This matter was heard in private. The judge gives permission for this version of the judgment to be published. In no report of, or commentary on, the proceedings or this judgment may the parties or their children or their addresses be identified. In this case a Reporting Order has been made on 20 July 2023 which continues in effect. All persons, including representatives of the media and legal bloggers must ensure that the terms of the reporting order are strictly observed. Failure to do so will be a contempt of court.

Case No: BV20D10701
Neutral Citation [2023] EWFC 119 (B)

**IN THE FAMILY COURT AT MEDWAY**

Date: 20 July 2023

**Before** :

**Recorder Laura Moys**

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**Between :**

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|---|---|
| **AFW** | **Applicant** |
| **- and -** | |
| **RFH** | **Respondent** |

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Hearing date: 15 June 2023

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# JUDGMENT

1. In January 2023 I made a final order in financial remedy proceedings between the applicant former wife (AFW) and the respondent former husband (RFH). My decision followed a final hearing that I heard over three days in December 2022.

2. In my earlier judgment in the original financial remedy proceedings I found that the respondent's behaviour - both in and out of court – had made the resolution of those proceedings very much more difficult, protracted, and costly than was necessary.

3. Unfortunately, these latest applications arise because (says the applicant) the respondent's obstructive behaviour has continued. The applicant alleges that the respondent is now in breach of several provisions of the final order.

4. Specifically, it is said that he has:

   i. Refused to cooperate in the sale of the former family home by, *inter alia*, failing to provide copies of the keys to the property to the applicant's solicitor (as part of my final order I granted the applicant sole conduct of the sale and ordered the respondent to provide the applicant's solicitor with a copy of the keys to the house so that viewings could be arranged).

   ii. Ignored attempts by the appointed estate agent to contact him in order to gain access to the property for the purpose of preparing marketing information and, in due course, arranging viewings. Again, as part of my order I had directed that the respondent should not "…obstruct, discourage or in any way impede the attendances of the estate agent" and I also set out a detailed mechanism through which the viewings were to be arranged, with the respondent required to vacate the property for set periods of time.

   iii. Not provided any response whatsoever to the applicant's attempt to agree the division of the contents of the former family home and the return of the applicant's personal belongings.

   iv. Refused to complete the pension sharing annex to enable implementation of the pension sharing order that I had made in his favour.

   v. Failed to cooperate in the closure of a bank account held in the parties' joint names.

5. As a consequence, the applicant has made three applications to the court. First, she invites me to vary the mechanism for the order for sale to bring forward

the date by which the respondent must vacate the property. Secondly, she has applied for a determination of the division of home contents. Thirdly, she has applied for the court to execute the pension sharing documentation and the paperwork required to close the joint account in the absence of cooperation from the respondent.

6. The final order in the original proceedings was made as long ago as 12 January 2023. I directed that the former family home was to be marketed for sale 'forthwith' and I made a number of detailed consequential provisions aimed at progressing that sale as quickly and efficiently as possible.

7. It is now July 2023, some six months on from the making of that final order, and it appears that (despite my best efforts) the family home has still not been marketed for sale. The appointed estate agent has not been allowed access, and no viewings have taken place. The respondent remains in occupation of the property (and paying the mortgage and outgoings) whilst the applicant continues to rent on the private rental market.

8. It is agreed that aside from some personal belongings that the applicant collected (by agreement) in the course of earlier Family Law Act proceedings which were compromised in 2020, the lion's share of the jointly-owned house contents remains in the family home under the physical control of the respondent.

9. It is also agreed that the pension sharing documentation has not been completed by the respondent to enable the pension sharing order to be implemented and that a joint account with Metrobank has not been closed.

10. Whilst the respondent claims in his documentation that the estate agent has never contacted him (this is not accepted by the applicant), at the same time he accepts he (the respondent) has never provided the applicant with a copy of the keys to the property and that no viewings have been set up. He also accepts he has never contacted the applicant's solicitor/the estate agent himself to progress the sale despite receiving emails from the applicant's solicitor imploring him to cooperate.

11. Furthermore, it is part of the respondent's own case that he does not want to vacate the property *at any point* prior to sale (i.e. he insists he will not absent himself for viewings despite the order I made to this effect). He claims that if he leaves the property at any point when the agent/potential buyers are present that will invalidate the house contents and buildings insurance.

