IN THE FAMILY COURT **Case No: DH 16 D 01714**

AT NEWCASTLE UPON TYNE

MATRIMONIAL CAUSES ACT 1973

The parties

MG -v- AG

RESERVED JUDGMENT OF MR RECORDER SALTER DATED 17 NOVEMBER 2020

Introduction

[1] On 24 September 2020, I heard an application by the prospective appellant, MG, for permission to appeal out of time against the order of District Judge Morgan MBE (as he then was) ("the judge") handed down on 27 July 2018 and subsequently clarified. The respondent to the application is AG. I will refer to them respectively as the husband and the wife, although I am well aware that they are now divorced. I intend no discourtesy in adopting this course purely for convenience in the conventional way.

[2] The hearing before me was conducted remotely by CVP. The husband was represented by Ms Sarah Phipps and the wife by Mr Jonathan Tod. I am grateful to them both for their detailed written and oral submissions.

[3] Although this was an out of time permission application, the detailed nature of the submissions from each of the parties was such that I found it necessary to reserve my decision. This judgment fulfils that obligation.

Factual background

[4] The wife is now aged 52 and the husband 51. They began cohabitation in November 2002. The first child, a daughter, was born on 6 March 2005 and is now aged 15; their second child, a son, was born on 16 September 2007 and is now aged 13. They married on 25 March 2006.

[5] The husband is the managing director of and a shareholder in C Limited and N Limited. At the time of the final hearing, the husband's shareholding in C Limited was 42.1% and in N Limited 26.59%. The other main shareholder, who owns the same number of shares in each company as the husband, is Mr. X. The husband had acquired his shares in C Limited in October 2013 from the owners, a private equity company, following a management buy-out, which was funded with borrowing from a bank. As I will explain, following the final hearing, the husband increased his shareholding in C Limited to 50%.

[6] The wife did not work outside the home, but the judge found that she had an earning capacity of "£15,000 or so".

[7] The parties separated in May 2016 and a decree nisi of divorce was pronounced on 7 September 2016.

[8] The wife issued an application for a financial remedy in Form A on 15 September 2016. Following an unsuccessful FDR, the application was listed for a three-day final hearing before the judge on 25/27 June 2018. He reserved his judgment, which was sent out in draft on 17 July 2018 and subsequently formally handed down, as I have indicated, on 27 July 2018. At the time of the final hearing, the parties' assets comprised of the net proceeds of sale of the family home, totalling £405,268.65, and the husband's shareholdings in C Limited and N Limited, which the single joint expert instructed by the parties had valued at £6m and £182,129 net respectively.

[9] In brief, the judgment provided for the husband to pay to the wife a lump sum of £3.09m by 23 July 2023. The wife was to receive 75% of the net proceeds of sale and the husband the remaining 25%. The husband was to pay simple interest on the lump sum at the rate of 4% over base rate pending payment. The husband was to pay to the wife periodical payments of £4,750 per calendar month, 25% of any net bonus received, payments in respect of the wife's car loan and 50% of any dividends received. The husband was also to be responsible for the children's school fees.

Proceedings after the final hearing

[10] On 3 August 2018, the husband's then solicitors requested by letter (rather than by Form N161) permission to appeal from the judge, the judge having permitted them to make the application to him at that stage ostensibly pursuant

to FPR 2010, PD30A, para 4.4. The judge refused permission to appeal without a hearing on 15 August 2018 giving detailed reasons for his decision. He noted that there was no appeal against the lump sum order, the appeal being limited to the term order for periodical payments (without any challenge to the dividend element) and interest upon the lump sum, although there was no challenge to the principle or amount of interest payable upon the lump sum.

[11] The application for permission to appeal was not immediately renewed to a judge of circuit judge level. The time for filing an appeal expired on 17 August 2018. Instead, the parties attempted to agree the terms of the order and engaged in correspondence with the court to this end.

[12] The terms of the order were finally agreed between solicitors when Mincoffs, acting for the wife, wrote to the court on 7 March 2019 agreeing to the draft order of the husband's solicitors, who lodged the agreed order with the court on 22 May 2019. This version simply removed the track changes from the order agreed on 7 March 2019. The order was not however sealed at this stage.

