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Case No: BV18D26288

IN THE FAMILY COURT AT OXFORD

Date: 22nd May 2020

Before: Her Honour Judge Vincent

Between:

AZ

Applicant husband

-and-

BZ

Respondent wife

Hearing date: 1st May 2020

Fiona Hay instructed by John Welch & Stammers solicitors for the Appellant husband
The Respondent represented herself at the final hearing

JUDGMENT

Introduction

1. This is an appeal against a final order made by a District Judge in an application for financial remedies. The Appellant is the Applicant husband. Miss Hay represented him at the final hearing before the District Judge, and in the appeal. The Respondent wife has represented herself throughout.
2. The parties have been together since 2011, married in June 2013 and separated in April 2018. At the time of the final hearing on 21st October 2019, the husband was 49, the wife was 46. The judge sent her judgment out to legal representatives on 8th November 2019, which was then shared with the parties on 20th November 2019. Because the judge was then on extended leave she was unable to formally hand down judgment until 29th January 2020. On that date she gave permission to the husband to appeal.
3. I heard the appeal at a remote hearing by video link on 1st May 2020, and then reserved this judgment.

The decision of the Court below

4. Before the marriage the wife had undergone surgical treatment for cancer. Due to negligence on the part of the NHS, a recurrence of cancer was not picked up by scans. The delay in diagnosis meant she had to undergo further extensive treatment. These events have understandably had long-term adverse physical and psychological consequences for her. In 2015 she received a sum of £550,000 in settlement of her claim against the NHS for clinical negligence.
5. The parties used some of this money to buy a property in [Spain] which was valued for the purpose of these proceedings at €245,000 (converted to £195,000 at final hearing).
6. The judge found that by the time of the final hearing, the rest of the damages award had been spent. Significant cash withdrawals had been made from the funds over a relatively short period of time, used for the benefit of both wife, husband and their families. The parties purchased the property in Spain and took holidays there. In one year they flew out to Spain seven times. There were two periods during the marriage that the husband did not work, the judge accepted this was due to health problems and that it was with the full agreement of his wife at the time.
7. Very shortly after the separation (in April 2018) AZ agreed that the £70,000 balance that was then remaining in the trust account should be paid to the wife. She was unable to account for what she had done with it save that £21,000 was loaned to her partner and £10,000 used as a deposit for a BMW. It was also accepted that the wife had withdrawn £20,000 from the account between January and March 2018, but she was unable to give any explanation as to how that money had been spent.
8. The judge found that the husband was earning £25,000 a year (net) and had liabilities of around £15,000, including a debt in respect of a Jaguar car which was no longer in his possession, and his legal fees. He was in possession of a black Landrover Discovery which was in the wife's name and worth about £2,000. It was agreed that he should keep this car and it should be transferred into his name.

9. Since separation the husband had been privately renting a studio flat, at a cost of £800 a month including utility bills. The judge reviewed the husband's evidence about mortgage capacity, which was that he could get a loan of £184,000 if he had a cash deposit of £84,000. Monthly payments would be £927.88. She expressed surprise that he could secure a loan at five times his salary, but recorded this was the only information she had. Later in the judgment she looked at his estimate of his income needs which he had put at £2994 a month whereas his income was just over £2,000 a month. However, those needs included £400 a month for sport and leisure and £470 a month for the outstanding finance on the Jaguar which presumably was included in his list of liabilities. The judge found that the husband had no need for a two-bedroom property and that in any event the mortgage he proposed appeared to her to be unaffordable.
10. The judge found that the wife was earning around £1,000 a month as a GP's receptionist. The wife gave evidence that she was training to become a counsellor. There was no evidence before the Court about what the wife might expect to earn in the future once qualified. The District Judge relied upon an extract from counsel's opinion in relation to her claim against the NHS to conclude that it was not reasonable or realistic for the wife to increase her working hours in the future, whether as a receptionist or a counsellor. The wife continues to live in the four bedroom housing association property which had been the matrimonial home. The tenancy was in both parties' names, but the husband agreed it should be transferred to the wife's name only. The monthly rent was £680 a month.
11. At the time of the final hearing the wife's three adult children were also living with her, two of whom were contributing a total of £450 towards her monthly outgoings. The judge found the wife's evidence about her current relationship to be unconvincing, and concluded that contrary to what she said, her partner was to all intents and purposes also living with her. However, the judge said she could not be certain that the wife could have the benefit of her partner's income in the long run.
12. The wife had a BMW worth £18,500. Her partner still owed her £17,000 of a sum of £21,000 which she had lent him to buy a car. He was repaying her at a rate of £120 a week. She had liabilities of £19,000 – credit cards and two loans, one for the BMW and one for legal fees.
13. The husband had a pension fund of around £18,000, the wife of £44,873. In addition, she had a NHS pension accrued from part-time work over the previous three years, but had not provided evidence of its value.
14. Basing her opinion on the extract of counsel's advice, the judge found that the wife would need £180,000 to cover future loss of earnings, loss of pension and other expenses, because she was not able to work at the level she had before receiving treatment for cancer, and would not be able to increase her working hours now or in the future.
15. Having gone through the section 25 factors the judge directed herself that the determining factor in the case was need. She said that she had to balance the husband's

