

IN THE NOTTINGHAM FAMILY COURT

Case No. ZZ21D64205

Neutral Citation Number: [2024] EWFC 311 (B)

Courtroom No. 5

Nottingham Justice Centre
Carrington Street
Nottingham
NG2 1EE

Tuesday, 13th August 2024

Before:
DISTRICT JUDGE DINAN-HAYWARD

B E T W E E N:

B

and

B

NO APPEARANCE by the Applicant
MR WILSON (instructed by Geldards LLP) appeared on behalf of the Respondent

JUDGMENT

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DJ DINAN-HAYWARD:

1. This is an *ex tempore* judgment, I am giving this judgment from a number of notes and documents, so apologise that it may not be as free-flowing as if it was a reserved judgment, but the parties probably do not want to wait for something a bit more presentable, so I am going to give this judgment now.
2. This is the case where, actually, this Mr B's application. He has not attended for reasons best known to himself. Not only has he not attended this hearing, or indeed the previous PTR in front of me, or indeed the FDR before that in front of His Honour Judge Watkins, he has also failed to do the following:
 - i) He has not provided replies to a schedule of deficiencies which would have given the Court and the wife his updating information about his financial position.
 - ii) He has failed to give financial statements for his companies, despite there being an order for specific disclosure.
 - iii) He has failed to evidence, not only his current housing provision, which may be rented accommodation, I know not, but he has not provided evidence of his housing needs, or his mortgage capacity and I do not have a knowledge of his income.
 - iv) He has failed to provide any updating disclosure whatsoever, and, in fact, the last substantive disclosure was in November 2022, so over a year and a half ago.
3. In addition, I do not have a section 25 statement.
4. The lack of disclosure is probably the worst that, I cannot say I have ever seen, but it is certainly up there in terms of really poor non-existent disclosure, and it has been so bad that it has forced the wife's solicitors to undertake detective work to try and work out what his assets and his income are. They have tried to do this by working out tax brackets from his drawdown on his pension, from documentation, which I have to say was not the most helpful, from the CMS and seeking third party disclosure orders.
5. That, I sense, is from a sense of desperation of trying to bring these proceedings to a conclusion, where one party has failed to engage. They have done the best they can, it is costly exercise. I do not criticise them at all for undertaking that. The work they have done has meant that I have been able to conduct this final hearing despite the state that it is in.
6. Further, it was evident from the third-party disclosure order that the husband does have other savings accounts, in particular were the digital savings account, and that has not been disclosed.

7. Therefore, this Court draws a strong adverse inference against the Husband in terms of his non-disclosure, on the balance of probabilities, and I prefer the evidence of the wife to the presentation of the case by the husband, which, as I say, is now historic. That adverse inference covers the extent of his current assets and that would include the value of the business, which is or may be his main asset which, as a result of this judgment, is going to remain in the husband's name. This will provide him with an ongoing income.
8. Service. I am satisfied, on the balance of probabilities that the husband was served with the hearing notice and knew about this hearing from a number of channels and that the wife has ensured that he knows about it.
9. I had already made an order for substituted service, which I appreciate may have put the wife in a difficult position of serving the husband by an email address which was used for a different purpose, but I made that order to further the overriding objective to ensure, or at least to try and ensure, that both parties have a fair trial and attend the final hearing, if they chose to do so. If somebody chooses not to attend a final hearing and they do not want to attend court, there is nothing I can do about that, but, as I warned at my PTR order, there may be unhelpful consequences to them. As far as the Husband is concerned, he has withheld giving the Court information about his current financial circumstances and has failed to engage. Ultimately this is a matter for him but I can and do draw an adverse inference.
10. The husband did, however, have the assistance of a QLR at this hearing, appointed by the court to assist the Court. This was Mr Deegan, counsel. I am very grateful to Mr Deegan for his help to the Court, it enabled me to conduct what I consider to be a fair hearing. He had, in my judgment, carefully read the papers, he understood the case that he believed, and I believe, the husband would have wanted put, on his behalf, and he asked appropriate questions that, in my judgment, Mr B would have wanted to ask the wife. Therefore, I am satisfied that the wife was fully challenged in terms of her evidence, enabling this to be a fully contested hearing.
11. Interestingly, the husband did recently engage with the court process when it suited him. To put it mildly, he was extremely unhappy about an order in one of the preliminary stages of the proceedings, made by Deputy Judge Wooderson. At the time, in November 2022, I tried to sort that order out, so that I could move the case along and my intention, although I am sure the husband would say that this was misplaced, was to help the husband, in terms of moving the case forward. However, that was not recognised or, sadly, appreciated by the

husband, and what followed was then multiple, nested, applications to the Court to sort out something that I believe I had already resolved, and was again resolved, with the attendance of Mr B, at the intervention hearing. Not happy with that, Mr B then made numerous further applications, presumably with the intention of wearing everybody down.