12. Moreover, the respondent also objects to leaving the property on the basis that he says his asserted health difficulties prevent him from doing so (and despite the specific finding I made in January that the respondent is categorically *not* 'housebound', and that he is capable of working but has chosen not to). The respondent also accepts he has not replied to any of the applicant's letters about house contents and that he has chosen not to complete the pension documentation (as he claims that the pension CEV should be recalculated).

*Service*

13. To enforce the order the applicant applied to the court by way of a D11 application (accompanied by a signed narrative statement) on 2 March 2023. The court did not issue and serve the application until May 2023 (and only after chasing by the applicant's solicitor). The delay between the application being lodged and it being issued was not the fault of either party. The respondent has complained bitterly about this delay both in his documentation and orally.

14. The respondent alleges deliberate misconduct on the part of the applicant's solicitor and/or the court, which is a continuation of a theme running throughout the original proceedings in which the respondent was (and remains) convinced that the applicant's solicitor is embroiled in an elaborate conspiracy with the court to deprive him of 'his' assets.

15. I am entirely satisfied that the respondent had adequate notice of this application prior to the hearing before me on 15 June and that he also has a full understanding of all the issues under consideration. I am equally satisfied that the applicant's solicitor has done his utmost to engage the respondent and to secure his cooperation.

16. Even if the court did not serve the sealed application on the respondent until May no prejudice has been caused to the respondent and nothing would have been gained by adjourning these proceedings and reconvening them on a later occasion. I note, in particular:

   i. On 1 February 2023 (the respondent having failed to respond to earlier requests made in correspondence on both 9 and 26 January 2023) the applicant's solicitor wrote to the respondent and warned him that if he did not cooperate in implementing the outstanding provisions of the order (including those relating to the order for sale) the applicant would apply to restore the matter to court.

   ii. On 7 March the applicant's solicitor wrote to the respondent asking *"Please can you confirm whether you will be complying with the order? The estate agents appointed have tried to contact you but to no avail. Non-compliance with the order will result in an application being lodged with the court, furthermore an application for costs will be made due to your non-compliance. In those circumstances, we would only suggest that you seek independent legal advice in respect of the order and consequences of not complying with the same."*

   iii. On 18 May 2023 the applicant's solicitor sent a copy of the hearing notice to the respondent. On 19 May the applicant's solicitor emailed the respondent a copy of the issued application and the applicant's statement in support.

   iv. By 23 May the respondent had instructed a solicitor who wrote to the applicant's solicitor *"…in relation to [the] application for enforcement"*.

   v. By 1 June 2023 the respondent had applied in person for (i) an adjournment of the hearing on 15 June on medical grounds (and, alternatively, to enable him to instruct a lawyer to appear at the hearing on his behalf); and (ii) for me to recuse myself from dealing with this case any further. At some point in this chronology the respondent and his solicitor parted ways and so by the time of the hearing before me

on 15 June the respondent was once again representing himself. It is clear that the respondent had at an earlier stage instructed a solicitor for the enforcement proceedings (and so it is obvious to me that he was aware of them and aware of the hearing).

vi. In anticipation of the hearing on 15 June the respondent chose to prepare and file a statement and exhibits of his own running to some 157 pages in which he addressed - at considerable length - the issues raised in the enforcement application and in the applicant's statement (as well as making detailed submissions in support of the applications he himself was making).

17. Therefore, by the time of the hearing before me on 15 June, the respondent had had a copy of the enforcement application and hearing notice for at least four weeks and had been able to prepare 157 pages of documentation in support of his position as well as consult a solicitor, issue his own D11 application, and obtain medical evidence (the content and significance of which I will address separately).

18. It is clear from the correspondence I have been shown that the respondent has in any event been aware –for some months now - of the defaults that precipitated the enforcement application and of the fact that the applicant was intending to apply to restore the case to court if the respondent's non-compliance continued.

19. Since the hearing on 15 June I have also received further detailed documentation from the respondent (dated 22 June) addressing the issues raised in the enforcement application which I have read and considered carefully as part of this judgment.

*Adjournment and recusal applications*

20. I directed that the adjournment/recusal applications made by the respondent should be listed to be dealt with at the outset of the hearing on 15 June. I dealt with both of those applications as a preliminary issue. After hearing submissions from both parties I gave an ex tempore judgment explaining my

reasons for refusing the respondent's applications which I shall not repeat in this judgment.

21. The respondent's applications having been refused, I then proceeded to hear submissions from both sides for around two hours in respect of the substantive enforcement applications.

22. It had been my intention to give the respondent a chance to respond orally to three discrete issues raised within the applicant's submissions and to prepare and deliver an oral judgment on the afternoon of 15 June.

