

IN THE FAMILY COURT SITTING AT CHELMSFORD

CASE NO: 1666-8847-8345-7005

Neutral Citation Number: [2024] EWFC 409 (B)

BETWEEN:

UV

Applicant

AND

WX

Respondent

JUDGMENT

Before District Judge Foss sitting at the Family Court at Chelmsford on the 2 August 2024

Mr N Baylis, instructed by Anthony King Solicitors appeared on behalf of the Applicant Wife.

The Respondent Husband did not attend and was not represented.

Background

1. The parties legally married in Country X in early 1996, although a traditional ceremony took place in 1994 when the applicant was aged 14, which was not illegal in Country X. The applicant moved to the UK in 2010, although the respondent has spent time in the UK before then. The parties separated in April 2015. They have 5 children between them, 4 of whom are now adults, the youngest child being 13 years old. One of the adult children has disabilities which means he is likely to require ongoing care from the applicant for the rest of his life.
2. At the time of the final hearing 3 of the children were still living with the applicant in the former family home, of those 2 are dependent children.
3. The applicant issued a petition for divorce in June 2021 and decree nisi was pronounced in May 2024. The applicant's Form A was issued in late 2022. The respondent has failed throughout these proceedings to engage, he has not filed any evidence and has not attended any hearings.

Assets and Liabilities

4. The information regarding the assets and liabilities held by the parties has come only from the knowledge of the applicant.

5. There are 4 properties in the UK held in the respondent's sole name, subject to mortgages, including the family home. The only assets held by the applicant is less than £100 in a bank account and her car; although this is subject to a loan in her sole name. The applicant is a health care assistant working part time due to her child care obligations. She is in receipt of Universal Credit and child benefit to supplement her income. The respondent has paid the current monthly instalment of the mortgage on the former family home but no additional child or spousal maintenance.
6. The applicant believes that the respondent is an owner of an import/export business in Country X and that it is probable that he owns other assets in that country.

Parties' positions

7. Applicant seeks a transfer of 2 of the properties held in the UK into her sole name so that she can provide a home for the children and sell one of the properties to clear the mortgage on the family home and provide her with a savings fund to undertake repairs to the family home, or alternatively to provide her with an income as it is let to tenants.
8. The respondent's position is unknown as he has not engaged in these proceedings and has failed to file a Form E and statement as ordered.

Issues

9. The first issue I need to consider is whether I am able to make final orders today in the absence of the respondent.
10. The second issue is to identify what assets there are and then consider what is a fair and reasonable settlement between the parties.

Law - general

11. In deciding a fair and reasonable settlement my first consideration is to any dependent children of the marriage and I have to take into consideration S.25 of the Matrimonial Causes Act 1973 and the factors in subsection (2). I must consider whether there can be a termination of the financial obligations between the parties as soon as it is just and reasonable to do so, taking into account whether the parties would be able to adjust without undue hardship.
12. That assessment must be made with the principles set out in *Miller v Miller*; *McFarlane v McFarlane* [2006] 1 FLR 1186 HL in mind. That is sharing, need and compensation shaped by the overarching requirement of fairness. This is not a case where compensation is a factor. The Husband and the Wife are equal partners in a marriage as they commit themselves to each other to share their lives together. When that partnership ends each is entitled to an equal share of the assets of the marriage unless there is good reason to the contrary.

Adverse Inferences

13. In the judgment of Mostyn J in *NG v SG* (Appeal : non-disclosure) [2012] 1 FLR 1211, [2011] EWHC 3270 (Fam), at paragraph 16 of his judgment, provided a useful and succinct summary of the law, thus :-
- "Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:
- (i) The court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.
 - (ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.
 - (iii) If the court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.
 - (iv) In making its judgment as to quantification the court will first look to direct evidence such as documentation and observations made by the other party.
 - (v) The court will then look to the scale of business activities and at lifestyle.
 - (vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.
 - (vii) The *Al-Khatib v Masry* technique of concluding that the non-discloser must have assets of at least twice what the claimant is seeking should not be used as the sole metric of quantification.
 - (viii) The court must be astute to ensure that the non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that the court should be drawn into making an order that is unfair to the claimant.

