

IN THE FAMILY COURT
SITTING AT LUTON

Date: 12 November 2024

Before:

DEPUTY DISTRICT JUDGE MARK HARROP

TO v GA (Financial Remedies: Deferred Sale)

Between :

TO

Applicant

- and -

GA

Respondent

Francesca Wilderspin (instructed by **Duncan Lewis Solicitors**) for the **Applicant Wife**
Charlotte McDonald (instructed by **Abbott Solicitors**) for the **Respondent Husband**

Hearing date: 11-12 November 2024

JUDGMENT

This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Deputy District Judge Mark Harrop:

Introduction

1. On 11 and 12 November 2024 I heard the final hearing of an application for a financial order on divorce. At the end of that hearing I gave an oral judgment which is reproduced, only slightly tidied up, below.
2. I suggested to the parties that theirs was a case that was typical of the sort of cases that judges have to decide every day, both in this court and across the country. They agreed to my proposal that I publish this judgment as part of the wider push for greater transparency to help aid public understanding of how judges go about deciding these cases. The wife asked that any published judgment be anonymised. Having weighed up the competing rights to privacy and freedom of expression I agreed that the judgment should be anonymised.
3. Both parties at this hearing had the benefit of specialist family barristers to present their case and to conduct cross-examination on their behalf. I have been helped considerably by the written notes they provided to me ahead of the hearing and by the sensible and considered approach they adopted throughout. Both parties have also had some assistance from solicitors, the wife thanks to legal aid funding and the husband on a more *ad hoc* basis funded by his brother.
4. Despite the legal assistance they have received there were, in places, gaps in the evidence and I was required at times to draw inferences and make assumptions about what might be possible. That too is typical of these sorts of cases, and another reason why this case represents a good example of the decisions District Judges have to make in ‘everyday’ financial remedy cases.

5. Two days is a very common length for a final hearing and this one followed the usual pattern: a slightly late start on the first day to allow for judicial reading and an urgent application on another case, followed by the applicant's evidence on the first morning and the respondent's evidence in the afternoon. I heard submissions on the morning of the second day and gave judgment orally sometime after lunch. The level of analysis and explanation below is typical of what one might expect (from me at least) at the end of a two-day hearing.

Introduction

6. The parties married in the late 1990s and separated in 2019 making this a marriage of slightly more than 20 years. I have not heard evidence about the breakdown of the marriage or what happened between the parties subsequently, and neither party is arguing that 'conduct' should be factored into the court's decision-making, but I am told that the husband is currently subject to a lengthy restraining order having been convicted, and having served time in prison, for breaching previous restraining orders in respect of the wife.
7. For this reason we had a screen set up in court so that the parties were not able to see each other at any stage. I was also able to arrange for us to move to a larger courtroom for the period when the husband was giving his evidence, where the participants could be better spaced out. Fortunately, there was no need for me to have to worry about the parties having to cross-examine each other as they were both represented at the hearing.
8. The wife had an interpreter present, although as it turned out she felt able to engage in the hearing both in the witness box and when observing the remainder of the hearing with very little need to rely on translation. The wife gave her evidence clearly and

confidently and I am satisfied that she was able to take full part in proceedings and that I have both a clear understanding of her position and of her account of the evidence.

The Family

9. This is a marriage of just over 20 years that ended five years ago. The parties have five children. Until very recently, all five continued to live in the family home with the wife. Not long ago the eldest, A, who is in her mid-twenties, got married and moved in with her husband. B and C are in their early twenties. D and E are in their teens.
10. In addition, after separating from the husband, the wife started a new relationship and has another child, F, by that relationship. F is at nursery. He also lives with the wife in the family home. I accept the wife's evidence that her relationship with F's father has now ended but that they remain on good terms and that he assists with F both financially and in terms of childcare.
11. B and C are both adults. B is working part-time and studying. C has been in and out of university and is currently studying again. He previously lived in university halls for a year but the wife says he has now moved back home again. The husband has no information about what the children are up to except what the wife tells me.
12. D is currently studying for her A-Levels, while E is in Year 9 at school. He has been in quite a lot of trouble at school recently for his behaviour and there are concerns that this may be caused or affected by neurodivergence. Investigations are now to be made to identify whether E has autism, in part at the instigation of the wife. While the recent concerning behaviour is admitted and documented in the bundle, I have no

evidence in terms of any diagnosis nor any evidence about what the consequences of such a diagnosis would be for E and the wife.

13. The wife and the children currently live in the jointly owned former family home, a large five-bedroom property with an agreed value of £330,000. The remaining mortgage is relatively small at £33,000 and will be paid off entirely within the next four to five years. The current net equity is around £287,000.
14. The wife reports that there is an expectation in the parties' religion that children will continue to live at home until they are married. The husband says that this is not true of the boys but accepts that there would be a cultural expectation for daughters, i.e. for D, albeit that it is a fundamental tenet of his position that housing her (or indeed any of the children) should not take priority over allowing him to meet his own housing needs.