need for accommodation against the wife's need for capital to supplement her income in the long term.

16. The judge concluded that the wife's need outweighed the husband's. However, she acknowledged that the husband had contributed £20,000 of his own money towards the marriage in its early stages. This money was his share of the sale of a property following the breakdown of his previous relationship. The judge said it would not be fair to ignore this contribution. She identified that the husband had liabilities of around £21,000 (a difference from the earlier figure of £15,000 because she included a further soft loan of £6,000 from his father). She ordered that the property in Spain should be sold, and after costs of sale, the first £21,000 paid to the husband and the balance to the wife. Until sale, she directed that the wife should be responsible for any expenses relating to the property and for any further expenses incurred prior to its sale.

Challenge to the judgment on appeal

17. There are seven grounds of appeal. The Appellant argues the outcome was unfair because it departed so dramatically from equality. Miss Hay argues that the final split gave 99% of the assets to the wife and only 1% to the husband, and that his position was rendered even less favourable still, because he surrendered the assured tenancy to the wife, but was given no means by which to house himself, and because the judge did not take into account the wife's NHS pension – the wife having failed to provide information about it.
18. Miss Hay submits that the judge went too far in making allowances for the wife's status as a litigant in person, permitted her to rely upon evidence that was submitted late, and in particular, allowed her to rely on the extract from counsel's opinion relating to her clinical negligence claim. It is contended that the judge was wrong to use that document, and apparently no other evidence, as a basis for reaching the conclusion that the wife had a need to be in funds of £180,000 in order to meet a shortfall in her earning capacity.
19. The appellant argues that the judge misdirected herself in asking whether one party's needs 'outweighed' the other. It is said that her assessment of each of the party's respective needs was flawed. Miss Hay argues that the judge effectively wrote off the husband's housing need because she doubted his evidence that he could get a mortgage. Miss Hay further submits that the judge's finding that the wife needed a substantial sum of money to sustain her into the future and supplement her income needs was inconsistent with the weight of evidence, and the judge's conclusion that the wife was very bad at money management.
20. Finally, it is said that the judge should have taken into account that the wife had spent £70,000 post-separation.
21. The Respondent says the order should stand and the judge was right to base her decision on the basis that her needs outweighed the Applicant's. She told me that where she had been earning £30,000 to £35,000 a year she was now on £11,000 and was suffering from fatigue and it was right that the judge had recognised her ongoing needs as a result of her illness and associated physical and psychological trauma. She stressed that she

had all the burden of upkeep and maintenance of the property in Spain and that it was now of uncertain value and may take many years to sell.

The law

22. An appeal will be allowed if the Appellant can show that the decision of the Court below was wrong, or the decision was unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
23. The Appellate Court has not had the benefit of seeing the parties and hearing them give evidence as the judge of first instance has, and must be slow to interfere with findings of fact.
24. In Re T [2015] EWCA Civ 453, the Court of Appeal reminded itself of the margin of respect that should be given to a judge at first instance; an appeal is not a wholesale review of the case:

Secondly, I have already described the approach of the judge and the experience of the judge. Where a judge correctly identifies the legal test, says he is applying it, and says he has the evidence which justifies that conclusion, and is able in the course of the judgment to refer to that evidence, this court should be slow to interfere and say he is wrong. There is no indication here that there was an error of principle in the judge's conclusion, and to my mind he should be given a substantial margin of respect by this court in having conducted the exercise that he said he had undertaken.

