wife has also specifically been asked to provide information about her entitlement or expectation to an interest in the Bicester property. She failed to answer specific questions about any inheritance due. She did not answer a direct question about whether assets were held on her behalf by a third party or likely to be received by her in the foreseeable future. She ignored the request to confirm whether she has a right of occupation in the property. She failed to provide the results of a Land Registry search in her name.
93. The wife has given little information to the Court to help understand her current income or expenditure. In her form E she says she receives £343 per month (£4,112 a year) in ESA. On 14 June she produced an income needs schedule estimating future income needs of £21,492 a year, although it does not include any current costs. She has disclosed only a very small extract from her Nationwide bank statements which do not show any day to day living expenses. If she has no other way of supplementing her income then it might be expected that she has borrowed money but she says she has no debts at all. She has not provided a credit report.
94. In all the circumstances, there is a clear duty upon the Court to consider whether adverse inferences should be drawn.
95. I remind myself that the Court can only draw inferences based on a reasonable assessment of the evidence.
96. The letter from her step-father does little to assist but it does enable an inference to be drawn; The stepfather says that due to the equity release charge on the property, should he die or have to live in a care home then the wife would not be entitled to live there. The reverse could therefore be assumed, that while he is

able to live in the property, so may his step-daughter live with him, as she has for most of the previous five years.

97. The direct evidence is of a large number of debts that started fairly small and went unpaid for many years, ever increasing as interest, penalty or enforcement fees were applied. On any view the parties' combined income would have been stretched fairly thinly to meet all the expenditures of family life.
98. The husband relies upon the documents found by him in bin liners in the matrimonial home. The documents show evidence of the debts, and the borrowing, but there is virtually no evidence of expenditure. The only evidence of that is a couple of lottery tickets and betting slips for a few pounds. There are no receipts for holidays, or clothes, or handbags, or trips to hotels, or food or alcohol or home furnishings.
99. I did however find the husband's evidence about the conversations with the wife's sisters and the argument he had in the Bicester property to be convincing. I prefer his evidence to that of the wife and I did not think that the letter she relies upon, even if I accepted it had been written by her sister, contained any information that undermined the husband's testimony.
100. On a balance of probabilities, I am satisfied that a significant proportion of the monies transferred into the Nationwide joint account following sale of the husband's mother's property were used by the wife to invest in furnishings and fittings at her mother and step-father's home.
101. The wife has two sisters. Her mother died in 2018, married and with a husband who had a need for a home. Whether she died intestate or wrote a will in which she divided her assets between her husband and/or her daughters, it seems highly unlikely to me that the wife would have inherited a share of her mother's estate that would have enabled her to rehouse herself independently.
102. The picture from the evidence I have seen is of a certain degree of financial chaos and mismanagement and, in particular with the Nationwide account, of a steady flow of cash withdrawals, which often indicates money being spent rather than saved.
103. However, alongside that there is compelling and significant evidence that the wife has deliberately concealed a massive range of financial transactions from the husband and that this has been for the purpose of benefiting her to his detriment. Even allowing for the difficulties of representing herself and managing her serious illness during these proceedings, she has had every opportunity to give full and frank disclosure of her own financial situation and she has chosen not to do so. Given that in the past the reason she chose not to tell her husband about their financial situation was that she was dishonestly using funds to her benefit and not his, it would in all the circumstances in my judgement be reasonable to conclude that this continues to be the reason that she has chosen not to answer the questions or provide the information that would enable the Court to understand her true financial situation.

Section 25 analysis

104. Against that background, I turn now to consider the particular factors at section 25 of the Matrimonial Causes Act 1973.

(a) The parties' income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

105. The husband retired on medical advice just before undergoing open heart surgery in December 2018. He is dependent on the income from his two private pensions (£8,100pa) and his state pension (£6,009).

