

IN THE BLACKBURN FAMILY COURT

Neutral citation: [2024] EWFC 76

Case No. 1663-8641-2032-6694

Courtroom No. 2

64 Victoria Street
Blackburn
BB1 6DJ

Tuesday, 12th March 2024

Before:
HIS HONOUR JUDGE BOOTH
Sitting as a High Court Judge pursuant to s9 SCA

B E T W E E N:

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and

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MR S TROWELL KC & MR N BENNETT appeared on behalf of the Applicant
MS S HARRISON KC appeared on behalf of the Respondent

APPROVED JUDGMENT

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HHJ BOOTH:

1. This is my judgment in financial remedy proceedings in a hearing which began on 27 February 2024. I heard evidence from both the parties and heard submissions and decided to reserve my judgment. This case raises the difficult question of the appropriate level of support for a second wife where there were no children of the marriage (although the wife's children of a previous relationship were treated as children of the family but who are now all over the age of 18) where the assets in the case were derived entirely from the husband's pre-relationship endeavours. The complicating factor is the wife's mental ill-health which I will set out in detail in due course.

Representation

2. The wife has been represented by Mr Stephen Trowell KC and Mr Nicholas Bennett and the husband by Ms Sally Harrison KC. I am grateful to them for their written submissions both in opening and closing, their oral submissions to me and the sensitive way in which this case has been conducted.

Overview

3. By the conclusion of the case, there was a large measure of agreement as to what it is I am dealing with. The total value of the assets is between £15,000,000 and £16,000,000. That difference is immaterial. It is agreed that this is a case where I must assess the wife's needs for financial support and where I am not sharing the assets. The wife's needs allow the Court to invade the non-matrimonial property accumulated by the husband. On any view the husband will be able to meet his own needs.
4. In giving their evidence I am clear that both parties were genuine in telling me what they believed to be true. There is no need for me to make findings of fact on matters they may have disagreed about.

Background

5. Let me set out a little bit of the background to the case. The husband is 63 years of age and is a businessman. His modus operandi is to invest in promising businesses in the hope that some of those investments will be successful whilst acknowledging that some will be unsuccessful. The wealth that is now available came in large measure from one such successful investment. The husband was previously married. From that marriage, he has three adult children. Sadly, one of those children is severely disabled. That child lives with his first wife. He has a son from a previous relationship.
6. In his first divorce proceedings, there were complications of the husband's own making which caused the proceedings to drag out and be expensive. A compromise was reached in those proceedings which then became the subject of a final order. The most important element of that order relevant to these proceedings is the provision that was made for the husband's disabled son. The husband pays £15,000 per month towards his care. In their financial settlement, they agreed to set up a fund to pay for that care requiring each of them to contribute £3,000,000. That fund has never been established. I have reached the conclusion on the evidence I was shown that the husband is unlikely to be called on to pay into the fund in the near future.
7. The effect of the potential liability to the fund for his disabled child is to reduce the capital pot by approximately £3,000,000 if interest is added but more significantly, potentially affects liquidity. In addition to anything he must pay to his second wife, he says he may also

have to find in relatively short order, a further £3,000,000. It is undoubtedly the case that some of his investments are illiquid and some of his funds are tied up, certainly in the short-to-medium term.

8. For the purposes of my decision, I will work on the assumption that the total pot available is £12,000,000 and I will deal with the question of liquidity when I have determined what it should be paid to the wife. He has £1 million in the bank. His investments and policies are valued at approximately £5 million. He has business interests worth approximately £3 - 3.5 million. He has a pension of £900,000. There are chattels etc. including furniture that reflect the parties' lifestyle and there are Ferrari and Bentley motor cars.
9. As far as income is concerned, the husband has relatively little. He has in the past had directorships which have paid him relatively modest incomes. In practice, the family have lived off capital gains and the realisation of investments with those being received with limited tax consequence given that he has also made losses. The calculations done by Mr Trowell KC and Mr Bennett suggest that the "income" of the husband towards the end of the marriage (that is income and capital available to spend) was approximately £500,000 per annum. That would be consistent with the lifestyle that it was demonstrated these parties have enjoyed.
10. The wife is 48 years of age. She has not worked, and it is accepted by the husband that she has no earning capacity. She has three children from a previous cohabiting relationship. She exited that relationship with £500,000 being her share of the proceeds of sale of a house. By 2020, all that money had been absorbed into the husband's assets. I will deal with that in due course. She is entitled to be treated as a fully contributing spouse. She introduced into the marriage all the money she had. Her children were treated as children of the family. She supported the husband through his first divorce proceedings. She looked after the family.
11. It is agreed that the parties began to cohabit in July 2012 at the time they bought the house that has been the family home. Currently, the wife continues to live in it and the husband is in rented accommodation. They married in 2017 and separated in July 2022. For the purposes of my assessment, this is a 10-year relationship and to be treated as a 10-year marriage. It is certainly not a short marriage, neither is it of the longest type.

