

**IN THE FAMILY COURT AT DERBY**

Combined Court Centre  
Morledge  
Derby  
DE1 2XE

Wednesday, 8 November 2023

BEFORE:

**DISTRICT JUDGE DINAN-HAYWARD**

BETWEEN:

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**TM**

Applicant

- and -

**AM**  
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Respondent

**MR B MALIK** appeared on behalf of the Applicant

**MR G LAZARUS** appeared on behalf of the Respondent

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**JUDGMENT**  
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1. THE DISTRICT JUDGE: This is an ex tempore judgment in relation to the case of TM and AM. In this judgment I will not deal with every issue raised between the parties. It is a single issue case. I have considered all of the documents before the court, the very helpful position statements filed on behalf of the parties, counsel's oral submissions and the various documents filed, particularly those that I have been referred to in the supplementary bundle. I have made it clear to the parties at the beginning of this case that I have read the entirety of the core bundle, as was agreed at the pre-trial review, but I would not necessarily look at every page in the supplementary bundle. I have been taken to quite a few pages in that bundle and I have considered them and reread them in formulating this judgment. I may not mention every page or every issue that has been raised in this judgment, but it does not mean to say that I have not considered them. I have.

#### Representation

2. In terms of the representation of the parties, Mr Malik is direct access counsel for TM, the Husband. TM is the applicant in this application, but he is the respondent in the original financial remedy application made by the wife. Mr Lazarus, instructed by Major Family Law, represents AM, the wife. She is responding to the husband's application, but she is the applicant in the financial remedy application, which had been concluded and I will deal with that in due course.

#### The issues

3. I am grateful to counsel for their significant assistance to me in hearing this matter, and in particular in identifying the issues, both in the written schedule of issues but also in the submissions at the end of the case and in the way that they have dealt with this matter. I will refer to the husband and wife as 'husband' and 'wife'. I appreciate they separated now over three years ago. I do not mean them any disrespect, but it is easier in the course of this judgment to do so.

#### The application

4. This is an application by the husband to set aside a consent order that was entered into on 18 November 2021. The application is dated 12 January 2022. I will not refer to many page numbers in the bundle but I will refer to this one, it is at A71. That application says in support of the application, "Please see the enclosed witness statement and exhibits dated 7 January 2022." That is the witness statement of the husband which is at B1 to B10. I have read that witness statement a number of times and most latterly in the lunchtime adjournment before delivering this judgment.
5. The parties separated after what can be considered by anybody to be a long marriage, with two now adult children, and the starting point for me is the consent order of the 18 November 2021. The consent order probably came through the Financial Remedy consent order portal in the normal course of events, and judges get allocated time to deal with these consent orders. This is probably why, putting two and two together, District Judge Revitt dealt with it initially, requested some more information, and then it came in front of District Judge Wylie on 18 November 2021, who approved the order.

The original consent order.

6. The husband maintains that he did not enter into that consent order, but he does not say that in his application to set aside the consent order, and neither does he say that directly in his witness statement. I find he did enter into the consent order. The terms of the consent order included that the equity in the matrimonial home was to be transferred to the Husband. The agreement was that the home was not going to be sold provided the wife could be released from her covenants under the joint mortgage and that was agreed on a clean break basis with a sale in default.
7. The reason for this unequal division of matrimonial assets in the Husband's favour, which has been set out in a number of communications with the court in order to justify the consent order, and in offers between the parties, was that the wife owned some other assets. These were non-matrimonial in nature and the court's starting point would be to look at the different categories of assets separately, in terms of what were non-matrimonial assets, being those that originated for example from inheritance, and

matrimonial assets. In effect, the only matrimonial asset here was the former family home. The Wife's assets came from inheritance.

8. Counsel agreed a very helpful schedule of issues that I had to consider. I have had those in front of me throughout the last two days and it has been helpful to concentrate my mind in terms of the issues before me. They are as follows: firstly, whether the wife failed, prior to signing the consent order before the Court on 18 November 2021, to disclose ownership of a valuable diamond and thus procured the husband's agreement to and the court's approval of the consent order through material non-disclosure / fraud. Second, whether the wife's solicitors, in response to District Judge Revitt's order, sent a schedule of assets to the court containing figures which amended information in the original D81 forms which each party had previously filed, without consulting the husband on, or informing the husband of, those different figures. Third, dependent on my decision, whatever may be the court's determination of the issues at one and two above, what consequential directions and/or orders for costs should follow.