12. The whole process, in my judgment, was completely and wholly disproportionate and it is, however, sadly, actions like this from the Husband that have accumulated the vast amount of costs for the wife and, as I say, I do not criticise her solicitors at all in relation to those costs.
13. More recently, the husband has applied, unsuccessfully, to discharge a non-molestation order in front of Her Honour Judge Williscroft. Therefore, when he wants to, he can engage with the court process, and I find on the balance of probabilities that he did so in those 2 examples.
14. I also dealt with this matter, as I say, at the pretrial review on 3 July 2024, the wife was representing herself at the time. I gave a warning that I would make adverse inferences and draw them from both non-disclosure and non-attendance of the husband at a final hearing, which has indeed happened, and that is what I intend to do.
15. Therefore, that deals with the husband, but of course, the husband is the applicant and so, the wife is responding to an application that has not been presented to the Court, and that is quite an unusual circumstance, in my judgment.
16. The wife is represented by Mr Wilson of counsel, as I say, instructed by Geldards. I am extremely grateful to Mr Wilson for the way that this matter has been conducted in rather bizarre circumstances. He has been efficient and focused in dealing with the decisions I have to make. However, it has also been of great assistance to have his position statement, his skeleton argument, and the documents that were sent to me on Friday and those that were already on the portal and I am very grateful to him, and I do want to underline his assistance to the Court, but also Geldards assistance, as well. They have gone, in my judgment, beyond what is necessary of them to do in most financial remedy cases.
17. Chronology. Just dealing fairly briefly with the chronology of this matter. I will call the parties husband and wife, I appreciate that they have been separated now for some time. I apologise for that, it is just easier for me to do so in this *ex tempore* judgment.
18. The wife is 47 and the husband is 43. The parties cohabited in 2007, and after a very short period of cohabitation, the parties married in May 2008. There are two children of the marriage, L who was born in October 2008, so he is therefore 15 and S, who was born in July 2011, and she is therefore 13.

19. I note from the chronology, that the husband was a professional footballer. I will come back to that, and he seems to have retired from that profession in the season of 2019/2020.
20. The former family home was sold in June 2021 with net proceeds of sale of £1.2 million. There was an overdraft that was repaid, and those proceeds were paid into a joint Handelsbanken account.
21. The same month, June 2021, the parties separated, and the wife froze the joint account on the advice of the police. There were charges brought for coercive and controlling behaviour against the Husband, although I understand that they were subsequently not pursued by the police.
22. The husband was arrested and bailed to attend a property which the parties were just about to, I think, live in as rented accommodation until they bought a further property.
23. In July 2021, there were Children Act proceedings instigated by the husband and the parties, having separated in December 2021, the wife purchased a property for £595,000. The purchase was made in her sole name, but using funds loaned from Mrs H. Mrs H is a significant person in these proceedings, and I will come back to Mrs H. However, the property is charged in Mrs H's favour, to the extent of £565,000 or so and I refer to this debt as akin to a mortgage. It clearly is a hard debt.
24. In January 2022, there were some section 37 proceedings and in February 2022 there was the first appointment, the section 37 proceedings were dealt with, decree absolute in August 2022, some non-molestation proceedings which I have dealt with latterly, but by Her Honour Judge Williscroft, but they started off life in September 2022, and then in October 2022, we have the first of the husband drawing down just under £100,000 from his pension.
25. The matter came before me in August 2023 for a preliminary issue hearing, dealing with a number of debts and sums payable to Mrs H. I have given a full judgment in relation to that. There are aspects of this judgment that I will touch upon again. However, I handed down that judgment, finally in September 2023, and ordered the husband to pay the costs of Mrs H of just under £60,000 at that hearing.
26. I listed the FDR in front of His Honour Judge Watkins, given the complexities in the case and the way that I suspected the husband may be dealing in this matter. Apart from the intervention proceeding, the matter was not difficult. It was adjourned initially and then listed for a substantive FDR on 10 November 2023 and that was the parties' opportunity to

try and resolve this matter once and for all, utilising the great experience of the zonal lead financial remedy judge of this area of the country.