(per Lord Justice McFarlane at paragraph 41)

25. In the course of her submissions, Miss Hay referred me to the cases of *Wagstaff v Wagstaff* [1992] 1 WLR 320, *White v White* [2000] 1 FLR 981, *Marshall v Beckett* [1998] 1 FLR 53 and *Barton v Wright Hassell LLP* [2018] UKSC 12.

Analysis

26. I have read the bundle, the case law to which I have been referred and considered the parties' submissions. In my judgement the appeal should be allowed.
27. In my assessment the decision to admit the extract from counsel's advice in respect of the clinical negligence claim at the last minute was wrong. The judge then placed significant weight upon this document as evidence of the wife's future need. If the wife had raised at an earlier stage of proceedings that she wished to rely upon it there would have been the opportunity for full argument about whether it was admissible at all, and if so, what status it had as evidence. There would have been less room for confusion or misunderstanding as to the approach the Court should take to personal injury awards received during the course of a marriage. Instead, the judge directed herself that the test to apply was whether or not the wife's needs outweighed the husband's needs. However, the wife's needs was just one factor to consider among all those on the section 25 checklist and should not in my judgement have been regarded as a decisive factor.
28. I shall explain the reasons for allowing the appeal in more detail.

Weight given to counsel's opinion from the clinical negligence claim

29. On 7th May 2019 the parties were directed to serve (i) by 28th June 2019 documents in their possession upon which they intended to rely in relation to claims made against the NHS; (ii) narrative statements to address the section 25 factors, housing, income and earning capacity, mortgage capacity, suitable properties, as well as to make their case about how the settlement fund had been spent. These statements were to be exchanged by 26th July 2019; (iii) up to date evidence of bank accounts, assets and liabilities by no later than three weeks before the hearing.
30. Neither party sent any documents on 28th June 2019. The Applicant's statement was filed ten days' late on 7th August 2019, and he invited the wife to send her statement. Despite sending chasing emails on 22nd August and 17th September 2019, the wife did not serve her statement (unsigned) until 16th October 2019, together with updated bank statements, particulars of properties and the twelve-page extract from counsel's opinion in the clinical negligence claim.
31. On 21st October 2020, the day of the final hearing, the Court received an additional bundle of documents from the wife, which included bank statements, the schedule of loss from her clinical negligence claim and a witness statement from the husband in respect of that claim. These documents are on the Court file, but it does not appear that they ever reached the Court bundle or formed the matter of any discussion at the final hearing. The judge does not appear to have been aware of these documents.
32. Both parties needed permission to rely upon statements that had been filed out of time but whereas the husband had filed ten days' late, the wife's statement came eighty-two days' late, and only three working days before the final hearing.
33. I have been referred to the case of *Barton v Wright Hassell LLP* [2018] UKSC 12 which considered the extent to which the Court should give latitude to a litigant in person who has not complied with the rules.
34. At paragraph 18 of the leading judgment, Lord Sumption said:

'... [S]ome litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigant in person a lower standard of compliance with rules or orders of the court.

...

The rules provide a framework with which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his unrepresented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights ... Unless the rules and practice direction are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.'

35. The judge was acting within the range of her discretion in deciding to admit the section 25 statement into evidence. The husband had not made any application to the Court, the consequences of refusing to allow the wife to give evidence could have been draconian, the consequences of adjourning would have been to cause more expense and delay. The Appellant was represented and counsel had an opportunity to consider the statement and take instructions on it when preparing for the hearing.
36. However, in my judgment the judge fell into error in her approach to the twelve-page extract from counsel's advice in respect of the wife's previous negligence claim. The previous directions required that the parties exchange documents they wished to rely upon concerning this claim by 28th June 2019, and significantly, four weeks before section 25 statements were due to be filed. The wife's documents came over a hundred days' late.
37. This document was an extract from counsel's opinion. The document was neither expert opinion, nor a witness statement of fact. The husband had no opportunity to challenge its contents by asking questions of its author, whose identity was unknown. He had no opportunity to respond to it as was envisaged by the Court timetable, in the evidence he gave in his section 25 statement, or to submit other relevant evidence to the Court in response. The twelve-page extract sets out each of the heads of loss claimed in the schedule. The concluding section of the note, presumably giving advice as to what might be realistic to expect being awarded under each of these heads of loss, is missing. The advice was prepared about five years before the final hearing, so it is questionable how relevant it was to the wife's current financial position. The best that can be said of it is that it provides some evidence of the way the damages claim was formulated.
38. The judge was put in a difficult situation because she did not have any information from the wife about what she might expect to earn in the future as a qualified counsellor. It is not clear upon what evidence the judge relied to find that the wife would be unable to increase her working hours in the future, there was no medical evidence about this. It appears that the judge relied substantially upon the section of counsel's advice to make the findings she did about the level of the wife's future financial need. In my judgment she was wrong to do so.