23. However, before I could complete the hearing and notify the parties of my decision, the respondent suddenly claimed to be experiencing a heart attack and began calling (what he told me at the time was) the emergency services and asking for an ambulance (it transpires from the medical evidence received since the hearing that the respondent in fact dialled 111 and not 999).

24. When it became clear to me that the respondent had disengaged from the hearing and was calling an ambulance, I adjourned the hearing part-heard and made a subsequent order (which I sent out to the parties after the hearing) that the respondent had permission to send me written submissions dealing with the three discrete issues that I would have given the respondent a further opportunity to address me on had the hearing not been unexpectedly adjourned part way through.

25. I also ordered the respondent to provide me documentary medical evidence of the asserted health difficulties that had led to him claiming to be unable to continue with the hearing on 15 June.

26. The respondent has since provided me with a copy of the discharge notes following the attendance at his home by paramedics and his admission to hospital. From those notes, I highlight the following:

i. The respondent telephoned 111 (the service for non-life-threatening healthcare needs) at 12.51pm despite telling me he was calling an ambulance. Whatever the respondent told 111 ultimately resulted in a first

responder arriving and an ambulance being called, but the ambulance was not dispatched until 14.01 (over an hour after the call to 111) and did not arrive until 14.10. I find it surprising that the respondent (who is himself a former consultant doctor) chose to call 111 instead of 999 when he claims to have believed he was having a life-threatening heart attack.

ii. Whilst the respondent was found to have very high blood pressure when the paramedics first recorded it (and I note that the respondent has suffered with high blood pressure for a long time, having heard extensive evidence about this during the original proceedings and having made earlier findings about the respondent's health), fortunately the respondent's blood pressure had reduced significantly within about 20 minutes of the paramedics arriving.

iii. The paramedic recorded his impression of the respondent's health situation as *"low level concern"* and noted that *"...patient mobilises as normal and walked out to the ambulance"*. The paramedic recorded anxiety as being a potential alternative diagnosis.

iv. The respondent was taken to hospital as a precaution. A troponin test (high levels of the troponin protein in the blood can indicate that a patient is having, or has recently had, a heart attack) was administered by clinicians twice and was negative on both occasions.

v. Happily, the respondent was well enough to be discharged home the same day. He has been referred to the chest pain clinic for follow up, but it does not appear he has been offered an appointment at the time of writing.

27. Since the hearing on 15 June the respondent has applied for me to list another hearing to enable him to make further oral submissions in addition to the two hours of submissions I have heard already, and the further written documentation (39 pages) sent to me by the respondent after the June hearing.

28. It is clear to me that the respondent (whom I fully accept has pre-existing health conditions including high blood pressure) is finding these proceedings very stressful indeed. Quite apart from the recording of raised blood pressure

on the day of the hearing, the respondent's demeanour in court at the hearing prior to becoming unwell (when he continued to behave in the same aggressive and bombastic fashion I observed of him throughout the final hearing in December: interrupting me, raising his voice, and making unfounded allegations of corruption in an excitable and agitated state) leaves me in no doubt that the respondent is being negatively affected by this protracted litigation (as - no doubt - is the applicant, albeit for different reasons).

29. It is plainly in everyone's interests that this difficult litigation is resolved as swiftly as possible without the need for further court hearings and a risk of a repeat of the respondent's raised blood pressure on 15 June.

30. I am quite satisfied that through a combination of the earlier submissions and the written documentation provided after the hearing I have already heard fully from both parties on all relevant matters such that I am in a position to determine the applications before the court *now* and that it is in the interests of justice that I do so.

31. It is for this reason that I have decided to hand down this written judgment which will also save both parties the cost and stress of a further court attendance. I intend to resolve all outstanding matters between these parties here and now and I urge the respondent to cooperate with the court to bring these proceedings to a close - for his sake as much as the applicant's.

**The applications**

32. I turn now to deal with each of the applications before the court.

***The order for sale and the respondent's occupation of the former family home pending sale***

33. Pursuant to s 24A of the Matrimonial Causes Act 1973, when the court makes a secured periodical payments order, a lump sum order or a property adjustment order under s 23 or 24 then, on making that order *or at any time*

*thereafter*, the court may make a further order for the sale of such property as may be specified in the order, being property in which (*or in the proceeds of sale of which*) either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

34. The court's power under s 24A is not free-standing. It must be made subsequent to a secured periodical payments order, lump sum order, or property adjustment order. In this case, I made an ancillary order for sale to give effect to my order providing each party with a lump sum equivalent to 50% of the net equity in the family home (less certain specified deductions from the respondent's share to account for costs orders and other items).