27. However, it was not to be. I know Mr Wilson says that the FDR could not have gone ahead because of the lack of disclosure. I am not so negative about it, I think there could have been progress made on that day, but sadly, the husband chose not to attend, he chose not to engage, and, as a result, rather predictably, further orders were made against the husband in his absence, and I have dealt with that FDR costs application.
28. In March 2024, there was a third-party disclosure order and in April and May, the solicitors for Mrs B, the wife, could see the full extent of the Husband's withdrawals, particularly from the SIPP which is held by M&G Wealth, amounting to £255,000 gross.
29. There were some applications made by the husband, which is another example, in my judgment, of how he has engaged when he wants to, in relation to the assets. He made applications to strike off some companies in which he had an interest from the register in May and, of course, that may be perceived as shortly before this hearing and the husband was ordered in May to file and serve replies with specific disclosure and, as I have already observed, none of that happened. He may have thought he would avoid disclosure by those actions.
30. More third-party disclosure orders were made in June of this year against NatWest and HSBC. No mortgage capacity details were provided, despite the fact that that requirement was ordered and then, as I understand it, the end of June, the Husband's company, which I will come back to, was dissolved.
31. I then made an order in July 2024 regarding Mrs H's enforcement proceedings against the Handelsbanken account and £317,915 was paid from that account to Mrs H for settlement. I will come back to that mechanism, but, of course, without that settlement to Mrs H, the wife has a claim to start off for half of that account, so in effect, the wife has paid from her own asset, as well as the husband's.
32. There was an order that the wife have permission to file a more extensive section 25 statement because of the way things were heading, and she did so at the end of July. No section 25 statement was filed or served by the husband and this case has now ended with me and I determined on the first day of this hearing, yesterday, that this final hearing was going to go ahead, come what may; it was not going to improve by adjourning it. Full and frank disclosure is a helpful thing to have for both parties' sake, and the rules say that I

should have it. I have just done the best I can with the information I have in, I have to say, very difficult circumstances.

33. Therefore, this is an application, as I say, that was brought by the husband, who has not come to court to put that application before the Court. Therefore, the wife is responding to an application that is not actively pursued, but because there needs to be a final order and a stopping of the haemorrhaging of the costs, I am treating that application as being actively before the Court.
34. Whilst it might have been tempting, to forego the trial process, I still have to exercise my discretion in making a fair order and therefore, without actually knowing the reasons, as there is no medical evidence, and there is no explanation at all, as to why the husband has chosen not to engage in this court process, my judgment was that it was better for the parties and in the interests of justice that I have a fully contested hearing take place, than to be accused at a later stage of rubber stamping an order, which I would certainly not do.
35. Therefore, we have had a fully contested hearing where I have conducted this trial, as if the husband were present, in all but actual presence.
36. I had a very helpful bundle, two bundles, actually, in front of me. I had a core bundle which I had read pretty fully, and I also had a library bundle which was extremely helpful in picking out some of the documents, in trying to understand where the husband was in terms of his disclosure.
37. The documents set out the parties cases, but obviously it sets out, more recently, the wife's case, than it does the husbands and we have just had to, I say we, myself and the solicitors for the wife and Mr Wilson, have just tried to construct a case of what we individually think the husband would put before the court, and there is inevitably a certain amount of guesswork, I may have got it wrong, I have just done the best I can. The Husband must carry the responsibility for putting the Court in this position.
38. Therefore, I heard evidence from the wife. She is an impressive witness, she is a thoughtful witness, and she was also, sensitively, cross-examined, appropriately, by Mr Duggen. His helpful cross-examination dealt with, amongst other things, the following salient issues:
 - i) There are some very expensive watches bought during the marriage, but there is a problem because they have come adrift from their paperwork, which may affect their value. Therefore, that was dealt with in cross-examination.
 - ii) There was, as I have mentioned, section 37 proceedings; that was dealt with, and the arrangements for the children now, in terms of the provision of their education.

iii)The wife's earning capacity and her ability to work more hours or full time than she has worked hitherto and the wife's skills. Moving forward in terms of her income capacity, it was suggested in cross-examination, that the wife has a greater earning capacity than she is utilising at the moment.

iv)The wife's debts, including the hard and soft loans. Obviously, Mr Duggen is constrained by my findings in terms of the intervention proceedings, but those were appropriately put questions, particularly in relation to the debt that has accumulated since the intervention hearing.

v)The wife's understanding of the husband's career from leaving school to date. That is part of the guesswork exercise in trying to work out what the husband's income currently is. The wife's knowledge as to the Husband's company and the global brand protection.

vi)Issues around child support, it having been assessed as a figure to be paid, then suspended and then reinvoiced without any information as to the thought process behind that.

vii)The wife's investment portfolio under the trust and finally, chattels and the valuation, in particular, watches, jewellery, numberplates, etc.

