

Nuetral citation number: [2024] EWFC 175 (B)

Case number ZZ22D29242

In the Bristol Financial Remedies Court sitting at Salisbury

Before:

DISTRICT JUDGE HATVANY

Between:

EC

Applicant

And

JC

Respondent

Extempore JUDGMENT
13th June 2024

1. This is the final financial remedies hearing in what has been protracted, costly and destructive litigation. The litigation has not been confined to the financial remedies court. In 2022 the wife was granted a non-molestation order on a without notice basis. This was compromised on mutual undertakings and no adverse findings were made against the husband. There has been protracted child arrangement proceedings in the Family Court. Broadly speaking, the wife is the

main carer of the two twin boys and the husband has contact midweek, every other weekend and half the holidays.

2. For ease I hope the parties will forgive me for referring to them as the husband and the wife. No discourtesy is intended to the parties.
3. The parties married in 2011 and separated in 2022. The husband is aged 60 and the wife is 58. The parties have twin boys who are 9 years old. The twins attend Primary School and will attend secondary school in September 2026.
4. The W has two adult children from her previous marriage, C (22 years old) and R (18 years old). C lives with his girlfriend and R lives away at university.
5. The twins continue to live in the former family home with the wife, their mother.
6. It is an unfortunate feature of this case that both parties have incurred huge costs. This will make achieving the objective of clearing debt on both sides and enabling both parties to rehouse in 3-to-4-bedroom properties close to the twin boys' school problematic.

7. To date the husband's legal fees, amount to some £151,000 and the wife's £177,000. Both sides have had to take out expensive litigation loans incurring excessive interest charges of up to 24%.

8. The two main assets are the former matrimonial home and the husband's business which I will refer to as X Ltd in which the wife holds a 30% stake. Although the husband incorporated the business long before the parties married this is a case where any non-matrimonial assets are going to have to be invaded to meet need.

9. The parties are ably represented and I am grateful to both counsel for the way they have presented the case and for their helpful closing submissions.

10. The husband works as a stunt coordinator. He occasionally carries out his own stunts but gave compelling evidence that at the age of 60 he no longer has any desire to jump out of upper floor windows, be run over or set fire to himself.

11. He now largely restricts himself to stunt coordination work. He works in the TV and film industry. He draws a modest salary to make use of the single person's allowance and transferred a 30% shareholding to the wife so that she can also benefit from the single person's allowance. The rest of his income is drawn by way of dividends from the company. The wife complains that she has received no dividends since separation notwithstanding her 30% shareholding.

12. The husband says that he has enjoyed some lucrative contracts with the BBC, Netflix and others in the past but that his order book is currently empty. He gave evidence that his business was severely hit by a recent strike within the industry.
13. The wife works as a children's illustrator. She clearly has unique skills in this sector and recognises that she must increase her earnings while working round the needs of the two young twins in her care.
14. The two primary assets are the former matrimonial home and X Ltd. The former matrimonial home has net equity of £1,174,947. The assets of X Ltd largely consist of a flat in London and Bath. X Ltd also has a goodwill element because of the husband's work as a stunt coordinator. The company owns various stunt equipment. Somewhat unusually the company also owns a self-propelled gun which I erroneously referred to as a tank. The wife produces evidence of an offer for the tank of £45,000 but the bona fides of the proposed buyer are questioned by the husband. In any event the issue of the value of the tank has already been dealt with when a previous judge directed a single joint valuation which came to £22,000. The husband wishes to retain this and gave evidence that he uses it to raise money for children's charities and help for heroes. The single joint expert values the company at £336,380 to which must be added cash reserves of £23,500.
15. Unfortunately, a great deal of time and money has been wasted investigating a trading account that was closed by the husband in 2019 and ZL plc a company that was wound up on 2 May 2013 in which the husband held shares.