[13] In early May 2019, the husband consulted new solicitors, Weightmans in Leeds. They went on the court record on 16 May 2019. On 20 May 2019, they requested by Form D11 judicial reconsideration of the terms of the periodical payments provisions contained in paragraph 12 of the draft order. There was no challenge to the lump sum order in this application.

[14] The application was heard on 1 September 2019 and, on 1 October 2019, the judge handed down a reserved judgment in relation to it. The only aspect of the judgment reconsidered was the provision that the husband should pay to the wife 50% of any dividends he received. This provision was varied to remove the wife's entitlement to such percentage share of dividend where the husband paid the dividend to her in part satisfaction of the lump sum order, providing such dividend was paid to her within two months of its receipt by him.

[15] Each party then submitted requests for clarification of the judgment dated 1 October 2019. The judge responded to these requests on 30 October 2019. Thereafter came yet further submissions from the husband dated 12 November 2019 lodged consequential upon the judgment dated 30 October 2019 in relation to drafting issues, costs and a request for permission to

appeal. The court was asked by the husband "to grant permission to appeal its refused [*sic*] to review these elements [quantum of periodical payments, the award of a percentage of bonus with no cap and the provisions for payment of both periodical payments and interest] of the order". The wife's position statement dated 4 November 2019 related to the issue of costs.

[16] The judge's order was finally sealed and dated on 16 January 2020. However, prior to this, the husband filed an Appellant's Notice in Form N161 on 21 November 2019 seeking permission to appeal the decisions dated 27 July 2018 and 30 October 2019 (or as indicated in the grounds of appeal the decision handed down on 1 October 2019 and clarified on 30 October 2019) as well as a stay. The husband's appeal is against paragraphs 9(a) and (b) [lump sum and interest], 12 [spousal periodical payments] and 17 [costs] of the then proposed order. The husband's new solicitor, Louise Walker, filed a statement dated 21 November 2019 pursuant to FPR 2010, r 4.6 seeking relief from sanctions as the appeal was out of time.

[17] The application for permission to appeal was referred in error to the judge, who refused permission to appeal out of time on 6 February 2020. He had already refused permission to appeal on 15 August 2018 and the application should have been referred to a judge of circuit judge level. The position was rectified when the matter was referred to the Designated Family Judge, HHJ Hudson, who by her order dated 22 July 2020 gave directions listing the application for permission to appeal out of time for hearing before me on 24 September 2020.

The legal framework

Reconsideration of decisions

[18] Wilson LJ (as he then was) observed in *Paulin v Paulin* [2009] EWCA Civ 221 at [30] that "a judge's reversal of his decision is to be distinguished from his amplification of the reasons which he has given for it". It is the advocates' responsibility, whether invited or not, to draw the attention of the judge to any ambiguity or deficiency in the reasoning with a view to amplification rather than immediately using the omission as grounds for an application to appeal (FPR 2010. PD30A, para 4.6). FPR 2010, PD30A, paras 4.7-4.9 set out the procedure to be followed in this situation where there is an application for permission to appeal on the grounds of a material omission from a judgment.

[19] However, the application made on behalf of the husband on 20 May 2019 was specifically for the judicial reconsideration ie reversal or amendment of the terms of the periodical payment provisions contained in paragraph 12 of the order rather than for amplification of the underlying reasons. This is referred to by the husband's counsel as the *Barrell* application (*Re Barrell Enterprises* [1973] 1 WLR 19), which confirmed that a judge has a discretion to change a decision at any time before the order is drawn up and perfected, as was the position here. The scope of this jurisdiction was considered by the Supreme Court in *Re L and B (Children)* [2013] 2 FLR 859, SC, where it was held that the discretion must be exercised "judicially and not capriciously", but that it is not limited to exceptional circumstances, as had been held in *Barrell*. The overriding objective must be to deal with the case justly. Every case will depend upon its particular facts. It will be relevant whether any party has acted on the decision to his detriment especially in a case where it was expected that they may do so before the order is formally drawn up.