106. The husband's private pension now with Old Mutual was previously with Legal and General. The husband had understood that his wife was contributing £100 a month to this pension from his earnings paid into the joint account throughout the marriage. Having listened to evidence from both parties, I do not accept the wife's case that the husband was often out of work. I find that he worked almost continuously throughout the marriage, save for when he was unable to work for health reasons – a knee operation, heart surgery – and that although he did move to work for different companies within the [redacted] industry or sometimes to working on contracts rather than an employed basis, he did so by his own choice. I find therefore that he would have been in a position to make regular monthly payments into his account. Having examined the statements he calculates that some £22,800 of contributions he thought were being made had not been. This has meant that his pension is worth far less than he expected it to be.

107. The wife has declared only an income of £4,112 a year. She told me in evidence that at present her accommodation and care costs are covered by public funding and that she anticipates that will continue for the foreseeable future. She has not given me any information about her entitlement to benefits other than ESA, or how funding for her accommodation and care costs are assessed or who is providing them. I did ask questions about whether or not any of these costs might be means tested. My concern was that if these benefits were means tested then being part-owner of the former matrimonial home or the property being sold and cash released to her from it may have an unintended effect of disqualifying her from the benefits she receives. She was unable to give me any information about this.

108. I have not been able to make specific findings about the wife's current income or access to assets, and in fact I consider it unlikely that she does have a beneficial interest in her mother's property or access to a large fund of money hidden away. However, it would appear that she does have an additional source of income that she has not been prepared to disclose to the Court, despite the duty of disclosure having been made very clear to her. If this finding is unfair to her, then she has only herself to blame because she has not given evidence to the Court which would enable a proper understanding of the position.

109. Having regard to the evidence she has given me and doing the best I can, I find that it is more likely than not that she will either continue to live at [name

redacted] care home or alternative state provision, or that she will be able to return to live with her step-father, and that in either case, the costs of her care needs will be met by the state and/or supplemented by other means that she has not disclosed.

110. There is no information to enable me to estimate the value of the wife's pension entitlement whether private or state. I accept that at 59, even if she has a pension, she may not be in a position to draw down an income from any pension she may have.

111. Both parties jointly own the former matrimonial home valued at £295,000. It is not subject to mortgage. If sold, sale costs might be up to around £9,000 leaving net equity of £286,000.

112. The husband has around £12,000 in savings and investments. He has a [modest] car. The wife has not disclosed any information about any assets or savings she might hold. The husband suggests she has jewellery valued at around £2,500.

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future

113. The husband lives alone. He originally stated in his Form E that he had a need for a one-bed property which he put at £220,000, but now says that it would make more sense for him to stay living in the matrimonial home, which is where he has lived for the last thirty seven years, and which has the added advantage of being close to the hospital where he has been under treatment. He has put his income needs at just over £20,000 a year.

114. Until her admission to hospital the wife had been living at the Bicester property, with her stepfather and late mother. Since her discharge the wife has been living at [*name redacted*] care home where she is shielding from Covid19.

115. In her Form E and in Court she suggested that she needs £150,000 capital and envisages housing herself in a static caravan or similar property where she could live alone. She would like to buy a car and she put her income needs at just over £21,000 a year.

116. The husband has debts of around £25,000 which includes legal fees, but also utility bills in his name which arose without his knowledge. There are council tax arrears and BT arrears in both names totalling £3,865. The wife has been asked to, but has not disclosed any information about her liabilities.

(c) the standard of living enjoyed by the family before the breakdown of the marriage

117. This factor cannot be a driver in this case because the funds available to them during the marriage were not shared equally, were built on an edifice of mounting debt and on any view the funds now available to the parties are limited.

(d) the age of each party to the marriage and the duration of the marriage

118. The wife is 59 the husband 67. This was a long marriage.

(e) any physical or mental disability of either of the parties

119. I hope that the wife's health continues to improve as it has since her discharge from hospital. However, her prognosis is not positive. She would much rather be living independently, with more freedom and the ability to see friends and family. Even if she were to be awarded sufficient equity from the matrimonial home to buy a property the reality is that it is unlikely she would be able to achieve that given the limitations placed upon her by her health. Her evidence is that her current health condition entitles her to receive continued financial support for accommodation and care and she does not envisage that position changing in the future.