The wife's ill-health

12. Sadly, the wife suffers from mental ill-health. That manifested itself in 2014 when she attempted suicide at a time when she tells me she was happy and in a loving relationship. Despite that, she became seriously unwell. Things took a turn for the worse in 2023 during these proceedings. There have been two serious suicide attempts the second of which led to a period in a psychiatric unit and a conclusion by her treating psychiatrist that she lacked litigation capacity. That coincided with the case being listed for final hearing in November 2023. She is much better and was certified as having capacity in mid-December 2023. Whilst I am no expert, it is obvious that she remains fragile.
13. Neither party sought to put before me evidence as to the wife's ill health by way of a jointly-instructed expert. In fact, there are two reports that have come in from the treating psychiatrist, the first to support the adjournment of the final hearing in November 2023 dealing principally with the issue of the wife's lack of litigation capacity. I have had a more recent report filed in support of the wife's application for special measures. I have, of course, read those reports in the light of the applications they were put in to support. It is the wife's case that her mental ill-health and fragility have financial consequences. Whilst the husband acknowledges the wife's mental ill-health, his case, through Ms Harrison KC, was that absent psychiatric evidence dealing with the wife's long-term prognosis and specifically

the need for support that would have financial consequences, I should not be led down that route.

The parties' respective cases

14. What is it that the parties say should be the outcome of this case? The wife seeks a lump sum of £3,980,000 payable in stages and in exchange offers a clean break from the husband. She calculates that she needs £1.25 million to allow her to buy a house together with the additional sum of the tax that would be payable on purchase. She asks for £2.26 million representing a capitalised sum for her maintenance for the rest of her life calculated at £100,000 per annum. She asks that the husband meet her outstanding legal costs of £267,000 and the balance of the sum she seeks would cover the costs of moving, refurbishing and equipping her home together with a small emergency fund to cover eventualities.
15. The husband offers £2.5 million in total. He suggests that the wife's housing needs can be met for £750,000 with the balance of the sum he offers to represent a capitalised maintenance claim based on £75,000 per annum.
16. As I will set out below, neither party has succeeded in persuading me of the correctness of their position.

How Do I Approach the Case?

17. Section 25 of the Matrimonial Causes Act 1973 as amended is the starting point in my assessment. It requires the Court to hold a balance of fairness between the parties with fairness having three elements: needs, compensation and sharing as explained in *Miller v Miller* [2006] UKHL 24. Section 25(2) sets out the particular factors that the Court should take into account. Needs are, therefore, to be assessed against age, earning capacity, standard of living and any disability. The need for housing is the first need that the Court should consider. When looking at housing and what a party needs, and, indeed, this applies to all aspects of need, need does not stand on its own but is informed by other aspects of the section 25 exercise. In cases of very significant wealth, the appropriate approach to adopt was analysed in *Juffali v Juffali* [2016] EWHC 1684 (Fam). Whilst helpful, this is not a case of very significant wealth although such wealth as has allowed the husband and wife to live a very comfortable lifestyle with no constraints on spending.
18. Whilst the standard of living during the marriage is something for me to take into account it is not appropriate to look to provide equality of lifestyle on the facts of this case. Whilst a comparison is not invalid it is not the driver of the ultimate result.

How do I Assess Each Party's Needs for Housing?