What should be the Court's approach where the significant asset in a marriage comes from an award of damages for personal injury?

39. The leading case is still *Wagstaff v Wagstaff* [1992] 1 WLR 320. Per Butler-Sloss LJ:

'The reasons for the availability of the capital in the hands of one spouse, together with the size of the award, are relevant factors in all the circumstances of section 25. But the capital sum awarded is not sacrosanct nor any part of it secured against the application of the other spouse. ...

.. any calculations made in respect of the capital of the parties should reflect a substantial discount for the fact that the money was received as damages. In general, the reasons for the availability of the capital by way of damages must temper the extent of, and in some instances may exclude the sharing of, such capital with the other spouse. It is important to stress yet again that each case must be considered on its own facts.'

40. And in his judgment, Lord Donaldson, MR, said:

'... compensation is a financial asset which, like money earned by one spouse by working excessively long hours or in disagreeable circumstances, is (subject to human selfishness) available to the whole family before the breakdown of the marriage and, like any other asset whether financial or otherwise, has to be taken into account when the court comes to exercise its powers in accordance with section 25 of the Matrimonial Causes Act 1973. In so far as it represents compensation for loss of amenity, as contrasted with pain and suffering, there might be a need to spend it on acquiring a replacement amenity, but this would be a financial need within section 25(2)(b).'

41. The damages award forms part of the matrimonial assets. The fact that it has been received may indicate that one party to the marriage has specific needs which must be taken into account as part of the section 25 analysis, and may weigh heavily in the balance. But there is no presumption that those needs will outweigh the needs of the other spouse.

42. In *Wagstaff*, the judge treated the husband's disability and consequential needs as very important, but was criticised for attaching so much weight to it that he lost sight of the wife's needs. By directing herself that she had to decide between the wife's need on the one side or the husband's on the other, I consider the judge fell into the same error.

Approach to needs and sharing

43. Miss Hay referred me to the case of *Marshall v Beckett* [1998] 1 FLR 53. In that case the parties had a house with equity of £335,000. The husband's housing needs were assessed at £75,000. He had debts of £45,000 so sought a sum of £120,000. The wife wished to re-house herself and the parties' children in a property she had identified at a cost of £210,000, but sought a sum of £295,000 to meet her liabilities of £75,000 and costs of moving. The judge acceded to the wife's case and awarded her £295,000, and the husband £40,000 (a split of 88:12).

44. The Court of Appeal overturned the decision and awarded the husband £77,500 (a split of 77:23). Nourse LJ said, *'while the judge was entirely justified in deciding that the wife should be able to acquire the maisonette ... he was not justified in enabling her to acquire it on terms which made it practically impossible for provision to be made for the husband's needs.'* In his leading judgment Lord Justice Thorpe said:

'In all these cases it is one of the paramount considerations, in applying the section 25 criteria, to endeavour to stretch what is available to cover the need of each for a home ... 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.'

45. Finally, Miss Hay referred me to *White v White* [2000] 1 FLR 981. In considering in all the circumstances what is fair, the Court must go through a process of looking at its

proposed division of assets then stand aback and test that result against a yardstick of equality.

46. The division in this case was as follows:

	Husband	Wife
Liabilities	(£21,000)	(£19,000)
Proceeds of sale of Spanish property	£21,000	£174,000
Car	£2,000	£18,500 (purchased post separation but with money from damages fund)
Pension	£18,412	£44,873 (plus NHS)
Total	£2,000 car £18,412 pension	£155,000 £18,500 car £44,873 pension (plus NHS pension) £17,000 loan being repaid

47. The wife's car should be included in the balance sheet because the liabilities include a loan for the cost of the balance of the BMW, so she does at present have the benefit of its current value less the remaining liability. Both hers and the husband's vehicles will depreciate in value. If you take the cars, liabilities and pensions out of the equation the split was 10% to 90%. If you include everything except the pensions, which are not like for like, the split was 1% to 99%, plus the wife has the benefit of the assured tenancy.