16. In addition, I am told the parties recently sold a painting at auction. The net sale proceeds of £21,000 are currently being held by the auctioneer pending further order from this court.
17. Turning briefly to pensions, the husband holds pensions with a value of £135,000 having recently cashed in £80,000 towards legal fees. The wife retains the benefit of a pension sharing order following the dissolution of her previous marriage with a value of £281,000.
18. The updated ES2 form shows liabilities of £181,407 for the husband and £210,703 for the wife largely comprising of expensive litigation loans taken out by both parties.
19. It appears that because of the husband applying for decree absolute prematurely an additional CGT liability of £16,617 has been needlessly incurred.
20. In terms of the parties' income, the husband draws a salary of approx. £12,000 per annum to utilise his single person's allowance and pays out dividends from the company as set out by the single joint expert and reproduced below:
 21. 2018 net profit £81,000. dividend £96,000
 22. 2019 net profit £87,000 dividend £73,000
 23. 2020 net profit £63,000 dividend £87,000
 24. 2021 net profit £137,000 dividend £152,000

25. 2022 net profit £119,000 dividend £134,000
26. On these figures, X Ltd appears to have survived Covid in relatively good shape.
27. I note that in 2022 the dividend pay-out exceeded net profit by some margin which the husband was quick to attribute to what he referred to as the wife's profligate spending.
28. The husband gave evidence that he now has no work. I was not taken to any evidence in the trial bundle to corroborate this. Ms Tanner invited me to be cautious in accepting the husband's oral evidence about this given the increase in X Ltd's net profit since Covid.
29. I do accept the husband's oral evidence that his work would have been impacted by the recent industry strikes although I note that these are now at an end.
30. Both parties sensibly agree that the wife should transfer her 30% shareholding in X Ltd back to the husband as part of any settlement.
31. The wife works as a self-employed illustrator. Her current income is about £18,000 per annum and her earnings topped up by universal credit. She also receives child benefit of £1800 per annum and fluctuating child maintenance currently about £11,000 per annum.

32. It seems that unfortunately the husband only declared his net salary to the CMS and omitted to mention dividend income for some time. This resulted in several reassessments and there exists about one year's worth of arrears amounting to £11,500. These reassessments are ongoing and depend on dividend payments received at the end of X Ltd's financial year which does not equate to the tax year. The wife has consistently questioned the CMS payments received which have been erratic and played havoc with her finances. This in turn has impacted on her ability to provide care for the twins. It is for this reason that I favour global maintenance. More on this later.

33. The husband criticises the wife for not increasing her earning capacity. I do not share the husband's criticisms. The wife clearly has unique skills as an illustrator and is now beginning to capitalise on those skills. She is the main carer for two young twins and her current work enables her to meet the children's needs for example by collecting them from primary school at 2:30 PM during the week and providing their day-to-day care. She can work from home which saves on travel costs. She will need an office to enable her to continue to do this. She was taken to her CV which illustrates a number of skills, but this is now 19 years old. The arrangement between the parties was always more traditional with the husband as the breadwinner leaving the wife to raise two young twins. I accept the wife's evidence that she will continue to build a reputation as a competent and gifted illustrator and that she should not be expected to find relatively menial work as a teaching assistant, receptionist or clerk. This would make it difficult to meet her care commitments and would be unlikely to generate any further income in the future when one factors in travel, childcare and other costs.

34. Both parties have similar housing need. Both need a 3-to-4-bedroom property.

The wife's housing need is somewhat greater than the husband's because she will need to be within the catchment area of the twins' school. At the moment, they are at a primary school, but they will move to secondary school in September 2026. The husband says this will need to be the local Comprehensive School and that the twins are unlikely to get into the local Grammar School. The wife refutes this. I sincerely hope that any disagreement does not result in further litigation in the family court.

35. The wife puts her housing needs at up to £750,000 while the husband purports to identify suitable properties commencing at £550,000. It remains to be seen whether the wife's expectations are realistic given the high level of debt of both parties.