#### Incorrect D 81s

9. I find that the husband's application to set aside the consent order is really on two grounds. I can deal with the first quite swiftly. The husband's dissatisfaction, and I think he goes further than that and alleges fraud in a number of emails, was with the content of either the wife's form E, and/or her D81, which he alleges was altered. The husband has had representation some of the time in the course of these proceedings, but also represented himself. Therefore, sometimes there are emails from his solicitors, sometimes he deals with issues directly, and no doubt that is as a result of funds being available or not. In one of his emails, I find that he had stated that he was not dissatisfied with the consent order itself, but he was unhappy with the financial information that was put before the court.
10. At this juncture I should remind myself that in 2021 the procedure for consent orders often had the submission of two competing D81 forms, one from each party. Had the Court had the benefit of one agreed composite form, I suspect that the issues that arose

from the competing D81s probably would not have occurred. But there is, as I say, that dissatisfaction by the husband, but I find the difference is not material.

11. The husband has stated in correspondence after the consent order, that all he wanted to do was to make sure that the Wife's D81 did not contain falsehoods. The wife has been cross-examined as to the variations of these forms, whether the figures were correct or not, and she has answered those questions as candidly as she can, although I accept that it is usually the lawyers that fill out those particular documents.

#### The £2 million diamond

12. The second basis of the Husband's application is the issue in the case. This is the Husband's assertion that the wife has concealed the ownership of a diamond ring, with an estimated value of £2 million. The Husband submits that this is material non-disclosure, which if I find to be correct, would undermine the basis on which the consent order was entered into. What the husband says in his witness statement was that his knowledge of the diamond came through an anonymous tip off, which I note came in early November 2021 and therefore in the chronology of events, I find pre-dated the consent order being approved by the Court. The husband corrected his witness statement in his oral evidence to state that "anonymous tip off" was probably the wrong description, as the tip off was not anonymous to him, but he wanted to keep the identity of who had given him this information private to him and did not want to disclose it.
13. Throughout the duration of these latter proceedings of the husband's application, Auctioneers and Valuers in Northumberland have become involved. They had been commissioned by the vendor to sell the ring. In particular, an auctioneer and partner in the business became the subject of an application for disclosure as a non-party, made by the Husband. The auctioneer responded to the original disclosure application by declaring that neither the wife nor the wife's mother, matched the description of the vendor, and that nobody with either surname was involved in the contract to sell the diamond.

## The evidence and the Auctioneer

14. Disclosure orders were made by District Judge Clow against the Auctioneers as a non-party, and I think it would be fair to say that they have largely not been complied with. There has been the odd document that has been disclosed to the parties, but nothing like the disclosure that was anticipated by District Judge Clow when he made the order that was the subject of that application. The Auctioneers are in breach of that order to a significant extent. Unhappy with the breach of the order, the Husband then sought a witness summons to be issued against the auctioneer to attend a production appointment and then the final hearing.
15. I heard the evidence of the auctioneer first. One of the problems with a witness summons is that the applicant for the witness summons can never be quite sure what is coming through the door or what the witness will actually say. I suspect that nobody could have been prepared for the colourful evidence of the auctioneer yesterday. I think it is fair to say that the auctioneer was very angry having driven to derby from Northumberland. In relation to looking at how a witness gives evidence, in my judgment, witness demeanour should hold very little weight. Lord Leggatt gave a speech in November 2022 to the At A Glance conference, at which I was present, where he dealt with the dangers of allowing witness demeanour to prejudice a judge's view of what that witness was actually saying. I find Lord Leggatt's guidance gives a useful check.
16. I must put how the auctioneer presented in giving his evidence to one side. That demeanour does not go to the veracity or otherwise of what he had to say, which was this: he said that he had sworn on the bible and so this was the truth. The story of the diamond being found at a car boot sale, being valued by his auction house, and then being given a value of £2 million, was just that, a story, completely fabricated by him, to stir up interest in his failing auction business in a post pandemic era. The car boot story, read by the husband, given to the press and the world in general was a lie, to generate some media interest for this diamond and the commission a sale would bring to his business.