Permission to appeal

[20] The husband requires permission to appeal the judgment of the judge (FPR 2010, r 30.3). As already indicated, the judge has already refused such permission. I am only able to give such permission where I consider that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard (FPR 2010, r 30.3(7)). The test for determining whether the appeal would have a real prospect of success is to be found in FPR 2010, r 30.12(3), which provides that the appeal court will allow an appeal where the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Time for filing Appellant's Notice

[21] In the case of a final financial remedy order, an appellant must file the Appellant's Notice within such period as may be directed by the lower court or, where the court makes no such direction, 21 days after the decision of the lower court against which the appellant wishes to appeal (FPR 2010, r 30.4(2) and (3)). It is common ground between counsel that time begins to run on the date upon which the judgment was handed down, namely, 27 July 2018. If authority is needed for that proposition, it is to be found in the decision of the

Court of Appeal in *Sayers v Clarke Walker* [2002] EWCA Civ 645. The Appellant's Notice was filed on 21 November 2019 and is thus over 15 months out of time. Any application to vary the time limit for filing an appeal notice must be made to the appeal court (FPR 2010, r 30.7(1)).

Relief from sanctions

[22] FPR 2010, 4.5 provides that, where a party has failed to comply with a rule, any sanction for failure to comply has effect unless the party in default applies for and obtains relief from the sanctions. Relief from sanctions is in turn dealt with by FPR 2010, r 4.6, which directs the court, on an application for relief from sanctions, to consider all the circumstances including a checklist of matters specifically set out in FPR 2010, r 4.6(1) in the following terms:

> **4.6 Relief from sanctions**
>
> (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –
>
> (a) the interests of the administration of justice;
>
> (b) whether the application for relief has been made promptly;
>
> (c) whether the failure to comply was intentional;
>
> (d) whether there is a good explanation for the failure;
>
> (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre –action protocol(GL);
>
> (f) whether the failure to comply was caused by the party or the party's legal representative;
>
> (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
>
> (h) the effect which the failure to comply had on each party; and
>
> (i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.

[23] Such an application must be supported by evidence (FPR 2010, r 4.6(2)). If relief from sanctions is obtained, the court may extend the time for compliance with any rule, even if an application for an extension is made after the time for compliance has expired (FPR 2010, r 4.1(3)(a)).

[24] I was referred to the recent decision of Francis J in *Re D (A child) (Appeal out of time)* [2020] EWHC 1167 (Fam). There, the father sought permission to appeal out of time against the district judge's finding of fact that he had abused his daughter. Francis J concluded that the findings were so unsafe and their consequences so serious that they could not be allowed to stand despite the exceptional delay of three years and five months in appealing. Permission to appeal out of time was granted, the appeal was allowed, the finding of fact set aside and a rehearing directed. In his judgment at [2], Francis J makes clear that "the delay in this case is wholly exceptional and nothing in this judgment is intended to alter the clear and long established principles relating to relief from sanctions and appealing out of time". Francis J found that the father's failure to comply had not been intentional and that there was a good explanation for it.

Waiver of privilege

[25] The statement of the husband's solicitor, Louise Walker, in support of the application for relief from sanctions makes reference to advice given to the husband by his former solicitors, whilst maintaining that privilege is not waived. Mr Tod on behalf of the wife maintains the contrary position, whilst acknowledging that there is no application before the court for disclosure of the former solicitors' files. Indeed, Mr Tod goes further by asserting that Ms Walker has waived privilege in respect of advice which she has given to the husband. Whilst counsel have drawn my attention to authorities on the issue of privilege, namely, *Re D (Care Proceedings: Legal Privilege)* [2011] 2 FLR 1183 and *AG v VD* [2020] EWHC 1847 (Fam), Mr Tod does not ask me to deal with the issue, although he reserves his position in the event that permission to appeal is granted. I accept that there is adequate material before me on the face of Ms Walker's statement without my having to make a decision as to whether or not there has been a waiver of privilege.

Merits of the appeal

[26] Amongst "all the circumstances of the case", to which I must have regard when deciding whether or not to grant relief from sanctions under FPR 2010, r 4.6, are the underlying merits of the appeal. Ms Phipps has drawn my attention to the decision of the Court of Appeal in *Re H (Children) (Application to Extend Time: Merits of Proposed Appeal)* [2015] EWCA Civ 583, [2016] 1 FLR 952 at 38-41. This related to implementation of a care plan for adoption where the

Appellant's Notice was 20 days outside the 21day period. The Court of Appeal reviewed a number of authorities in the civil jurisdiction, noting that it had been held that other circumstances should be given less weight than the considerations specifically mentioned and, in most cases, the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time, unless without much investigation the court could see that the grounds of appeal are either very strong or very weak. The Court of Appeal did not suggest that the approach in the family court should differ, whilst leaving the point open for another day where the merits are less strikingly clear than in the case under appeal.