39. I have had the benefit of an updating ES1 and ES2, regrettably, the husband has not complied with his duty under the rules to fill out his side of the ES1 and ES2 and I am extremely grateful to Geldards for doing the best they can, in a very fair way, because it would be very easy for them to not do anything, or choose numbers that would present their client in the best light, and they have not done that. In my judgment, they have been fair, very fair, about it.
40. Just dealing with some factual issues in relation to the section 25 factors. As I say, this is a marriage of 13 years. I believe the average marriage is about 11 years, so greater than the average marriage these days. The parties separated in 2021 and, as I say, we have had a number of hearings.
41. In terms of the husband financial situation, he is a retired professional footballer, he owns or owned a luxury goods brand, he may be football coaching, but we really have no idea as to what he is doing now or what his income is. In due course, I have made a guess as to what his income or his income capacity might be. I could be completely wrong about it, but it is the best that I can do in the circumstances.
42. Mrs B is a self-employed sports therapist and conducts sports massages. She also does some cleaning jobs. She is meant to have an income via CMS, and she has asked for them to collect the CMS, but as I understand it, nothing has been paid since April 2023. She works,

I think, one day a week during the term time. That gives her a very modest income; and the same with the cleaning, a very modest income.

43. Just dealing with the children, as they are my first consideration. L is 15 and S is 13, there is no direct contact with the husband. There is indirect contact, and their education needs are met by a trust in their favour and their housing needs are met by the wife's property.
44. There is an ongoing duty to make open offers to try and negotiate a settlement and the case law and the rules are very clear about that. I am satisfied that the wife has done all she can to try and negotiate this matter and keep it out of court. She made offers in July 2022, March 2023, and more recently, August 2024. I am satisfied that the husband can be under no doubt as to the wife's case and what she was seeking from the court, in terms of a settlement. It is his responsibility to engage with her in that negotiation process and, sadly, he has chosen to absolutely not do that and that lack of willingness to engage has got to be met in costs, whatever else happens.
45. In terms of the costs estimate, the wife's costs are £389,553. There is about £13,620 outstanding. Given the work and given the size of the bundles, and I can see that it has been quite an exercise to trim them, those costs are eye-watering, these costs are incurred at the behest of the husband, they do not surprise me, given the work that has had to be done, in effect, presenting two cases. They are wasted costs.
46. Therefore, just looking at the other section 25 factors, I am in no doubt that this is needs case. The wife's current property meets her needs and the children's needs. I accept that it is a diminution in living standards, but the property does meet their needs.
47. The problem is that there is the charge in favour of Mrs H. Mrs H is a significant financial contribution to the marriage on the wife's side. It would be completely inequitable to ignore Mrs H's contribution, or indeed the wife's family contribution, to this marriage, and I find that the charge is a hard debt but it means that there is little or no equity in this property and it would not be worth the wife moving, even if she was able to do so.
48. Therefore, the only other available capital is either in the joint bank account, or in the wife's share of the Spanish property and it seems to me that she is going to have to do a deal with her mother in order to reduce that charge on her property.
49. The wife has no mortgage capacity because of this charge but, in my judgment, even if that charge was reduced, or in some way repaid, I suspect because of the wife's income and the nature of her income, I do not find that the wife has a significant mortgage capacity, in any event; it is going to be very modest.

50. In relation to the husband, I have no idea how the husband's capital needs are met. I have no idea whether he has any mortgage capacity or not. I cannot even begin to guess. I can only assume that if there was nothing, Mr B would come to Court to tell me that, and he has not, and there must be an adverse inference as a result of that.
51. Looking now at the income and income needs of the parties, the wife's income is modest, as I say, she undertakes sports therapy on a private basis. I think she does have to be very careful as to her customers. She also does some cleaning, again, she has to be careful about her customers. That to me demonstrates a willingness to work, to do anything she can, that she feels she can turn her hand at, but it also represents the economical dire straits that she now finds herself and the children in, as a result of the behaviour of the husband. Whilst there has been modest CMS reinstated, I understand it is yet to be paid.
52. The wife has lost her income, coming into the marriage. I find that she is one of those rare litigants in financial remedy proceedings that could have brought a claim for compensation, if the assets were available to bring such a claim. They are not and so, it is for that reason, and the fact that the wife cannot adjust without undue hardship, that I do make a nominal periodical payments order for five years. However, I am going to make a bar at the end of that, a section 28(1A) bar because the youngest child will be 18 at that stage and I suspect that over that period of time, the wife will be able to increase her income, particularly as the children become more independent, and she is going to be able to increase those earnings, to some extent.
53. She has been living hand to mouth since separation. There has been no maintenance paid, there has been no child support paid by the husband and her income needs are just over £3,500 a month and I find that that is not at all excessive or disproportionate to her, firstly regarding the previous standard of living, and her situation now. I am not surprised that she has had to borrow from family and friends because there is very likely to be a shortfall, quite a significant shortfall on a monthly basis from her modest income.
54. Turning to the husband, I have no idea how the husband is meeting his income needs, apart from the fact that I strongly suspect, on the balance of probabilities, that he is. He has not told the Court how he lives but he was clearly a talented footballer and therefore is able to be a talented coach. His income potential may be masked by his current income. I have to consider his capacity.
55. I have also assessed the husband as a risk-taker and the rare Mercedes car involved in the intervention proceedings supports that point, on the balance of probabilities. He has entered