36. Whilst the husband's mortgage raising capacity is put at £250,000, he also relies on recent updated mortgage raising capacity evidence that this will be reduced to zero if he is ordered to pay spousal maintenance. Unfortunately, it is not clear whether the first mortgage raising capacity report takes potential spousal maintenance into consideration.

37. The wife's mortgage raising capacity is very limited by virtue of her current modest earnings topped up as they are by universal credit.

38. Discussion

39. At the outset of the case, I commented that irreparable damage had been caused by excessive costs on both sides. This now makes it problematic to both clear debt and rehouse both parties in properties suitable for their needs and those of the children.
40. I felt that costs were disproportionate on both sides but particularly on the part of the wife. The wife chose to change solicitors, and this doubtless led to higher costs being duplicated while the new solicitors played catch up.
41. Numerous questions were put by the wife's former solicitors to the husband's solicitors in relation to both a trading account that the husband closed in 2019, and ZL Ltd. A company that was wound up as long ago as May 2013.
42. At first blush, it seemed to me that the wife spent a great deal of money asking questions about historical assets with no value.
43. However, the husband did not help by providing wholly inaccurate information in his form E. This is a key document supported by a statement of truth. In that document the husband gives the value of X Ltd as £16,625 and the value of the London flat as £-630. When he was cross-examined about this, he was simply unable to provide any explanation.

44. This meant that the wife could no longer take anything the husband said at face value. The wife had entertained the hope that she might be able to keep the house in return for not making a claim against the husband's business.
45. When the husband undervalued his business, this set into train an atmosphere of utter distrust between the parties and I now have a better understanding as to why the costs are as high as they are.
46. This made it very difficult for the wife's solicitors to take seriously the husband's various offers of non-court dispute resolution in circumstances where inaccurate information had been given.
47. As Ms Tanner rightly concedes, the finger of blame can be pointed to both parties. The husband for giving information that was misleading in his Form E and the wife for asking a disproportionate number of questions in relation to historical assets with no value.
48. Matters did not improve when the parties gave mutual undertakings to compromise the domestic violence injunction application taken out by the wife. The husband undertook to pay all the outgoings on the house, and I find that he has largely complied with his undertaking. The wife in turn undertook to pay half the net profits from the air B&B business but on occasion she somewhat cynically only paid 1p despite the business having previously been profitable.

49. In short there has been culpable behaviour on the part of both parties resulting in distrust and the needless and disproportionate escalation of costs. For the avoidance of doubt, I do not hold one party more responsible than the other and I do not expect any costs applications to be made at the end of this judgement.

50. Offers.

51. The wife now seeks some £935,000 from the net sale proceeds of the home amounting to some 80% of the net equity in return for transferring her 30% shares in X Ltd back to the husband.

52. The husband offers £820,573 which amounts to almost 70% of the net equity in return for a transfer of the shares.

53. I am grateful to counsel for emailing the revised net effects schedule which show that on the husband's proposal the parties will broadly end up with 50% of the available assets and on the wife's proposal the husband would end up with 47% and the wife 53% of the assets.

54. I am conscious that I must not treat the former matrimonial home in the same asset class as X Ltd although I take comfort from the main assets in X Ltd being the London and Bath flats, so to some extent I am comparing apples with apples.

55. I have no hesitation in finding that there should be a departure from equality in favour of the wife in that the wife should receive the first £935,000 from the net sale proceeds of the FMH with the balance to the husband and in return should transfer her 30% shareholding in X Ltd to the husband with the husband to provide an indemnity. This equates to a 52.9% share to the wife and a 47.1% share to the husband. This move from equality is justified for the following reasons:

56. -the husband has a higher earning capacity

57. -The wife will remain the primary carer for the twins for the foreseeable future notwithstanding her advancing years

58. -the husband has the higher mortgage raising capacity

59. The wife's housing needs are marginally greater than the husband's given that she needs to be within the catchment area of the twins' school

60. -the husband gets to keep the self-propelled gun he seems so keen to retain.