[27] I will discuss the parties' respective arguments as to the merits of the proposed appeal below.

The husband's position

[28] Ms Phipps has made extensive written and oral submissions in support of her application, all of which I have considered carefully in reaching my decision. I will set out what I consider to be the essence of her submissions. Her short point is that the stark reality is that the husband cannot afford to meet the terms of the order. She submits that the grounds of appeal demonstrate that the husband has a real prospect of success.

[29] So far as the lump sum is concerned, her position is the judge has taken precisely half the value of the husband's shareholdings in two private companies with no evidence-based indication as to how the husband would be able to raise the required lump sum by July 2023 or at all. The judge has also failed to give proper consideration to the different risk profile between the husband's shareholdings and cash. The husband rejects the wife's assertion that it was common ground at the hearing that the husband would sell or transfer his shareholdings within five years. Ms Phipps asserts that the judge made no findings as to whether the husband would sell his shareholdings in the foreseeable future and that the husband's position at the final hearing was that he would need five years to pay to the wife the figure of £1.57m contained in his open offer.

[30] It is submitted on behalf of the husband that the award of interest on the lump sum in addition to periodical payments including a share of bonuses amounts

to double counting and is wrong. It is asserted that the judge does not appear to have given any consideration as to the effect of this part of the order, which equates to nearly £150,000 per annum, nor as to its affordability so far as the husband is concerned.

[31] The order for periodical payments referred to in paragraph [9] has four elements. It is challenged by the husband on the basis that the order exceeds the wife's needs as found by the judge and results in the wife having a greater income than the husband. It leaves the husband dependent upon bonus payments. The order fails to take into account the wife's earning capacity, as found by the judge, and the husband's own needs. It also fails to take into account the need for the husband to reduce or repay his director's loan account. The award of a percentage of the husband's bonus without a cap is asserted to be contrary to established authority (*H v W (Cap on Wife's Share of Bonus Payments)* [2013] EWHC 4105 (Fam)).

[32] In seeking relief from sanctions, Ms Phipps concedes that her application is made "considerably out of time". She relies upon the statement of the husband's current solicitor, Louise Walker, dated 21 November 2019, which addresses the specific factors in FPR 2010, 4.6(1) at paragraph 18. It is asserted that it would be a grave injustice to the husband to allow the order in its current form to stand in the light of his inability to meet its terms. It is asserted that the husband's current solicitors acted promptly in seeking a judicial reconsideration of the periodical payments elements of the order in an attempt to narrow areas for appeal. The delay between July 2018 and May 2019 is acknowledged, but attributed mainly to the husband accepting the advice of his former solicitors. It is argued that the husband's delay is not prejudicial to the wife in that she has received the basic periodical payments under the order. I consider further Ms Phipps' detailed submissions in relation to relief from sanctions below.

[33] The husband rejects the wife's contention that, as a consequence of now owning 50% in C Limited his interest has increased in value by £2m, as this ignores the fact that he has had to refinance the business by borrowing. There was no evidence at trial that borrowing might be available to fund a lump sum payment to the wife.

The wife's position

[34] On behalf of the wife, it is submitted that the appeal is not just out of time it is "hopelessly out of time". It is asserted that the husband's former solicitors and counsel clearly took the view that an appeal should not be pursued and that the husband's new legal advisers took a similar view in that, having been instructed in early May 2019, an appeal was not issued until some six months later in November 2019. The current application is characterised by Mr Tod as a "box- ticking exercise" which is a prelude to an action in professional negligence, a suggestion rejected by Ms Phipps.

[35] Mr Tod is clear that the evidence at trial indicated that the husband was planning to sell his business interests in order to satisfy the lump sum payment that he proposed rather than rely upon dividends. At trial, there had been no recent payment of dividends and the husband's evidence was that no dividends were likely to be paid in the future. His open offer of £1.57m was based upon 50% of the value ascribed to his shareholdings by the single joint expert in his first report dated 18 August 2017 without any form of discount. The court adopted this formula using the updated valuation before the court dated 3 June 2018. The husband had offered interest at 4% per annum. As the sale or transfer of the husband's interests within five years was one of the few areas of common ground in the litigation, there was no need for the judge to set it out in his judgment. Mr Tod refers to the well-known passage of the judgment of Lord Hoffman in *Piglowska v Piglowski* [1999] 2 FLR 763, where he held that it should be assumed "that, unless he has demonstrated to the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2). An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself".