17. The auctioneer stated that he was desperate at the time of the lie, to try and save his business, of which he was a director and shareholder. It was a 100-year old company, something that he wanted to impress on the court, and the businesses' recovery from Covid did not go according to plan. He explained to me his modest roots and how he had been able to build up the company from a relation, I believe his father or grandfather, and he was proud of his achievement. What he told me was that he could not have envisaged the fallout or aftermath of the story about the diamond, and he said on a number of occasions that there were hundreds of TM's, all claiming that the diamond was theirs or there was some personal link to the diamond. He stated that the diamond actually came from Antwerp and because of a personal connection in his company, the owners were allowing his company to sell it for them. It was a 34 or 36 carat diamond and the owners owned an even bigger diamond which may have been 54 carats. If the auctioneer and his company had been successful in selling the smaller diamond for £2 million or so, then they could have secured the sale of the bigger diamond as well. He told me that the sale of this diamond would have given his company a commission of around £400,000 and that would have saved the company, or at least reversed the diminishing performance of the company in times of post-Covid.
18. The connection between the auctioneer, the diamond and the seller was his company's gemmologist, and he said that the diamond had been sent from Antwerp to either an office of his company in Hatton Garden, or a sister office, I was not quite certain, but it was certainly an office that had the auction house logo. I was shown a video of the diamond arriving at the London office and being opened by the auctioneer. The video has the Hatton Garden auction house logo in the background and I was able to hear the excitement of the auctioneer in receiving the diamond. Due to the falling out or unhappiness of the vendor of the car boot story line that had suddenly accompanied the diamond, the owners immediately demanded it be returned to Antwerp and there was no sale for the Northumberland auction house. The auctioneer said that it never went, whilst in his hands at least, further north than Hatton Garden in London. He told me that he had to take out specialist insurance to convey the diamond back to its owners. He said that the fallout with the sellers, who, he explained to me, were worth billions of

pounds, was devastating for him. When they saw their diamond splashed all over the British newspapers, they wanted to know what was going on and wanted the diamond back, and the auction house lost the sale.

19. In my judgment, the auctioneer was not an impressive witness. I find that he was excitable, agitated and aggressive. He had formed a negative view of the husband and aligned himself, in my judgment, with the wife, who he perceived as wronged by the Husband. He referred to the husband, in my judgment, unhelpfully, as greedy, and I was surprised at the aggressive nature of his evidence, which was not warranted from the appropriate questions that were being asked of him.

#### The video

20. The auctioneer did not bring with him many, or indeed any, documents, that he was prepared to show me, save for the video on his phone. I had anticipated an exercise where we could ensure that all documents he had been ordered to supply were in the court bundle, but it became obvious to me at a very early stage in that exercise that there were not any documents to check off. I find that he was in breach of the order of District Judge Clow. What the auctioneer says is that he did not have those documents to disclose in the first place. He gave a number of reasons, but the main one seemed to be that the company was now in liquidation and any documents he did have were with the official receiver. In my judgment, he did not seem to understand the seriousness of his breach of a court order. At one stage he accused me of being a kangaroo court, which, underlined to me that he did not understand why he was here or what he had to do, which was really to answer questions in as straightforward a way as possible and to tell the truth.
21. However, I do find that this is the first time that he has told anybody the explanation for the story, and he said that included his employees, as he had had to ensure that nobody else was in on the lie. I place very little weight on what he said, but the weight that I do place is on the video he showed the court. It seems from the video that the diamond was received, I find on the balance of probabilities, in the post or a courier or however it was transported, to his offices or his sister offices in Hatton Garden, and I



find that it came from Antwerp, and on the balance of probabilities it was returned to Antwerp. I find that there is no evidence that it ever went north of London, apart from being in the post and being opened at Hatton Garden, and certainly not in a car boot sale in Northumberland. I find that the story of the car boot sale was false, but having provided such a massive fabrication in terms of what happened to this diamond, and such a massive lie which included duping the British press, it seems extraordinary for him now to come to court and say that I should believe every word that comes out of his mouth. As I say, an unimpressive witness, but I find that the video is corroborative evidence of what he says.