19. The husband tells me it is his intention to return to the family home. It has been valued at £2.8 million and is mortgage-free. It is subject to a mortgage facility currently standing at zero but with a facility of £1.5 million which the husband intends to use to satisfy in part the claim of the wife. His evidence about his housing need was striking. In his mind, the family home represents a marker of his success as a businessman. The same thinking applies to a holiday home that the parties have enjoyed in Majorca worth £2,000,000 but half of which the husband has given to his eldest son by placing that property in their joint names.
20. As far as the husband is concerned, the wife's need for a home should be measured in a much more modest way. She asks that she be provided with a home which will allow her to have family live with her. Since her most recent ill-health where the two suicide attempts coincided with her being at home alone, her mother and her stepfather are proposing to live with her, and she wishes to accommodate two of her three children whilst they establish

themselves financially. More significantly, because on any view, she will have enough money to accommodate the people she wants to live there, she says her choice of home is limited geographically by needing to be near her friends and within walking distance of recreational facilities. She suggests that she needs to live in one of the most expensive areas of North Cheshire as that meets and is the only place to meet her criteria. It is, of course, her mental ill-health that she asserts generates those needs. Insofar as it is relevant to the exercise it appears that her mental ill-health has developed during the relationship although there is no suggestion that it is “relationship-generated”. The argument would be the same if she had a physical illness that had potential long-term implications for her.

How do I Deal With the Absence of Expert Evidence?

21. It was open to either party to invite the Court to instruct a single joint expert. Had that been done, questions could have been put to the expert in the letter of instruction to try to answer whether it could be established what the long-term prognosis for the wife might be and what the implications might be for her future financial support. I am left with having to do my best. The wife’s ill health is not a new feature of her life and has been with her for many years. I have already described her as “fragile”. It seems to me I must take a generous approach largely in the wife’s favour but with the caveat that I do not have expert evidence to support that approach. In any event, in cases involving significant wealth, it has been repeatedly acknowledged that needs should be “generously interpreted” – again, see *Miller v Miller*. A generous interpretation consistent with the husband’s ability to pay seems to me in these circumstances to cover the difficulties of the wife’s mental ill-health.

The Parties’ Respective Ages

22. It was asserted on behalf of the husband by Ms Harrison that he was at the end of his working life. Given the nature of the way he conducts his business affairs, there is no retirement age. He can carry on investing for as long as he likes. If he feels the need to maintain his lifestyle, the sort of lifestyle he had during the marriage, then it is unlikely that he will retire any time soon. Using the Office of National Statistics’ tables for life expectancy, published in January 2024, at 63, the husband has a life expectancy of just over 19 years. At 48, the wife has a life expectancy of just over 35 years. Life expectancy has reduced in the most recently published tables from those in the current version of the *Duxbury* Tables in *At a Glance; 2023-2024*.

Is this a case for a lifetime maintenance award?

23. The longer the wife asks that the award should last relative to the length of the relationship the more scrutiny that is required. This in large measure was Ms Harrison’s justification to restrict the assessment of the annual sum that I should start with in assessing what was accepted would be a lifetime award. Whilst a factor, it is only one of many factors subsumed within the s25(2) criteria.
24. The husband did not argue against the wife’s approach but sought to reduce the annual multiplicand suggesting that the totality of the award should be contained within his figure of £1.75 million after housing costs as suggested by him are deducted. Mr Trowell and Mr Bennett have taken a straightforward £100,000 per annum from the 2023-2024 *Duxbury* Table for a woman of 48 years. They suggest that underrepresents the wife’s need as the table assumes she has a full entitlement to state pension which this wife does not have.
25. The *Duxbury* calculations have been considered in many cases over the 30 years since they were first published. They are a guide. They do not supplant the exercise of judicial assessment but provide guidance as to whether that assessment is in the right area. The

calculation has weaknesses. It is assumed that the wife lives for precisely the time her life expectancy suggests. There is no deduction for potential future remarriage where any maintenance award would come to an end. In a case such as this it assumes that on the older husband's death there would be a successful Inheritance Act claim. The recent bout of inflation in the economy caused by the Russian invasion of Ukraine has tested the underlying assumptions in the *Duxbury* calculations. Having said all that, it seems to me that as a starting point, the *Duxbury* arithmetic is the right approach. The issue I have to decide is what annual sum I should use as the multiplicand.