[36] Mr Tod points to the fact that, in June 2019, the husband was able to draw a dividend of £1m and increased his holding in C Limited to 50% paying almost £2m for the additional shareholding. It is the wife's case that the husband has elected to use monies in this way rather than pay the lump sum to her, enhancing the value of assets against which she has no claim.

[37] Mr Tod argues that the income orders are not wrong and are well within the court's discretion. He relies upon the findings of the judge in his primary

judgment of 27 July 2018 and the three subsequent judgments on 15 August 2018 and on 1 and 30 October 2019. On this basis, it is asserted that the wife did have a shortfall as against her stated needs. The husband had substantial protection in relation to the periodical payments, share of bonus and dividends payable in that they reduced *pro rata* by any payments made by him against the lump sum. The wife's earning capacity was taken into account as part of the consideration of the section 25 criteria.

[38] In his written submissions, Mr Tod has provided a detailed analysis of the factors to be considered under FPR 2010, r 4.6(1), to which I refer below.

Discussion

[39] My first duty must be to review the factors to be considered under FPR 2010, r 4.6(1) in deciding whether or not to grant the husband relief from sanctions to bring his application for permission to appeal out of time.

(a*) The interests of the administration of justice*

[40] Ms Phipps asserts that this factor goes to the merits of the proposed appeal. The husband cannot afford to meet the order in its current form. For his part, Mr Tod asserts that it cannot be in the interests of the administration of justice to grant permission to appeal 15 months after the date fixed by the rules. He cites arguments advanced before Francis J *Re D* at [36] that there would be a real risk of "opening the floodgates" and that the time limit would be so nugatory that no litigant would be able to feel secure in the outcome of any case, even years afterwards.

(b) Whether the application for relief has been made promptly

[41] Ms Phipps concedes, as she must, that the application was not so made. Mr Tod asserts that this is not just an application made late, but woefully late.

(c) *Whether the failure to comply was intentional*

[42] Ms Phipps submits (relying upon the finding of Francis J in *Re D* at [47]) that, whilst the husband was not blameless, the delay on his part was not intentional. Mr Tod responds to this by asserting that a deliberate decision was taken in August 2018 that there was no arguable case for an appeal. The husband did not approach his new solicitors until some nine months later,

which is a significant and material delay. Furthermore, the husband's new solicitors did not issue an appeal for a further six months.

(d) Whether there is a good explanation for the failure

[43] Ms Phipps' analysis is that that are three relevant periods of delay. The first period runs from August 2018, when the judge refused permission to appeal, to March 2019, when the form of the order was agreed. Within this period, the last discussion the husband had with his former solicitors about an appeal took place on 2 October 2018 according to paragraph 9 of Ms Walker's statement. She offers no good explanation for this period of delay amounting to seven months. The second period runs from March 2019 to May 2019, when Weightmans were instructed. During this period, the husband's former solicitors remained on record, but were doing nothing. The husband was clearly aware of his right to appeal. No explanation is offered for this further two-month period of delay. The third period of delay is from May 2019 until 21 November 2019, when the appeal is issued. The explanation offered by Ms Phipps is that the husband's new solicitors were focusing upon persuading the judge to change his mind by issuing the *Barrell* application to deal with the periodical payments and payment of 50% of dividends. Mr Tod asserts that there is no good explanation for the failure to comply. The husband has changed his mind on a number of occasions acting against the advice of his former solicitors and, he asserts, against the advice of Weightmans insofar as they did not issue an appeal in May 2019, but only in November 2019.

(e) The extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol

[44] Neither party suggests that this factor is of relevance to the current circumstances.

(f) Whether the failure to comply was caused by the party or by the party's legal representative

[45] Mr Tod asserts the failure to comply was caused by both the husband and his legal representatives, although Mr Tod qualifies this assertion by indicating that it is a moot point who is at fault in the period from September 2018 to May 2019, when the husband had been advised to approach other solicitors if he wished to review the advice given and pursue an appeal.

(g) Whether the hearing date or the likely hearing date can still be met if relief is granted

[46] This factor is not of relevance to the current circumstances.