The Parties

15. The wife is in her early 40s. She has previously made an income tailoring at home and caring for an elderly local resident, and more recently doing agency work as a teaching assistant. As of July this year she has secured a permanent role as a teaching assistant, working full-time and earning around £23,000 pa gross (around £17,500 pa net). In addition, this income is topped up with benefits – some of which (but perhaps not all) relates to the three minor children in her care. She also receives some government support for F's nursery fees, which is also supplemented by F's father.
16. The wife says that she made the effort to secure a permanent role in order to maximise her chances of securing a mortgage, not least because she has always hoped that she will be able to retain the family home and buy the husband out of his interest.

Regardless of the reason, the wife is to be commended on her efforts to find work to ensure financial security for herself and the children, especially when F is still so young. She is clearly an intelligent and capable woman and I am confident she will make a success of this new role.

17. In respect of mortgages, however, her evidence is that her mortgage advisor reports that she is still unable to secure a mortgage at present due to her poor credit history. As a result, she has had to rethink an offer she made earlier in proceedings to buy the husband out of the property with a lump sum of £85,000.
18. It was not in the bundle, but the wife told me in oral evidence that her broker advises that her credit score is likely to be sufficiently recovered in around two years' time. Her open position at this hearing is that she will buy the husband out of his interest in the property when E is 18, around five years from now, for £59,400. This figure appears to be based on what the wife believes she will be able to borrow rather than on any assessment of the husband's needs. It is not a figure that appears in the letter from her mortgage advisor. I note that it is only slightly more than twice her gross income.
19. The husband is in his mid-40s. He has found things very difficult since leaving prison and clearly still holds a lot of bitterness towards the wife, who he holds responsible both for the breakdown of the marriage and for his subsequent imprisonment. He has been unable to revive his former career as a taxi driver due to his criminal record and has only recently found work part-time as a delivery driver for a takeaway, that income being supplemented by a small amount in benefits.
20. The husband is currently living in a small studio flat which does not even have proper cooking facilities. He survives with a small amount of financial assistance from his

brothers. This is clearly very different from the family life he used to enjoy in the family home and is one reason he is so desperate for these proceedings to be resolved by an immediate sale of the family home.

21. Despite the inadequacies of his current arrangements, and the fact that he is debarred from returning to taxi driving for the next 10 years, the husband was relatively buoyant about the prospect of being able to find further work in the relatively near future. He accepts that he should be able, sooner rather than later, to work full-time earning at least minimum wage, which would be something over £20,000 pa gross.
22. Both parties have taken some small loans from their respective families, and both accept that these are what might be considered ‘soft’ loans that can be paid as and when it can be afforded and whose existence will not impact their ability to secure commercial borrowing. Each has an inexpensive car that they clearly need to retain. Neither reports a pension or any other asset of meaningful value. Furthermore, both parties agree that this is not a case where either should be expected to make maintenance payments to the other (other than the usual child maintenance that the husband will pay for D and E in line with the Child Maintenance Service formula).

My Observations on the Parties

23. I will say something briefly about the parties, each of whom I have seen and heard give evidence.
24. As I have already said, the wife is an articulate and intelligent woman who is clearly focused on supporting her children. She sees herself as having various obligations to them, some of which are prescribed by cultural expectations, and clearly takes the

view that those obligations take priority over any requirements that the husband may have.

25. That said, she has gone to some lengths to secure a permanent role, even with a young child to care for, in her quest to try to resolve these proceedings without a contested hearing. I am entirely satisfied that she was doing the best to help the court understand her situation and that the evidence she gave was truthful.
26. The husband is clearly extremely unhappy with his lot and finds himself living on a shoestring and from pay cheque to pay cheque. He is lucky to have the support of his family and I accept his account that the *ad hoc* payments he has received from them have been no more than their efforts to support him following his release from prison. I do not find that they reflect or suggest any hidden resources, savings or income, and I do not conclude from them that his brothers could provide more financial support than they have already given.
27. I can quite understand the husband's frustration, knowing that he has had a considerable amount of capital tied up in the family home for five years already, that the wife seeks for it remain locked up there for a further five years, leaving him to continue his subsistence living in the most basic of accommodation.
28. While I was unable to follow his explanation of some recent payments into his bank account that he said related to a friend's fruit machine winnings, I do not consider this to be the thread that will unravel a wealth of hidden resources, nor that it makes the husband's evidence as a whole unreliable. More generally, I suspect that much of what counsel and I found confusing in the husband's evidence was really the product of our own inability to fully imagine and understand the reality of living day-to-day in the way the husband has had to. Overall, I am happy that the husband too was doing

his best to assist the court in understanding his financial situation and the outcome that he is seeking.