61. In my judgement, these factors combined suggest to me that it would be fair to depart still further from equality by also ordering that the net proceeds of sale of the painting currently held by the auctioneer in the sum of £21,000 be released to the wife immediately to defray some of her debt.

62. In addition, I intend to order that the husband's share be reduced by £16,617 representing the CGT that will now needlessly be payable on the sale of the home because of the husband prematurely applying for decree absolute.

63. The husband is currently renting at £900 per month. Once the house is sold and his shares transferred back to him, he will have the option of selling the business assets and utilising the sum of approx. £240,000 from the net sale proceeds of the FMH to acquire a new property or he may choose to continue to rent and keep X Ltd.

64. Spousal Maintenance

65. The wife's schedule of future needs exceeds £6000 per month. Ms. Brett cross-examined the wife extensively on this and she accepted that this would have to come down.

66. The husband has more or less paid all the outgoings on the former matrimonial home since separation in 2022 in accordance with his undertaking. He should continue to do so until sale. The property will need to be sold at the earliest opportunity given the horrific interest rates accruing on the litigation loans taken out by both parties.

67. The husband offers £2000 per month spousal maintenance for a five-year term. The wife seeks £3250 global maintenance per month for a 10-year term. As Ms

Tanner helpfully pointed out the figures are not as far apart as they seem once you factor in child maintenance. Given the erratic payments of child maintenance leading as they did to arrears of £11,500 together with all the uncertainty this caused for the wife, I accede to Ms Tanner's request to order global maintenance.

68. I consider a figure of £3000 per month to be fair on a global maintenance basis with a pound for pound reduction for child maintenance received. In addition, the husband is to continue paying the mortgage and outgoings on the former matrimonial home until the property is sold. Global maintenance to commence following sale. This will incentivise the wife to achieve an early sale of the property. The wife's short term needs can be met from the sale proceeds of the painting currently held by auctioneers.

69. I appreciate the wife will have to make up the shortfall by continuing to increase her earnings. I admire her for her illustrative work and her ability to increase her earnings while raising two young children notwithstanding her advancing years.

70. I do not say that this is a case where the wife can be expected to transition to financial independence within a few years. I agree with Ms Tanner's submissions that this is a unique case where a wife of advancing years will be the main carer of two young twins for the next decade or so.

71. For this reason, I order the husband's payments to continue and to be linked to CPI until the twins achieve majority in nine years' time.

72. I would add that it was always the expectation of the parties that the husband would be the main breadwinner and the wife responsible for bringing up the twins. It was never envisaged at the outset that she would have to return to work.

73. I suggest that the property is placed on the market immediately and that the selling agent is agreed between the parties. I should add that I expect the wife to cooperate fully with the selling agent and to heed the advice of the agent on a realistic sale price. I do appreciate that it will be a wrench on the wife and the twins to move out but I hope she understands that an early sale is imperative given the circumstances of this case.

74. I make no order about pensions. Both parties are to keep their existing pensions. I appreciate the husband has had to take £80,000 out of his scheme to fund costs but as I have said earlier in this judgement there has been fault on both sides in terms of litigation conduct and additional costs needlessly incurred.

75. I invite both counsel to agree an order reflecting this decision.

76. For reasons already given I am not expecting any submissions about costs.

77. Finally, I would like to end with a brief plea to both parties. This endless and costly litigation must stop. You will have to learn to coparent these two young twins and they will have to see that the two of you are able to do this in a

civilised way so that they can be happy and not feel conflicted. I sincerely hope that you can agree appropriate schooling for your boys and that you turn to non-court dispute resolution if you are unable to reach agreement. I say the same about the chattels.

78. I know that this has been a very difficult time for both of you and I hope that you are both able to move on with your respective lives while coparenting and respecting each other's role that the other must play in bringing up the twins.

79. END