Whether a final order should be made

14. This matter was first heard on the 21 June 2023. Prior to that hearing both parties would have received the Form C, Notice of a First Appointment order dated 15 November 2022. That order directs the parties to file with the court and on each other the financial statement Form E and if they wished to use the accelerated procedure then to obtain valuations of any properties, property particulars of suitable housing for themselves and the other party, mortgage capacity evidence and a questionnaire.
15. The applicant filed her Form E and this is dated 15 June 2023. She also filed a Form G on the 14 June 2023 stating that the First Appointment could not be used as an FDR as the respondent had failed to file any financial evidence.
16. At the hearing on the 23 June 2023 the respondent did not attend. Directions were given for the respondent to file his Form E by 19 July 2023 and if he did so for questionnaires to be filed. If he did not, a direction was given for the applicant to file a S25 statement and obtain Office Copy Entries from the Land Registry of the 4 properties that she was aware of in the UK that were owned by the respondent. It was stated on the order that if the respondent filed his

Form E the next hearing would be an FDR hearing, but if he did not then the next hearing would be a final hearing. Warnings were given to the respondent in that order, firstly, that adverse inferences could be made if he fails to provide full and frank disclosure and that orders may be made in his absence and he may be denied any further opportunity to file evidence that he may wish to rely on.

17. The respondent did not comply with that order and did not file a Form E and did not provide full and frank disclosure. As a result, the matter was listed for a final hearing on 4 April 2024 before me.
18. At that hearing the respondent again did not attend and did not contact the court. Consideration was given as to whether a final order could be made, however, although the applicant had obtained office copy entries for the 4 properties owned by the respondent in the UK, they were clearly encumbered by mortgages and the applicant had not been able to obtain that information as it was in the respondent's sole name. Further, valuations of the properties would be required.
19. As a result, I made third party disclosure orders in relation to the mortgages and also the managing agent who appeared to managing at least one of the properties which had been let to tenants. The matter was then adjourned to the 2 August 2024 before me. The order made on the 4 April 2024 contains two warnings in bold to the respondent indicating that if he fails to engage in these proceedings he may be denied permission to rely on any evidence and orders may be made in his absence.
20. The respondent failed to attend the hearing before me on the 2 August and did not comply with any orders made. I am satisfied that the respondent has had sight of the orders made in these proceedings, the applicant in her evidence stated that he had sent her family a message about the proceedings shortly before the hearing, in which he threatened the applicant if she received any of the UK properties. I understand that the applicant's solicitors served the respondent with the orders by email and WhatsApp message. I am satisfied that the respondent has had several opportunities to engage with these proceedings, attend hearings, and contact the applicant's solicitors or the court and has chosen not to do so.
21. In that respect I am satisfied that it is appropriate to conclude matters today and make a final order.

Evidence

22. The evidence before me consists only of that provided by the applicant. She has filed a Form E and two statements. I also heard brief oral evidence from her.
23. In her evidence she confirmed that the respondent owns 4 properties in the UK:

Property 1, the former family home.
Property 2
Property 3
Property 4

24. The applicant obtained a valuation of the former family home and drive by valuations of the other 3 properties. She obtained by way of the third party disclosure orders the outstanding balances due on the mortgages on each property. The former family home is valued at £280,000, with a mortgage of £78,066; Property 2 is valued at £300,000 with a mortgage of £167,028; Property 3 is valued at £280,000 with a mortgage of £117,352; and Property 4, is valued at £325,000 with a mortgage of £127,921.
25. The balance of the respondent's bank account, such information also coming as a result of the third party disclosure order, was £1974.20.
26. The total assets in the UK that the applicant is aware of, after notional costs of sale, totals £707,757.

Matrimonial Causes Act 1973 S.25(2)

27. (a) *the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;*
 - a. The applicant works part time due her child care obligations as a health care assistant, she earned £7,416 net in the year ending April 2024 and also receives Universal Credit and Child Benefit. Her total income is limited to £18,816 net per annum. It may be possible for her to increase her earnings as the youngest child gets older, however, she will always have the care of her adult child who has lifelong disabilities. In any event, any increase in earnings is likely to lead to a reduction in benefits. It is therefore likely that her income will remain relatively similar for the future.
 - b. The respondent's income is unknown. The applicant believes that he runs an import/export business in Country X. She said that even when she and the children moved to live in the UK permanently in 2010 the respondent would spend most of his time in Country X. She believes he has several properties in Country X but was unable to give any estimates of valuations or documentary evidence of their existence. She was also unable to give an indication as to the respondent's earnings. From the third party disclosure obtained the 3 of the UK properties, other than the former family home, yield at least £2,900 per month in rental income, although it is appreciated that the respondent would need to pay the mortgages, and house insurance in respect of those properties and the former family home from that income.

- c. It is likely in my view that the respondent must have an alternative source of income as the net income from the rental of 3 UK properties is unlikely to meet any one person's daily needs. It is likely that he has an income from the business he runs from Country X, however, without any information about his standard of living it is impossible to say what that is likely to be. I am able to say however, that he clearly has sufficient funds to meet his daily needs from all sources as he has not sought to sell any of the properties nor ceased to pay the mortgages due on all 4 properties.