(h) The effect which the failure to comply had on each party

[47] Ms Phipps acknowledges that the effect of the failure to comply is uncomfortable to both parties. Mr Tod accepts this, but asserts that the effect on the wife by reopening this litigation would be devastating in terms of costs and anxiety. She has confidently believed that the order could not be reopened once the normal appeal period had expired. The first time she was made aware of any intention to appeal was upon the filing of the appeal in late November 2019.

(i*) The effect which the granting of relief would have on each party or a child whose interest the court considers relevant*

[48] Ms Phipps acknowledges that the effect of granting relief would be a rehearing, but submits that, if no relief is granted, the husband will not be able to meet the terms of the order, which will have an impact upon both parties. Mr Tod repeats that the impact of granting relief will be devastating for the wife, who has limited funds and is living in rented accommodation.

[49] As well as the specific factors which I have referred to above in FPR 2010, r 4,6(1), I must have regard to all the circumstances. These include the merits of the appeal. Much of the submissions made by each of the party have focussed upon this. Whilst Ms Phipps has marshalled certain arguable points, I do not regard them as being strikingly clear in the way that was the case either in *Re H* or in *Re D*. Her position in relation to the lump sum order is undermined by the fact that it was not thought appropriate to mount any formal challenge to this part of the order until late November 2019. To my mind, Mr Tod has mounted a reasoned defence of the framework of the order made by the judge, as I have set out above.

[50] The merits of the appeal are not by any means the only focus of the court's attention. They must rather be viewed against the broad canvass of the specific factors discussed above and all the other circumstances. Such other circumstances also include the availability to the husband of alternative

remedies, which include an application for a variation order (insofar as the spousal periodical payments order is concerned) and/or an action in professional negligence against his legal advisers. I express no view at all on the likely outcome of the latter course, if pursued.

[51] When I have regard to the factors mentioned specifically in FPR 2010, r 4.6(1), the delay here is, in my judgment, serious and lacking in any good explanation; indeed, no explanation is offered at all for the delay in the period from August 2018 to May 2019. It is clear beyond doubt that the husband had been aware of his right to appeal since August 2018. He was represented throughout the total period of delay running from August 2018 to November 2019. Paragraph 9 of Ms Walker's statement makes it clear that by 2 October 2018 the husband had been invited by his former solicitors to transfer his instructions to alternate solicitors if he wished to seek permission to appeal. He did not do so immediately even though he knew that time was running against him. Even when he did consult other solicitors in May 2019, no appeal was lodged until late November 2019. I am not convinced by the explanation that in this period attention was focussed on persuading the judge to change his mind with the *Barrell* application (limited in scope as that was) rather than immediately filing an application for permission to appeal out of time given the considerable time which had already elapsed prior to May 2019. I can only regard the delay as being intentional upon the husband's part in that he was represented, he knew of his rights and he instructed his solicitors to agree the form of order. An application for permission to appeal is not something which can be stored up in case it might be of future use. It is for this very reason that the rules contain specific time limits for the commencement of appeals. No delay (if any) can be attributed to the husband's former solicitors after 2 October 2018 at the latest. I do not have before me evidence to indicate whether any part of the delay after May 2019 could be said to be attributable to Weightmans.

[52] I have regard in my approach to the issue of delay that the August 2018 appeal and the application for judicial reconsideration in May 2019 related only to the periodical payments order, the difference being that the latter application incorporated a challenge in respect of the element of dividend payments.

[53] This litigation has been going on since 2016. The wife has been unable to move on in her life. The effect of the delay has been clearly prejudicial to her.

By agreeing the terms of the order, the husband allowed the wife to believe that all issues had been resolved.

[54] It cannot be said to be in the interests of the administration of justice to permit an application for permission to appeal to be brought so far out of time against a background of intentional unexplained delay. To do so would, to borrow from the submissions put to Francis J in *Re D*, render the time limit in the rules nugatory.

Conclusion

[55] Having considered the written and oral submissions before me and having regard to the legal framework set out above and in particular the requirements of FPR 2010 r 4.6, I have no hesitation in reaching the conclusion that I am unable to grant relief from sanctions and that accordingly the application for permission to appeal should be dismissed.

[56] That is my judgment. I will hear further submissions on costs.

D A Salter
Recorder

Dated 17 November 2020