120. The husband's health condition has prevented him from working since December 2018 but there is no evidence that his life expectancy is reduced significantly or at all.

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family

121. Both parties now look on the contribution of the other with a high degree of resentment and criticism. However, it is clear that both parties worked during the marriage – I have not accepted the wife's case that the husband was regularly out of work I find that he worked almost continuously and contributed all his income to the benefit of the family. The wife gave up work for a time when their daughter was very young, but returned to work. She earned less but her contribution to caring for the children and looking after the house was significant. The husband worked to maintain and keep the house in good repair.

122. As noted above, case law tells me however that, *'[If] a spouse has created unnecessary debt or incurred unnecessary liabilities, this detracts from his or her contributions as well as meaning that the assets have been reduced.'*

(g) the conduct of each of the parties, if that conduct is such that it would be inequitable to disregard it

123. In my judgement it would be inequitable to disregard the wife's conduct throughout the marriage. By her actions she exposed the husband to significant financial liability, depleted the funds they did have available to them, both by taking money and siphoning it off for her own ends and in meeting the liabilities that had been incurred. She allowed him to believe that she was making contributions to his pension but did not do so, which has had a direct impact upon the income that he now receives and has no prospect of improving upon.

124. She has failed to give reliable disclosure about her own financial situation, and I have drawn the inference that she is concealing the true position from the

Court with the aim of improving her financial situation to the detriment of her ex-husband. I refer again to the words of Mostyn J, cited above:

'The Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that than that the Court should be drawn into making an order that is unfair to the Claimant.'

(h) the value of any benefit which will be lost as a consequence of the marriage

125. This factor is not relevant in this case.

Conclusion

126. My assessment of the assets available to the parties is adjusted to reflect the wife's financial conduct.

127. On my calculations around £160,000 should be added back in as the wife's share already taken, to reflect the monies which were procured either by taking from joint funds or by using the husband's name without his knowledge to borrow money.

128. In addition, but for the wife's conduct, the husband's pension income would have been higher.

129. I find that the wife has been able to meet all her needs and the expenses of daily life from an undisclosed source of income and there is no evidence to suggest that will not continue. To the extent that finding is unfair to the wife, she has only herself to blame because she has not been honest with the Court by providing the information she should have done. The evidence she has given is that irrespective of any orders made she would continue to receive the benefits and care package she currently receives.

130. I do not consider that selling the former matrimonial home would be appropriate in all the circumstances of the case. I find that the husband would need no less than £220,000 to rehouse to meet his needs, the margins become very small. I appreciate that the wife would like to purchase a property for herself but given her current health situation she may not be in a position either to purchase a property or to take up residence in it. I find that the wife's current and future housing needs will be met by the state and/or her step-father.

131. For all these reasons, I consider that in the particular circumstances of this case, the former matrimonial home should be transferred to the husband's sole name and there should be a clean break as to capital and income.

132. On my analysis, the final balance sheet looks like this:

	Wife	Husband
Income	Satisfied sufficient income from pension/benefits/	Private/state pension is just meeting current needs,

	undisclosed source to meet needs;	shortfall due to wife's financial misconduct in not paying husband's pension contributions;
Capital	£160,000 nominally added back into wife's share to reflect financial misconduct	£286,000 matrimonial home
Liabilities	Undisclosed	(£25,000)
Pension provision	Undisclosed	£100,000 - would have been more but for financial misconduct
Percentage calculation of liquid assets	(160/421) 38%	(261/421) 62%

133. Because the wife has not disclosed her income, pension or liabilities this schedule is a fairly basic working tool. I have calculated the add-back on a conservative basis. I am satisfied that the wife would not be receiving any less than 38%. In all the circumstances of this case, and having particular regard to the parties' respective needs and considering whether those needs can be met from other sources, I consider that this apportionment represents a fair outcome.

134. I appreciate this judgment will be very difficult reading but hope it will have been helpful that I have set out the reasons for my decision in some detail. I hope that the parties will now be able finally to close this chapter and I wish them both well for the future.

Joanna Vincent
7th August 2020
HHJ Vincent
Family Court, Oxford