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

- a. The applicant requires a 3 bedroom property for herself and the dependent children. She also requires that to be mortgage free as her own income is limited and she would not be able to afford to meet the mortgage payments each month nor a rental payment. I am satisfied that the applicant's income just about covers her daily needs and there is no room for additional costs such as rent or a mortgage, nor general repairs.

29. (c) *the standard of living enjoyed by the family before the breakdown of the marriage;*

- a. The applicant states that the standard of living was comfortable, she does not describe being in debt however, she also does not describe a lavish lifestyle.

30. (d) *the age of each party to the marriage and the duration of the marriage;*

- a. The applicant is 46 and the respondent is 60, they were married legally in 1996 and separated in 2015. In that respect this is a long marriage with 5 children.

31. (e) *any physical or mental disability of either of the parties to the marriage;*

- a. The respondent has not declared any disabilities. The applicant suffers with anxiety largely caused, she says, by the respondent's behaviour. One of the adult children has a life long disability and the applicant will have to make provision for his care, as the respondent does not have any contact with him.

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

- a. The applicant's evidence is that throughout the marriage and even after she moved to the UK in 2010 she would assist the respondent with the business in Country X as well as caring for the children. When she moved to the UK she would also assist by meeting suppliers and

overseeing the shipping. Since separation, when the respondent left the family and did not return, the only contribution he made was to pay the monthly mortgage instalments and insurance on the former family home. He made no further financial or emotional or practical contribution to the welfare of the family.

33. (g) *the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;*
- a. The applicant has raised in her statement that the respondent was abusive during the marriage and he has made threats to kill her during these proceedings. She also raises the fact that the respondent has been deliberately evasive in these proceedings and failed to provide full and frank disclosure.
 - b. Although it is clear that the respondent has not been open regarding his disclosure, the applicant has not sought to rely on conduct as a factor in these proceedings.
34. (h) *in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;*
- a. The applicant is not aware of any pension provision that the respondent may have. She believes that the respondent is likely to inherit assets from his family in Country X and she and the children are unlikely to benefit from that.

Analysis and conclusion

35. Taking into consideration all of the evidence and the S25 factors above I must assess what is a fair and reasonable settlement between the parties.
36. The applicant is seeking the transfer to her of two properties, the former family home and Property 2. In respect of the known assets in the UK this would provide her with 54%. She will be able to retain the family home and either sell Property 2 and use the proceeds to clear the mortgage and provide her with a savings fund for future maintenance, or she could retain Property 2 and receive the income from the tenancy to cover the costs of running both properties. It would leave the respondent with 46% retaining 2 of the properties in the UK, as well as what ever assets he has in Country X and the business that no doubt provides him with his income.
37. Unfortunately, the applicant has not been able to provide any documentary evidence regarding assets in Country X. She was unable to give any addresses or descriptions of any properties and likely value. She was also unable to give any evidence as to the likely value of the business and the income that it generates. On that basis I am in difficulties ascribing any value to those assets

even though I find it is likely that the respondent has resources in Country X. If he did not have such resources I would expect him to fight harder for the assets he has in the UK.

38. From the evidence presented to me in this case, I am satisfied that the applicant's needs are for a mortgage free property for herself and the children. This need is met by her having the former family home, however, she would also need further capital to ensure she can maintain that property as her income on its own is insufficient to meet the running costs with the mortgage secured upon it. I am satisfied that the respondent will not co-operate with a claim for spousal periodical payments to the applicant. He has failed to engage in these proceedings at all and given he is often living in Country X, enforcement of such an order would be extremely difficult.
39. The applicant's position is modest and reasonable in the circumstances. This proposal results in a small departure from equality of the UK assets and does not take into account any assets the respondent has in Country X or elsewhere in the World. Even though I am unable to quantify any assets the respondent has in Country X or his income from the business, it is likely that they would have some value, sufficient to meet his needs. The respondent would have 2 properties in the UK plus whatever he has in Country X. In that respect the applicant's proposal is very reasonable.
40. On that basis I do find that the former family home and Property 2 should be transferred to the applicant subject to the mortgages secured thereon. This would be on a clean break basis. The applicant is not seeking an order as to costs so the order will be made on the basis that each party meet their own costs.
41. As the respondent has failed to comply with any orders made by this court in the past, I have little faith that he will comply with this order. On that basis I find it is necessary and proportionate to make orders for the execution of any documents that will put into effect the transfers of the properties. I therefore direct that a partner or director of the solicitors firm that the applicant wishes to instruct in the conveyancing of the properties shall be permitted to sign any documents on behalf of the respondent. By making these orders today it will save the applicant time and costs by not having to make such an application in the future once it is realised that the respondent is not co-operating with the conveyancing.
42. That concludes my judgment.

District Judge Foss
Date: 2 August 2024