48. In addition, the wife had the benefit of £20,000 of the damages fund between January to March 2018, and after separation in April 2018, she withdrew the remaining £70,000 for her own benefit. Some of this money was used to purchase the BMW so should not be double counted. The £17,000 of the £21,000 that she loaned to her partner is being repaid so should arguably also go in the asset schedule. The rest has been spent. The husband agreed to the release of these monies and could not reasonably have claimed more than half of it. The Court cannot make any award in respect of it now, but this money was part of the marital assets of which the wife has had the sole benefit, so is relevant as part of the consideration of whether or not the Court achieved a fair result.

49. In my judgment the judge did on this occasion uncharacteristically fall into error in (i) her assessment of the parties' respective needs and (ii) in concluding that the wife's needs outweighed any consideration of the husband's needs. This led her to make an award which was in my judgment unfair in all the circumstances of this particular case.

Conclusion

50. The appeal is allowed and the District Judge's order shall be set aside.

51. The parties have little money to spare between them and both are keen for a clean break and to move forward with their lives. It would be disproportionate for them to spend more money and time on going over the issues again, and would cause unnecessary stress to both. The Covid-19 pandemic means it is likely that there would be significant delay before a case could be relisted. In all the circumstances I consider it appropriate that I substitute my own assessment of a fair outcome, having had regard to all the circumstances of the case and the section 25 checklist factors.
52. The wife told me that she has been told the house in Spain may have lost value and will be very difficult to sell. Uncertainty existed around the Spanish property market even before the pandemic, but this was taken into account when the property was valued and was a known fact at the final hearing. The wife told me that even in October/November 2019 she was warned that it may take eighteen months or two years to sell the property. She says now it may take as long as four years. I appreciate the difficulties but a level of uncertainty around whether a particular house will find a buyer or will sell at its estimated value exists in a significant proportion of financial remedies claims. I do not consider that to be a good reason to delay making a decision in this case. I do not consider it to be appropriate to replace the evidence that already exists in this case with anecdotal information or speculation about the future.
53. Considering the **income, earning capacity, property and other resources which each of the party has or is likely to have in the foreseeable future** (section 25(2)(a)).
54. The parties co-own the property in Spain. They should each keep the cars that they are presently driving.
55. The husband's net income was £25,000 and is not likely to change substantially. The wife's is just under £12,000. There was insufficient evidence about her ability to increase her income in the future, whether through work or other sources, for example entitlement to benefits.
56. The husband's pension was £18,000 the wife's £44,873. Most of the wife's pension had accrued before the marriage, as would the husband's as he spent long periods out of work during the marriage. The wife's NHS pension had accrued over three years of part-time work as a receptionist and was unlikely to make a very significant difference to the outcome.
57. Having regard to **the financial needs, obligations and responsibilities which each of the parties has or is likely to have for the foreseeable future** (section 25(2)(b)).
58. The wife's income is just under £1,000 a month. The cost of her four-bedroom property is £680 a month and she receives contributions from her adult children, and currently her partner, in order to meet that rent as well as food and utility bills. For the time being her housing needs will continue to be met because her tenancy is secure and affordable, she remains in a relationship and any of her adult children who live with her and are working can continue to make a contribution. The judge assessed her situation on the basis that the children would leave home and she could not depend upon her partner to contribute. In that situation the wife would downsize to a smaller property. The judge found that she would need about £1,450 to meet her income needs, therefore leaving her with a shortfall of around £500 a month. I am sceptical as to when that need will

arise, as there did not seem to be any evidence that the wife was planning to change her current living arrangements in the near future. But even assuming this to be the case, using round figures and discounting for advanced receipt, her need would not be in excess of £90,000.