into business ventures in the world of luxury goods but no doubt he will come to court and say that that is not successful. I am sceptical about that, given the performance of the company just before these proceedings were to be concluded.

56. Ultimately, I find on the balance of probabilities, that the Husband does or can make a comfortable living from football coaching and/or managing, if he chose to do so. When I say that, I also bear in mind that he has some good connections, he is a well-connected person. In my judgment that is something that the Husband works very hard to achieve, is good at and has done so.
57. Therefore, doing the best I can, and this does have an element of guesswork, but looking at all the evidence, I find he has an income capacity of a minimum of £25,000 to £50,000, so that would give him a decent mortgage capacity, should he choose to utilise it, and, of course, he does not see the children. On the balance of probabilities, he is unlikely to see the children, so therefore, his housing needs are far removed from the wife and the childrens' and he is a single man. Therefore, a one or two bedroomed flat would meet his housing needs and, of course, he now does not live in this part of the country and, to be fair, I do not think anybody really knows where he is living, although we have had to have some kind of guess work to serve him with the papers and ended up serving them by email because of that.
58. Moving on to the standard of living. The parties had a very comfortable standard of living during the marriage. It bordered, in my judgment, on luxurious, by looking at the cars, watches, jewellery, and the brands that were being bought during the marriage. If there is a typical footballer's standard of living, that is probably that enjoyed by the parties, with a very significant diminution for the wife, and probably for the husband as well, I know not at this stage, coming out of the marriage.
59. Dealing with contributions. They have been significant, probably on both sides, and by both parties, for different reasons. The husband was a professional footballer, his income was a significant contribution during the marriage. He came to the marriage with no assets, substantial debts at the time of the marriage, but I do not want to lose sight of his skills as a footballer and therefore income that he brought to the marriage.
60. What I would say about the income is that it seemed to be 'easy-come, easy-go' and slipped through the parties hands whilst enjoying a luxurious lifestyle. There were luxury goods bought during the marriage, there was clearly a very high income, and it may be, in my judgment, that the spending was such, because the husband was confident that he would

sustain a level of income moving forward in a different direction, such as coaching or managing, but that was the sort of expenditure during the marriage. Therefore, there is a contribution there, and I would not want the husband to think that I had ignored that significant contribution.

61. In terms of the capital wealth, that came into the marriage from the wife. Mrs H's contributions are a significant factor in this case, and, in my judgment, I really do not know how the wife would have survived without the assistance of her mother, both in terms of emotional support and financial support. She has been invaluable to the wife in every aspect she possibly can.
62. The wife has an investment portfolio of around £1.25 million, she also had her own property, worth, as I say, £400,000 and the parties received significant financial assistance from the wife's parents during the course of the marriage. There was a gift of £300,000 and I think there was some inheritance of about £130,000-odd from the grandmother and also £142,000 from the father. Therefore, these are considerable sums brought into the marriage by the wife and/or her family.
63. A significant amount of those sums then went, in effect, from the wife's side into the various business ventures of the husband. Overall, the investment into the husband's business ventures, in my assessment, again, I might be wrong about this, but it looks as it is north of £500,000 and, in my judgment, this goes some way to negating the riskier nature of the assets that I leave the husband with, in terms of the division of assets. The investment has significantly been from the wife.
64. I have assessed in my judgment that the Husband is a risk taker, but he is also astute in terms of business, and he also has, what sounds to me, on the balance of probabilities, to be a very sound and experienced business partner in Ms B and he is unlikely to take risks that do not pay any returns to him, or her, with that money.
65. Therefore, I do find it striking and not a coincidence, that the companies in which the husband has an interest, and received that significant investment from the wife, have been shut down immediately before this hearing. On the balance of probabilities, that is not a coincidence.
66. In terms of conduct, there is the non-disclosure of capital, the non-disclosure of income and income resources from the husband. Regrettably, I find that there has been litigation and financial misconduct. The husband's presentation throughout these proceedings has been obstructive and his cooperation, sadly, non-existent.