The Law

29. When asked to consider a financial application on divorce the court's task is to divide the assets in such a way as it considers fair, having in mind the particular matters set out at section 25 of the Matrimonial Causes Act 1973.
30. By virtue of section 25(1), the court is required to give first consideration to the welfare while minor of any children of the family while they are under the age of 18.
31. In this regard I observe two points in particular. First, both parties acknowledge that F is not a child of the family and does not fall to be one of my first considerations. Second, there has been a tendency on the husband's part to treat both F and the older children, B and C, as though they do not fall to be considered at all. To be clear, they do – they remain a consideration as part of all the circumstances of the case and, to a greater or lesser extent, as relevant to the wife's financial responsibilities and obligations under section 25(2)(b). What is a live issue, however, is how the need to house them should be balanced against the husband's own need for housing.
32. I also need to consider the statutory steer towards a clean break contained at section 25A of the Matrimonial Causes Act 1973, which requires the court to consider whether it would be appropriate to exercise its powers so that "*the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable.*" That might mitigate against a deferred sale of the family home, or in favour of a shorter deferral rather than a longer one, particularly in circumstances where there have already been five

years since separation in which the wife has had the benefit and enjoyment of the family home and the husband has had to rent.

33. In achieving fairness the court is directed by case law to consider overarching principles of ‘needs’, ‘sharing’ and, occasionally, ‘compensation’. Resources are so tight here that this is a quintessential ‘needs’ case and I need say nothing more about the other guiding principles.
34. Needs is an elastic concept which can be tailored to the specific financial needs of each party that are required to help them make the most effective start on the road to life independent of each other. For most people meeting needs is as simple as having a suitable place to live and enough money coming in each month to pay the bills.
35. Ms Wilderspin for the wife suggested that the husband’s studio apartment must be sufficient to meet his housing needs because he has now been there for several years without incident and is not currently facing eviction. If that were sufficient to meet the test of needs then the court would never need to include owning a property as party of a party’s needs assessment.
36. The reality is that where parties have owned a property during the marriage the court will strive, where possible, to ensure they can own a property after the marriage. In the well-known words of Lord Justice Thorpe in *M v B* [1998] 2 FLR 180:

"In all these cases it is one of the paramount considerations, in applying the s 25 criteria, to endeavour to stretch what is available to cover the need of each for a home, particularly where there are young children involved. Obviously the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit of lesser importance, that the other parent should have a home of his own where the children can enjoy their contact time with him. Of course, there are cases where there is not enough to provide a home for either. Of course, there are cases where there is only enough to provide one. But in any case where there is, by stretch

and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome."

37. In cases like this one, where resources are being stretched to their limits, that closing observation about stretch and risk-taking becomes the key tool in the judge's arsenal in trying to achieve some sort of measure of fairness between the two parties in front of them.

The Parties' Respective Needs

38. I have been provided with various property particulars to give me a sense of what alternative accommodation would cost to buy in the relevant area:
- i) The wife has given me examples of one-bedroom flats on the market for between £110,000 and £120,000. All are easy to find problems with and none is in the least bit desirable;
 - ii) The husband has provided examples of far nicer looking one-bedroom houses available for between £180,000 and £225,000. I assume, if it were necessary, that a one-bedroom flat could be secured for less than the cost of a one-bedroom house;
 - iii) The husband has provided examples of three-bedroom houses available for between £295,000 and £315,000 which he says would be suitable for the wife;
 - iv) Finally, the wife has provided examples of four-bedroom properties on the market for between £400,000 and £475,000. It was pointed out to her that these were valued higher than the current five-bedroom family home and she acknowledged that these came from a more expensive area (that was more

convenient for the children's schools) as there was nothing for sale where she currently lives. I remind myself that needs are to be assessed with reference to the standard of living enjoyed during the marriage and that in the ordinary course of things one would expect divorce to lead to a drop, rather than an improvement, in the standard of living and so I do not find the final properties particularly helpful.

39. The last thing I note is that the family home, about which I have been told nothing except that it has five bedrooms, has an agreed valuation for these proceedings of £330,000, which I understand to have been informed by some estate agent valuations that were completed some time ago.
40. The husband accepted in evidence that a one-bedroom property would be perfect to meet his needs at present, although he said that two bedrooms would be preferable. I agree that a one-bedroom property would meet his needs, particularly as the children do not come to stay with him. Without suitable examples it is hard to put a precise figure on his housing need but based on the properties I have seen he is likely to require somewhere in the region of £140,000 to £160,000.
41. At present, with three minor children at home, the wife needs at least three and, ideally, four bedrooms, especially as F gets older. While I appreciate her desire to support the two older boys, I do not find that this amounts to a *need* for the purpose of the section 25 exercise, nor that having a larger property to accommodate them should take priority over allowing the husband to rehouse.
42. The next significant milestone will be D finishing her A-Levels, and possibly going on to further studies. That will happen next summer. I recognise that the reality on the ground is that she is likely to remain living with the wife for some time beyond that.