#### The Wife's evidence.

22. Turning then to the evidence of the wife. Her evidence is in her witness statement and that is signed by a Statement of Truth. She was cross-examined, at length, appropriately by Mr Malik. She was also cross-examined about the miscalculation in the ES2-type document, I do not think it was actually an ES 2 but it was certainly a schedule of assets, and her form E and the new D81, in terms of the equity in the home and the debt. I find from that evidence that the miscalculation was quite modest. In the scheme of things, it was a minor miscalculation or error, and I certainly do not find on the balance of probabilities that there was a miscalculation that was designed in any way to mislead the court. On the balance of probabilities, I do not think that is evident before me. Certainly, there were different figures, but I am very used to seeing variations of parties' figures and the court will usually take a broad brush view. They were certainly minor when looking at the intention of the consent order, which was to give the husband 100 per cent of the matrimonial asset, being the former family home.
23. Cross-examination of the wife then turned to the diamond. The wife gave evidence in line with her witness statement. She denied possession or anything to do with it, and Mr Malik, of course, has had to quite rightly accept that there is no direct evidence to rebut the assertion from the wife. In terms of his cross-examination there is nowhere to go with that, where there is a blanket denial from the wife that she had any involvement with this diamond.

24. There was also a police report. The Wife was cross-examined on this document. The Husband had reported the Wife's alleged fraud to the police. The police's subsequent report, the wife says, contains a mistake that wrongly connected her to the diamond. This was corrected by a subsequent letter from the police, and I find that there was an error made by the police but it was rightly corrected by them so as not to implicate the wife. After this finding, there is therefore absolutely no direct evidence to challenge the wife's assertion that she knew nothing about the diamond, save the husband's unshakeable belief that she does. I found that she was a straightforward and credible witness.

The Husband's evidence.

25. I then heard from the husband. He has filed a witness statement, as I have referred to. That witness statement is signed with a Statement of Truth. There was an amendment in terms of the anonymous tip off, in that it was not anonymous to the husband, but he did not want to disclose the name of the person as the source of his belief. This is an obvious lacuna in the presentation of the Husband's case, as it is the primary source from which the Husband believes the diamond belongs to the Wife. I still do not know who or what caused him to have this belief.
26. In my judgment the husband is unflinching in his belief that the diamond is the wife's, and that she has benefitted from either the diamond, or the net proceeds of sale. The husband gave evidence in a manner that suggests to me that he truly believes that the diamond is or was the wife's, and she had benefitted from it. However, I find that there is not a shred of evidence to support his case. There was not a shred of evidence on the balance of probabilities before the hearing started, there certainly was not after the evidence of the auctioneer and the court seeing the video, and I was surprised that the husband did not wish to reconsider his position after the evidence of the auctioneer. That is a matter for him, but the auctioneer's evidence was the height of the husband's case. Despite the pretty appalling manner in which the auctioneer gave his evidence, he did not support the husband's case, which the husband accepted in his own evidence.

There was no other evidence, apart from the Husband's overwhelming belief, which I find on the balance of probabilities, to be wrong.

27. The husband accessed the wife's private emails during the period leading up to the consent order. Some of them contained legal advice from her solicitors that the Husband just should not have been a party to. I find that the husband wrongly accessed her emails as he was desperate to find anything that would support his case. They have no place in the husband's hands, but they support the Wife's case that she had nothing to hide.
28. There are also outstanding costs orders against the husband which have not been paid. The implications of a Hadkinson direction were discussed at the PTR which was raised by myself, but the wife wanted to proceed and draw a line under these proceedings.
29. In terms of the weight that I put on the husband's evidence, I find that the husband is genuine in his belief that the wife has sold this diamond. I find that on the balance of probabilities he is unable to consider his position objectively and to look at the lack of any evidence that supports his contention. He says I must find that he is right because he says so. I place little weight on his demeanour. He clearly has been upset at some of the allegations that have been made and the way matters have unfolded in this court hearing. I put that to one side when I consider his evidence, it is not relevant for me to consider in dealing with the issues in this case. I find however that he has convinced himself that he is right.