67. The wife's costs are really off the scale of what would ordinarily be deemed to be reasonable, solely due to the husband's conduct in these proceedings. This is no criticism of the wife or her solicitors, and, of course, the wife represented herself for a period of time to try and save costs. Therefore, there is an adverse inference that I can draw that the Husband's conduct has elevated the Wife's costs beyond what would or should be reasonably incurred.
68. I do not have any understanding of the husband's financial circumstances; there has been non-disclosure and I find, on the balance of probabilities, that it is more likely than not that the husband has had much to gain by non-disclosure in these proceedings and probably, potentially, in other proceedings. The non-disclosure assists with any unhelpful computations that this Court may come to, it avoids CMS, it avoids the potential costs litigation with MC, who is clearly unhappy with the husband's behaviour, and it avoids, potentially, tax implications.
69. Therefore, I find on the balance of probabilities the husband's assets are greater than is stated on the ES2. I do not know how much by, but, as I am not making a lump sum order out those assets, aside from the issue of costs, I am confident that he has what he needs to meet his needs and if he did not, in my judgment, he would have been more prepared to disclose or come to Court to tell me what his financial position is. If I have got this wrong, then the husband only has himself to blame.
70. I am also left with a very strong sense that there are other accounts, the lack of expenditure from someone who has readily spent money freely is, on balance, a good indication that that is the case on the balance of probabilities, and we already know from the third-party disclosure that there is at least one other account and I suspect, on the balance of probabilities, there is more.
71. By his litigation conduct he has significantly increased the costs of these proceedings. He has run down the joint savings. The preliminary issues, taken on in the intervention proceedings by the Husband, were, I would not say completely without merit, as there was one issue where there was some merit in what he said, but overall, they justified the costs orders made against him.
72. In addition, those costs orders and the costs paid to Mrs H were, in effect, coming out of joint funds, so the wife has also paid towards a debt that was incurred at the behest of the husband.

73. I mention that because I have to be mindful that if the husband were to complain that I have in anyway been unfair to him, that those costs that should have been his responsibility, caused by his unrealistic position, have been paid from joint assets.
74. He has caused the wife to run up unnecessary costs, the wife says that he has done so blatantly and purposefully. His failure of disclosure has caused her to incur further costs, rendered the FDR completely aborted, and has thrown away all chances of a settlement in what is actually, I am afraid to say, quite a straightforward case now.
75. Just dealing with loss of resources as a result of the marriage breaking down, the husband has two pensions, I take into account the fact that there has been a significant draw down on the SIPP by the husband, against the wishes of the Court and certainly, in a very inefficient tax manner. It gives me the impression that the husband wanted to dissipate those assets as soon as he possibly could.
76. When I look at the circumstances of this case, I need to stand back and look at the circumstances when I am considering my order in relation to how fairness can be achieved to both parties, if possible. Obviously, the starting point is an equal division of the matrimonial acquest but given the wife's contribution at the start of the marriage, then we are really dividing the matrimonial deficit not an acquest.
77. Therefore, fairness dictates that I must shift from the equal starting point, quite significantly in the wife's favour, both in terms of quantum but also in terms of the nature of the assets, for the reasons that I have already stated.
78. I am very grateful to Mr Wilson, who very carefully took me through the ES2, and, as I say, I am also very grateful for the wife's solicitors for attempting to represent, fairly, the last knownand best position of the husband in order to achieve some sort of balance for me, as best they can.
79. Therefore, I am now going to go through the ES2 and my view as to how I have looked at the assets.
80. The Court considers the ES2 to look at the net effect of the orders that the parties are asking for, and as a sort of cross-check that there is no unfairness. Of course, the difficulty here, is that I have already found, on the balance of probabilities is that there are other assets that are not in this asset schedule and many of the figures provided for the husband could be wrong and I find on the balance of probabilities that they are going to be higher than they currently are shown on the husband's columns.