43. It will be nearly five years until E turns 18 and, if he remains in education until then, finishes his A-Levels or equivalent (by which time D will be 22). At that stage F will still only be seven and will still be living with the wife.
44. Putting a figure on the wife's housing needs is also tricky, not least because the evidence I have is that three-bedroom properties cost between £295,000 and £315,000, but the current five-bedroom family home is worth only slightly more at £330,000. Unless the family home has been undervalued I can only conclude that four-bedroom properties can also be had for approximately the same amount.

The Parties' Proposals

45. The wife's proposal is that the family home is retained until E turns 18 and is then either sold (with the husband receiving 18%, currently £59,400) or that she be permitted to buy H out for that amount. Since this amount has clearly been calculated by reference to what she believes she will be able to borrow she clearly hopes that this will allow her to retain the family home and would therefore be sufficiently housed.
46. I do not have any evidence from either party about what the husband might be able to borrow in the future, but if he gets himself that full-time minimum wage role and looks after his credit score then I would think that it would be realistic to expect that his borrowing capacity in five years' time could be somewhere in the region of three times his salary, which would be around £60,000. Adding that to the wife's proposal would give the husband a housing fund of around £120,000, which is a little short of my assessment of what he might need for a suitable home.
47. The husband's first proposal is an immediate sale of the property, from which he seeks the sum of £89,100 with the wife retaining the balance. At the moment neither

is in a position to get a mortgage and so each would have to rehouse themselves on the share of the proceeds – for the husband that would be £89,100 and the wife £171,000. The husband may be prepared to compromise his onward purchase to get the funds quickly, but there is no way the wife can purchase a suitable property for £171,000. I remind myself that there are currently three children under the age of 18 living with the wife. As I have also indicated, both parties may also have access to mortgage borrowing in future that will increase their budget. Notwithstanding the section 25A steer, I am not going to force the wife to rent in the interim.

48. The husband's second proposal is that, if there is to be a deferred sale in five years' time, the proceeds should then be divided equally on the basis that the wife's needs will no longer be any greater than his. I consider this to be a false equivalence that results from effectively ignoring all the children. As I have said, just because the children stop being the court's *first* consideration does not mean that they stop being a consideration at all. They are still relevant in the assessment of the wife's financial responsibilities and the overall circumstances of the case.
49. Ascribing the husband a borrowing capacity of £60,000 and the wife the £85,000 she was previously advised would be possible, the husband's second proposal would give him a housing fund in five years' time of £220,000 and the wife £205,000. That would leave the wife in one-bedroom house (or perhaps a two-bedroom flat) territory, which does not meet what I consider her housing needs will be at that time. Realistically she is still extremely likely to have F and E at home, and quite possibly D as well. They cannot simply be ignored. I do not consider that an equal division of the capital in the property, even after a deferred sale, leads to a fair outcome in circumstances where fairness is determined by reference to the parties' needs.

50. I also do not consider, however, that fairness requires a five-year deferral of the sale of the family home. Nor am I comfortable allowing such a long deferral considering that the parties have already been separated for five years, bearing in mind what is said at section 25A.
51. The wife's evidence is that she should have her borrowing capacity in around two years. For the husband, the situation should be the same. Thinking about the welfare of the children, D will have finished her exams by then, but E will be in his GCSE year. It will not be in his interest to sell the house while he is preparing for those exams, but it could certainly be marketed for sale after he has sat them, in July 2027.
52. If the husband were to take £80,000 from the sale of the property, a borrowing capacity of £60,000 would allow him to purchase a property for around £140,000. The wife, with borrowing of £85,000, would have a housing fund of close to £290,000 which gets her, with the degree of stretch and risk-taking envisioned by Lord Justice Thorpe, there or thereabouts in terms of the housing stock that I have been shown.
53. I am also mindful that it only leaves the wife around £10,000 short of being able to buy the husband out of the property and avoid a sale, which seems to me would be a desirable outcome. I observe that the wife's is a family that has in the past had the resources to help each other out in those sorts of sums.
54. I therefore propose to structure this order as a lump sum of £80,000 to be paid by the wife to the husband by 31 July 2027, with him to transfer his interest in the property to her at the same time. An order for sale will take effect if the lump sum cannot be paid by that date. If the wife can raise the money before then and they can part ways sooner then so much the better.