59. The husband is paying £800 in rent and utility bills for a one bedroom flat. If he paid off his liabilities and cut his spending in some areas, and had the benefit of a substantial lump sum, he would be able to afford around £900 a month for a mortgage.
60. The husband's debts were assessed at £21,000, the wife's at £19,000.
61. **The standard of living enjoyed by the family before breakdown of the marriage** (section 25(2)(c) was modest until receipt of the compensation payment at which point spending rocketed. Now that money has been spent the husband and wife have returned to the situation they were in before, where they have to manage their money carefully in order to pay the bills every month. Neither is able to afford luxuries.
62. Section 25(2)(d); **the age of the parties and the duration of the marriage.** The husband is 49, the wife 46. The parties started living together in 2011, were married in 2013 and separated in April 2018. The marriage was just under five years but the parties were together for nearly seven.
63. Section 25(2)(e) requires the Court to consider **any physical or mental disability of the parties.** The husband has had problems with his back which may impact his ability to work to retirement age. The wife has had major health problems which have been life-changing for her and she continues to live with the consequences of her diagnosis and treatment for cancer every day. Her life expectancy has not been adversely affected but her capacity to work has, and she is currently earning significantly less than she did before. If at some point in the future she were to live alone, and had no other means of increasing her current income, she would be about £500 a month short of her needs, and because she is not planning to return to full time work, she has less ability to build up her pension fund than the husband.
64. A large part of the compensation payment she received was in respect of loss of earnings, but just as it was not ring-fenced within the trust, it is not ring-fenced as a matrimonial asset. As she was entitled to do, she chose to share that money with her family and to use it for short term ends, to buy luxury items including cars and holidays and the property in Spain. Even when the relationship was nearing its end the wife did not appear to see a need to put money aside but spent £20,000 in the early months of 2018 and then £70,000 within a short time post-separation.
65. There is no evidence of any other continuing expense related to an ongoing disability for which allowance needs to be made.
66. Section 25(2)(f) is concerned with the **contributions each of the parties has made to the marriage.** The judge found that both parties made a significant contribution to the welfare of the family including the wife's four children and the husband's daughter. They both contributed what they could financially. There were periods of time when the husband could not work and periods of time when the wife could not work. Upon receipt of the damages award they made the decision to use the money in the short term

for the benefit of the whole family. The case of *Wagstaff* is clear that awards of damages are not to be regarded as akin to a special contribution by one party to the marriage.

67. **Conduct** (section 25(2)(g)) is not relevant in this case.
68. Section 25(2)(h) is about **benefits which the parties will lose the chance of acquiring as a result of the end of the marriage**. In this case the only relevant benefit would be pensions. However, as the pension assets of each of the parties were largely accrued outside the marriage and of relatively modest value, this is not a case for pension sharing.

Conclusions

69. The starting point for the Court when considering a marriage of this length is a fifty-fifty split of the assets. The Court then has to look at all the circumstances, in this case, having particular regard to the respective needs of the parties, and consider whether there should be a departure from that starting point so as to achieve a fair outcome.
70. If the property in Spain were sold for £195,000 and the proceeds split, the parties would each receive around £97,500. This would enable them both to discharge their liabilities. The husband would have close to the sum needed to obtain a mortgage on a small property, and would be able to meet payments at around the level of £900 a month. The wife does not have an immediate need for funds, but would be able to use her share to supplement a shortfall in her income in the event that her children or partner moved out of her property, albeit not to the extent that she would have been able to had the damages fund not been spent, or if she were given a greater share of what is left.
71. The wife would remain in a slightly better position than the husband because her pension pot is slightly larger than his, she has a car worth £18,500 and is due repayment of £17,000 from her partner for the loan she made to him. Taking these assets into account, the split is 60% to 40% in her favour. In addition she had the benefit of the husband's £35,000 share of the remaining money she withdrew from the damages fund post-separation. Because their joint tenancy was transferred to her name only, she has been able to continue to live in a four-bedroom house at a lower cost than the husband is paying for a one-bedroom flat, and has stability of the assured tenancy. That the balance should move in favour of the wife is fair in all the circumstances, because her income is lower than the husband's and she has less opportunity to build up her pension.
72. If the house in Spain is not sold for a year or two then the costs of maintaining and upkeep on the property will fall to the wife. I have considered whether there should be some further departure from equality to reflect this. However, the wife and her family will continue to have the benefit of that property until it is sold, so should in my view also bear the financial burden.
73. This is a case where there are not sufficient funds to meet wholly the needs of each of the parties, but that does not mean in my judgment that the needs of one should be abandoned wholly in favour of the needs of the other. For all the reasons I have given, my conclusion is that the property should be sold, and after costs of sale the proceeds

should be split between the parties fifty-fifty. I would not make any other changes to the terms of the District Judge's order.

74. I have had regard to all the circumstances of the case and weighed the checklist factors carefully into the balance. Nobody could hear of the ordeal that the wife has lived through without feeling a great deal of sympathy for her. However, while recognising a future need for financial support to supplement her income, the revised award in my judgment also achieves fairness as between her and her ex-husband.

Joanna Vincent

20th May 2020

HHJ Vincent
Family Court, Oxford