81. Therefore, it has been almost impossible to look at net effect because I do not actually know the figures I am dealing with. However, there are some figures that are in dispute, so I am just going to deal with those as part of this process and my cross-checking in terms of fairness.
82. In terms of properties, I have taken from the wife's column the equity in her property as £24,895. I have taken her interests, her net interests in the Spanish property at £325,000 so that gives her a figure of £350,241 for property.
83. In terms of bank accounts, what I have done, and I strongly suspect on balance that there is likely to be more bank accounts, I have taken £18,371 for the husband, I have taken £1,853 for the wife, and I have taken £159,418 for the joint account.
84. In terms of policies, I have taken £210 for the wife. I can only say in passing that I suspect there are other assets there, often a digital account is a savings-type account and runs alongside another account. I do not have that information, so I suspect there is more assets there than we know about, but £210 is the figure I have taken for the wife.
85. In terms of the business interests, most of those values are unknown, the best figure that I can take for the husband's interests in the Husband's company is £473,492 and I suspect that that is a fairly safe figure in terms of net assets. It does seem to me that there is some treading of water going on, and that is likely to be because they can be realised at some stage at a higher level than they are at the moment but £473,492 is doing the best I can.
86. In terms of the chattels, what I have decided to do is to take out chattels completely apart from the two watches, which are the £220,000 and the £190,000 that is as SJE report. From that needs to come the commission to be deducted but it seems to me that I cannot have one approach for one party and one approach for the other, so I am taking out chattels completely. There is an issue about chattels, in terms of the wife getting some chattels that the husband has taken back. I think, in my judgment, the fairest thing to do is just take all of that out apart from the two watches.
87. However, I also take out all the costs orders that have been previously made. It seems to me that there is no place in my consideration for looking at the costs orders as an asset of the wife, or looking at it as a debt of the husband because that will lead to a muddle. There are Children Act proceedings, there are costs orders in relation to preliminary issue hearing that have not yet been resolved, as I understand it. Those costs orders should, in my judgment, just be enforced, as the best the wife can do in terms of enforcing them against whatever assets she can find in due course. I have taken them out of the equation, not because I want

to disregard them, but just because they are debts that have accumulated as a result of the court process and it seems to me that that is the fairest thing to do, rather than try to give the wife notional assets and the husband a notional debt without knowing actually whether that debt is ever going to be satisfied. Therefore, this exercise is not perfect by any stretch of the imagination, but that is the approach that I have taken.

88. I have then taken the other liabilities of the wife as £413,038 but then, in terms of the husband's liabilities, I have put that as zero because it seems to me that if my approach is, I take them out on the wife's side, I have to take it all out on the husband's side as well. That will hopefully achieve what I am trying to achieve, fairness, in terms of treating the parties the same, whether I actually achieve that or not, that is what I am trying to do.
89. Therefore, that gives a total figure, if my maths is right, £492,223 for the husband and it gives the wife -£64,484 and joint assets are £569,148.
90. If the joint assets go to the wife, which is what my order is, then that gives her £504,664 and if you take off the commission for the watches, then that is pretty much a 50/50 division of the assets. The wife may actually come out worse because I suspect the watches may not reach the value of the SJE, particularly if the paperwork does not catch up with the watches. However, I also bear in mind that the husband is taking on the more risk-laden assets.
91. Therefore, that is, overall, a 50/50 division and because I think it is the lesser sum for the wife, that reflects the risks that the husband has, to some degree, been awarded, doing the best I can.
92. In terms of pensions, the wife has a nominal pension of £33,000, the husband has two pensions. I take the figure of £324,976, there is footballers pension scheme, and of course, these are very old figures, so I have no idea, actually, what the up-to-date figure is. I say very old, they are out of date, they have not been updated, so the footballers pension scheme is £131,000 and the investment fund of M&G of £192,000 and it seems to me that, standing back, given the sums that the husband had just taken from the M&G scheme, that scheme should be much higher than it is at the moment.
93. If there was to be any draw down, that could have been done in a tax efficient way, it was not. It incurred the maximum tax that could be incurred, and it seems to me that the husband was, to be frank, just determined to reduce those funds as much as possible.
94. Therefore, it seems to me that the fair thing to do is to give the wife a transfer of pension of that higher fund because the husband has already taken a huge chunk of that pension, and he has lost money on taking it out of that pension in the way he had. The responsibility of that

should not be at the wife's door, if there is any responsibility, it should be subsumed by the husband. On balance he knew that he should not have drawn down.