35. When an order for sale is made, the court also has the power to order supplemental or consequential provisions "as the court thinks fit" (MCA 1973 s.24A(2)), for example governing the conduct of the sale, appointment of estate agents and so forth.

36. FPR r.9.24(2) clarifies that where the court has made an order for sale under s.24A, as part of the consequential provisions the court also has the power to require a party to deliver up to "…the purchaser or any other person" possession of the property.

37. Adjuvant to the original order for sale, I made an order that the respondent give vacant possession on completion of the sale. I also directed that the applicant should have sole conduct of the sale, linked to my finding that *"...I have no confidence that the respondent will cooperate with the sale process"*.

38. The court also has the power to vary an order for sale (MCA 1973 s.31(2)(f)). However, such a variation can *"...never directly affect the allocation of property between a husband and wife in an order for property adjustment or lump sum"* (*Birch v Birch* [2017] 2 FLR 1031). The Supreme Court in *Birch* (*ibid §31)* noted, however, that a decision to postpone an order for sale *"... may have an indirect effect on the allocation…".*

39. In other words, an application for a variation of an order for sale is expressly *not* an opportunity for a court of first instance to embark on a revision of the

underlying capital orders. However, the court should be mindful of the fact that when orders for sale are postponed (with the result that a party's intended receipt of a lump sum tied up in the equity of that property is delayed) there is a risk of an *indirect* effect on the allocation of capital between the parties.

40. That is an important factor to weigh in the balance when considering the overall merits of the application. The court otherwise has a wide discretion as underscored by the statutory requirement to consider "…all the circumstances of the case" (s.31(7)).

41. In this case, the applicant's position is that the terms of the original order for sale should be varied to bring forward the date by which the respondent should vacate the property. Alternatively, by way of FPR r.9.24(2), she asks me to make an order that the respondent give the applicant immediate possession of the property.

42. I am satisfied that through a combination of the powers contained at s.24A (which is a power that can be exercised at the time of the making of a lump sum order or *'at any time thereafter'*), s.31(2)(f) (which enables orders for sale – and therefore, in my judgment, the consequential provisions that attach to them – to be varied), FPR r.9.24(2), and also the general 'liberty to apply as to timing and implementation' provision contained within my final order, the court has the power to grant the relief sought by the applicant.

43. Alternatively, the applicant could have applied for a standalone order for possession as an enforcement mechanism, but it is unnecessary for her to have done so.

44. I also observe that FPR r.33.3(2)(b) enables an applicant for enforcement to make an application "for such method of enforcement as the court may consider appropriate". The framework of the legislation is plainly designed to make enforcement as straightforward as possible for judgment creditors and to give the court wide powers to ensure that its orders are complied with.

45. Likewise, I have treated the *respondent's* arguments in respect of (i) asking me to revisit my decision to require him to vacate the property for viewings;

and (ii) the alleged decline in his health which he says makes it impossible and unfair to require the property to be sold and for him to vacate as akin to his own application to vary the order for sale.

46. Ultimately these issues are two sides of the same coin: the applicant says that the respondent is obstructing the sale; never intends to leave; and will make marketing and sale impossible. On the other hand, the respondent does not want to leave the property (during the marketing process *or at all*) and invites me to vary the order for sale to allow him to remain in occupation.

47. As I emphasised to the respondent during the hearing - and as I remind myself in this judgment - I have already made final orders in the financial remedy proceedings between these parties after hearing extensive evidence and making evidential findings just six months ago. This is not an appeal against that final order or against the factual findings underpinning it.

48. It is clear to me (and I accept the applicant's case in this regard) that the respondent's objective is to try to undermine the original decision and to obtain an alternative order in respect of the substantive financial division because he was unhappy with my decision in January. For example, at §7 of his written submissions of 22 June the respondent states:

    *"I hold Recorder Moys personally responsible for my deteriorating medical conditions & my declining health for forcing me to attend court on 15th June 2023 against my GP recommendation & solicitor adjournment application while Recorder Moys & Ms Driver racially discriminated me, stole my assets & abused me while I am very ill & unrepresented. I also hold Recorder Moys responsible for my death from the above or from having to vacate my house against my human rights whilst housebound, ill, abused & racially discriminated by her unjust orders while she is intentionally squandering my money, assets & my children's inheritance in favour of Ms Driver & Mr Soni's fees."*