#### The circumstantial evidence

30. The burden of proof is on the husband. It is the civil burden, which is the balance of probabilities. The fraud allegations carry a higher burden but the husband accepts that there is no direct evidence to support any of his allegations regarding the diamond. He is seeking a finding from me based on illusive circumstantial evidence. I categorise this circumstantial evidence really into four categories of what he is saying and what he is inviting me to find.

31. The first is that in 2021 he received this tip off that the wife was selling a diamond. He says it is a source he does not want to disclose. The date in my judgment is significant, because the date the husband says he received this tip off predated the consent order being entered in to. I would have thought, in my judgment, that the author of the tip off would have been the starting point of the husband's case. I find that this tip off came from a source that the Husband trusts, and although I do not know who or what it is, it sent the Husband, in my judgment, on the wildest of wild goose chases.
32. Secondly, the story spun to the Press by the auctioneer, of the diamond being bought at a car boot sale as costume jewellery. The husband says that the parties would often attend car boot sales in the Newcastle area and the wife often bought costume jewellery from such a sale over the years. He says that it is highly plausible that the report of this diamond being found at a car boot sale would fit into the pattern of the parties' behaviour when they were together of buying jewellery at car boot sales. In my judgment it would be a stretch to prove this, but after the video evidence and my finding in relation to where this diamond has come from (Antwerp) and where it went back to (Antwerp), in my judgment this assertion cannot be right. I have found that the diamond never went north of London. The Husband has reacted to the auctioneer's lie.
33. Thirdly, the husband believes that the diamond was valued in 2021 or thereabouts, and was sold privately by the wife, he thinks around 19 to 21 November 2021. I find on the balance of probabilities that there is no evidence to support this, and I find that on the balance of probabilities, looking at the video evidence of the auctioneer, that it did not happen.
34. Fourth, the husband says that he had a vague recollection of the item itself, having seen it some 10 to 13 years beforehand, and I now find, having heard the evidence of the auctioneer, that that cannot be the case in relation to this diamond. Of course, the wife may well have bought other jewellery at a car boot sale, just not this diamond.

### Findings

35. This application solely involves a factual dispute. My findings are that there is no direct or indirect evidence to support the contention of the husband in relation to the diamond. There is no circumstantial evidence that supports what the husband says in relation to the diamond ever being in the wife's hands and there is no evidence that discharges the burden on the Husband. I make these findings on the balance of probabilities and the evidence before me, that there is no evidence whatsoever in support of the husband's contention that this £ 2 million diamond or its proceeds belong to the wife.
36. In relation to the second limb of his argument, in the D81 or the ES2 type schedule of assets, I find that the discrepancy is minor and inconsequential. The Husband perceives that there is some unfairness to him created by this discrepancy, but I do not find that.
37. I find that the husband did consent to the consent order. I find that the consent order was generous to the husband in giving him 100 per cent of the matrimonial assets, and if there had been any rejection of the agreement by the court, it is more likely to have been because the division of the matrimonial assets did not favour the wife, it was advantageous to the husband. I was surprised when the husband stated that he considered that the agreement reached was disadvantageous to him. That is repeated both in his statement and also in correspondence, and has led to the Husband putting words being put into District Judge Revitt's mouth that he had given an indication that he said it was disadvantageous to the husband. There is no evidence that that was the thinking of Judge Revett, one way or the other. The matter then came in front of District Judge Wylie and the consent order was entered into.
38. If a party is unhappy with an order of the court then their remedy is to apply to set aside the order on various grounds or appeal the order. The court will look at the period of time it has taken for an application to be made, after the original order has been made. 28 days without a valid explanation for further delay would be the upper limit of such an application, although it very much depends on the circumstances of each case. Here the Husband has admitted he had the 'tip off' before or at the time of the consent order. Therefore at least two months elapse before the application is made by the

husband, and, of course, there is also the correspondence from the Husband that says that the husband was not necessarily unhappy with the order, although clearly unhappy with the information given to the court by the Wife's solicitors. There is no basis to set aside the consent order in any event, but the delay weakens the Husband's case further.

39. In conclusion, I find, on balance of probabilities that there has not been material non-disclosure by the wife, or materially incorrect financial information before the court for me to consider whether the consent order should be set aside. I dismiss the Husband's application and will now turn to costs.