95. The husband has also, when I am looking at any inequality, had interim payments on account and so, I am very mindful of the *Wells v Wells* [2002] EWCA Civ 476 arguments, because the wife is getting copper-bottomed assets, the husband is getting riskier assets. However, the husband has, already, as I have found in the intervention proceedings, had the net proceeds of sale of the Mercedes car, he has rent-free accommodation, he has monies from the Handelsbanken account, he has had net proceeds of sale from two cars and a number plate, and I think he had some money released for counsel and he has had other sums, that both parties have had, from the Handelsbanken account. Therefore, he has had a significant amount of interim payments before we even got to this stage and already received the benefit of those.
96. Therefore, in terms of the order that I propose, and I have seen Mr Wilson's draft, then the parties retain the assets in their sole name, the funds in the joint account and the proceeds of the two Patek Phillipe watches are the wife's. She can choose what she wants to do with them whether she wants to sell them now or hold onto them for a bit, or indeed hold onto them for a lot longer for her children, they are hers.
97. The only thing that occurs to me is that they will have a diminution in value as a result of the lack of paperwork, and I am not confident, on the balance of probabilities that they are ever going to catchup with their paperwork. Therefore, doing the best I can, I, in my judgment, think that this order should also be disclosed to Patek Phillipe, to see what they can do in terms of getting the most value for the wife out of these watches and I say that to try and soften the blow because I appreciate that that will be a disappointment to the wife of taking the single joint expert valuation. It is the best I can do, I think.
98. The costs orders of the FDR and the Children Act proceedings, that already have been made, I am leaving to one side, they are up to the wife to enforce in the best way she can, and she will just have to take a view as to whether it is proportionate to do that.
99. I make nominal periodical payments until the youngest child reaches 18, which I think is about five years.
100. The husband's life policies, given that he is not here, I am not sure that he can undertake. If I can order that, I would order it, I am not sure I can. If I make an order that says a sum of money should be paid by the husband for life policies, that is actual maintenance as opposed

to nominal periodical payments, so I am happy for the counsel to address me further on that, but I think, may be more trouble that it is worth.

101. Pension sharing order of £100% of the SIPP, that may, as a 100% transfer, lead to difficulties in terms of the costs, again, I am happy to be addressed in relation to that, in terms of the order that would ensure that the wife gets all of the SIPP, without it being eaten into for costs that would ordinarily be shared equally or, if the order is silent, by the husband as transferor.
102. The return of the personal possessions should be returned to the wife. However, of course, the structure of my order and what I am proposing and ordering, is slightly different to Mr Wilson's in terms of giving the husband incentive with the costs orders. Therefore, Mr Wilson, you might lose that incentive by the structure of my order. However, because of how I have dealt with the ES2, I do not think that I can then go back and change my mind on that, and I am not going to.
103. Otherwise, clean breaks.
104. Therefore, looking at Mr Wilson's statement of issues, I have dealt with the distribution of the funds, I have tried to achieve fairness between the parties. The net effect, I think, from what I know, is an equal division, albeit the assets are of a different nature, but I suspect, on the balance of probabilities, that it is not, that the wife comes away with less than the husband because of the unknown.
105. I have dealt with the division of chattels, they would ordinarily be divided by agreement. I condemn the husband's behaviour in clearing the storage facility of the parties' assets, that can only have been done, in my judgment, to defeat her claim to them then, and has not been remedied now. Therefore, the husband retains a number of items of the wife's, including jewellery, some have a monetary value, which I am sure would be very helpful to the wife, and some have a sentimental value. Those should be returned and, again, I am happy to be addressed on an order that will try and achieve that. I have dealt with the housing needs of the parties; I have dealt with their income capacities.
106. I have put the business assets in, as best I can, as I say, I am, in my judgment suspicious as to the timing of all of this.
107. I took the wife's debts, which were both hard and soft as debts that the wife has and I appreciate that I have taken them into account in their totality and do that, because despite the fact that I have already distinguished between the hard and soft debts, the evidence of the wife is that she feels duty bound to repay those debts. I take that as evidence that that must

be absolutely right and, of course, the wife's income is such that she is reliant on her family, they are basically supplementing her income on a monthly basis, and unless somebody says, I will repay you, at some stage, that good will gets easily lost. Therefore, I have taken them all into account. I appreciate the husband may well say, well some of them are soft, they are not going to be repaid, but the evidence, overwhelmingly, is in front of me that they will be repaid, and I believe the wife in that.

108. In terms of the costs orders, as I say, I have left those to be enforced, if that is possible.
109. Therefore, in summary, this is not a difficult case and once the intervention proceedings were resolved, and those proceedings in themselves that should never have reached court, given the concessions that the husband, quite rightly made, in his evidence at those intervention proceedings, this case, both intervention and now, should never have been litigated, but I cannot blame the wife, in any way, for having to be brought to court and have it litigated.
110. Therefore, that is my *ex tempore* judgment. That is the order that I intend to make.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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