26. Ms Harrison mounted a full-frontal attack on the wife for the figures she has put forward for her annual financial needs. The wife explained that her initial calculation in her Form E was based on the lifestyle enjoyed during the marriage. There have been maintenance pending suit proceedings for which a more modest budget was produced and that award together with the sums paid by the husband in respect of the family home suggests that she has been receiving in payment and in kind, approximately £100,000 per annum. The argument is that when she moves to a much more modest house, she will not need that level of funding. In evidence, she trimmed her figures further. Mr Trowell and Mr Bennett held out for a calculation based on £100,000 per annum.
27. Until she moves and establishes herself in her long-term home, no one will know precisely what she "needs". In one sense, her needs will be self-determined. The larger and the more expensive the home she buys, the more it is likely to cost and the quicker she will go through the finite amount of money she has available to her. A more modest house would undoubtedly be cheaper for her to run, then she might be able to make savings. It was said on her behalf that she may need further periods of in-patient care which will be expensive. A cost of £20,000 per stay seems likely. In my assessment, a figure of £100,000 per annum when put in the context of the lifestyle enjoyed by these parties for 10 years is fair for the wife and fair for the husband. I, therefore, assess the appropriate *Duxbury* sum, making an allowance for the fact that the life expectancy is less than that used in the current tables at £2,100,000 (being the figure for a woman of 51 years).

At What Price Should the Wife's Housing be Met?

28. Mr Trowell suggested to me in his closing submissions that as I only had sample sales particulars for houses at £1.25 million and above from the wife and £750,000 from the husband, I could not assume that housing would be available at any other cost. With great respect, that is not a sound submission. I am familiar with housing costs to the south of Manchester and the north of Cheshire. I regularly have cases before me involving houses from that part of the world. I can take judicial notice that there is a wide range of housing stock in that part of the world and the wife will be in a strong negotiating position as she will be a cash purchaser. I am quite satisfied that if I award her £1,000,000 under that heading, she will be able to pay for a house, the appropriate tax on purchase and will be able to equip it. Precisely how much she spends is a matter for her and she will have a total fund to cover her housing and her maintenance for the rest of her life with which she will have to budget. She will have to make informed choices. I have no doubt she has available to her plenty of sources of advice.
29. I am not persuaded that I should alter that assessment to take account of her only being able to meet her criteria in a particular location. My award will not prevent her buying precisely where she wishes but she will have to assess the consequences for her own long-term support from the money she is left with. My conclusion is based on the totality of the evidence I have available to me.

The Wife's Outstanding Legal Fees

30. The costs that she has expanded have been subject to criticism throughout this litigation. Indeed, the last order I made restricted her to the same sum that was to be spent by the husband on his legal costs. Despite that, she has incurred substantially more. Her costs in total are more than double those of the husband and she has run up fees far greater than his in the run-up to and including this final hearing. Mr Trowell and Mr Bennett have said both in writing and in oral submissions that the scale of the wife's fees reflects her ill health. She has struggled to understand the complications of the husband's financial affairs, she has required far more time devoting to her than many other clients in more robust health and with greater understanding. Although little could be done while she lacked capacity in the run-up to this final hearing, the effect of her serious ill-health at that time was, says Mr Trowell "to push up her costs even further".
31. I have no doubt there is significant truth in what is said. However, where should that money come from? Should it come from the assets generated exclusively by the husband as the rest of her award has done? There is no option of saying she should have used her own funds to pay that bill. In 2020, she had £350,000 standing to her credit representing the balance of the £500,000 that she had introduced into the marriage from her previous relationship. In circumstances that were not in any way sinister, the husband used that money for investment purposes. The wife now complains that it was her money and is now gone.
32. I have some empathy with the wife's current thinking, and I can see why she felt that was her fund. It was not money that the family had used to live on or provide for themselves and was her only asset attributable to her rather than the efforts of the husband. What I am not doing is bringing it back into account. Ms Harrison argued that a claim for the outstanding legal fees was tantamount to seeking a costs order against the husband. Mr Trowell characterised the outstanding costs as part of the wife's needs, i.e., it is money that must be paid and can only be funded by the money received from the husband. Both are right. If it were a costs order, then the husband would be entitled to have it assessed by a costs judge and there is authority to suggest that if I take it into account now, I must carry out a rough-and-ready assessment of that sort myself.
33. Ms Harrison referred me to *Ezair v Ezair* [2012] EWCA Civ 893, an appeal from a decision of mine, where the Court of Appeal was considering how the court should deal with a costs order intended to be a penalty against a party to reflect their litigation misconduct that had resulted in the other party having a larger legal bill to pay than should have been the case. That is not what I am dealing with here.
34. The circumstances I have were considered by the Court of Appeal in *Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1184 where King LJ gave the leading judgment. At paragraph 63. She said:

It is undoubtedly the case that there is no specific rule requiring the first instance judge to carry out an analysis by reference to the principles applicable to costs orders and in my judgment to do so would not be compatible with the wide discretion of the judge to determine the extent of a party's needs and the extent to which they should be met. Having said that, in my judgment in cases where it is argued that an order substantially in excess of the sum required to meet a party's assessed needs is sought in order to settle the outstanding costs (or debts referable to costs) of that party, the judge should:

- i) *Consider whether in any event the case is one in which consideration should be given to the making of an order for costs under FPR 28(6) and (7) in particular by reference to FPR PD 28 para 4.4;*
- ii) *Whilst not carrying out a full costs analysis, the judge should have firmly in mind what the order they propose to make by way of additional lump sum*

to meet a party's costs would represent if expressed in terms of an order for costs. To do this would act as a cross check of the fairness of the proposed order.

35. Accordingly, what is the answer? I am persuaded that this wife will have incurred significantly more in legal fees than would a litigant not suffering from her ill health. Having seen her give evidence, I can see why far more time would be needed with her than would be needed, for example, with the husband. Doing my best and applying a quasi-assessment of what might be ordered if it were a costs order and looking at the overall fairness of how this should be paid, the husband should pay two-thirds of the wife's outstanding legal costs, an additional lump sum of £177,300. What in part has driven my assessment of fairness is to look at the parties themselves. It is not the wife's fault that she has ill-health. The husband is not to be punished because he married someone who was, in due course, to succumb to ill health. It is one of the facts of the case that cannot be ignored.

How Should the Money be Paid?

36. It has been agreed that there will need to be stage payments. Ms Harrison seeks to characterise this as a series of separate lump sums which cannot be varied save as to the timing of the payment. He offered in evidence that the first payment could be made within a week of my judgment. I will hold him to that. Any further payments should carry interest but the rate of interest I apply is 3.75% being the rate of return used in the *Duxbury* calculation.
37. I have had additional submissions from the parties as to the scheme for payment. I will not be providing for any additional security for payment in addition to the provision of interest at the Judgment Act rate in default of payment on time. I have no reason to think the husband will not pay. My decision is as follows:
- a. £2,000,000 fourteen days from handing down of the judgment;
 - b. £500,000 within four months;
 - c. £777,300 within 12 months.
38. A question arises as to when the wife should vacate the family home. She seeks a period of four months from the date of payment of the first lump sum and in the expectation that she will have the total payment in time to buy her home. My expectation is that she should certainly have the £2.5 million offered by the husband within four months of the date of this judgment being received by the parties. That is the period I am going to give her to move out. If the money is paid earlier, then she should move out on payment.
39. The Bentley motor car is with the wife. It should be given to the husband immediately.
40. The remaining interim provision will cease on the payment of the first part of the lump sum provision save for those instances where the husband is paying for utilities etc., which will continue until the payment of the second part of the lump sum provision and the wife vacating.

Can that Sum be Paid?

41. The husband has cash in the bank of £1,000,000. He has a mortgage facility of £1.5 million on the family home. He has other investments that are likely to mature in the very near future.
42. It is said on his behalf by Ms Harrison that an award of that scale will leave him with all the illiquid assets. That is not a fair characterisation. He will be left with two houses in which he has a very substantial equity. If he chooses to retain two trophy homes, then he must find the money from somewhere else.

43. I was taken on a fascinating tour through the husband's investments. A debate ensued as to whether it would have been more cost effective to have appointed a single joint expert to value those investments. Instead, it was decided by the parties that they were content for the husband to provide his own valuations subject to challenge. I am satisfied that the husband gave me realistic evidence as to valuation. His evidence illustrated that expert evidence might have been misleading and/or completely out of date as he referred to board decisions and investment decisions by others that have had and continue to have a direct impact on valuation and the prospect of him recovering a profit or a return of his investment.
44. How do I allow for the £3 million that might be required for his disabled son? Any early demand for the establishment of the fund seems unlikely and, in any event, I would expect him to be able to stall until he could release funds.
45. On a rough-and-ready calculation, the effect of my order is to divide the available assets as to 75% to the husband and 25% to the wife. Given all the circumstances of this case, that suggests by way of cross-check that my other calculations are correct.
46. That is the end of the judgment.

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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This transcript has been approved by the judge.