49. Furthermore, at §10-11 of those submissions the respondent states:

*Contrary to the unjust order of Recorder Moys for the financial proceedings final hearing, I have no income or maintenance at all to live from, as my pension life savings were given to my wife & I am living only from some of my saved pension money which is adding to my stress & housebound situation. Mr Soni & Ms Driver helped Recorder Moys steal my savings and gave to my wife & themselves & fabricated the judgement & final order in cooperation while I am LIP & unsupported. They stole in excess of £120K legal fees from my savings, mostly from me only by agreeing with R. Moys to take same costs more than once.*

*If evicted from my house I will be homeless as I have no place to go or even able to rent as I am housebound, with many medical problems, on crutches, unemployed, retired without pension or any income at all which will prevent estate agents from finding any house for me. Recorder Moys not only helped stole my assets & pension savings to give to my wife but also wanted me to be homeless at my old age, while I am ill & helpless, as I mistakenly trusted the UK on my family & assets having worked in UK as a consultant Gynaecologist & Obstetrician for more than two decades saving lives & treating & helping the ill & needy."*

50. It is abundantly clear from the passages I have quoted from that the respondent is repeating substantially the same arguments now that he made at the trial in December (arguments that I rejected after hearing evidence and submissions), namely that he is "housebound"; that it would be unfair to require the house to be sold; and that the former family home should be transferred to him.

51. The respondent claims to be too unwell to leave the family home, either in the short or longer term, whether temporarily or permanently. This is precisely the position he adopted in December and which I rejected on the evidence I heard at that time.

52. I have considered the updated medical evidence attached to the respondent's D11 which comprises two letters dated 2 March 2023 and 25 May 2023. As I noted in my ex tempore judgment on 15 June in respect of the respondent's application to adjourn, the medical conditions described in the letters are not new. The respondent suffered from all of the same documented conditions at

the time of the final hearing and I weighed the issue of the respondent's health in the balance at the time when exercising my discretion under s.25 MCA 1973 and when deciding to order the sale of the property and division of the proceeds of sale in the first place.

53. The letters also appear to simply summarise what the respondent himself has told his GP. For example, at §8 of the letter of 2 March the letter states:

*"[the respondent] is currently unemployed and he alleges he has been subject to racial discrimination and abuse at family courts causing him insomnia and stress. This has resulted in deterioration of his both his physical and emotional health causing him to be housebound. He is also claustrophobic".*

54. In the letter of 23 May it is said:

*"[the respondent] is under a lot of stress due to recent court enforcement application by his wife to remove him from his only residence this has exacerbated all his medical conditions".*

55. It is significant, in my judgment, that the wording of the letter of 23 May bears uncanny resemblance to the respondent's *own* documentation for this hearing. For example, at §8 of his written submissions the respondent wrote:

*"I also further suffer stress due to [the applicant]'s enforcement application to evict me from my only residence".*

56. The medical letters largely restate the respondent's position in these proceedings as conveyed to the doctor by the respondent himself. I find the medical evidence to be self-serving; in any event it does not add to or alter the findings I have already made about the respondent's health, and which have not been appealed.

57. The respondent also submits that if he is required to leave the property at set periods of time (to enable the estate agent to compile the marketing material and for viewings to take place) this will invalidate his home contents and buildings insurance policy.

58. This is an argument the respondent raised in a (partially successful) appeal against an earlier case management order made by DDJ Landes (but which he did not resurrect at the hearing before me or when the draft judgment or draft order was circulated).

59. In short, in 2021 DDJ Landes had made an order requiring the respondent to vacate the former family home for a short period to enable appointed estate agents to view the property in the absence of either party to provide evidence of market value without the risk that either party would try and influence the estate agent's conclusions.

60. Such an order is relatively common and (until now) seemingly uncontroversial. However, unhappy with DDJ Landes' order, the respondent immediately rang his insurers, Nationwide, and asked them whether complying with the order would invalidate his home insurance policy.

61. Nationwide wrote an email to the respondent on 1 November 2021 (which the respondent then relied on in his appeal against DDJ Landes' order) which said:

    *"Our head office have reviewed the information you have provided as the sole policy holder, regarding the request made by your wife's solicitor/barrister/family court that you hand your keys to a third party so that 5 separate estate agents can come to the home and do valuations. They have requested that you are not in the vicinity of the home while these valuations are being completed but you have confirmed that you have not agreed to this request. The decision has been made that if this were to happen this would invalidate the theft, malicious acts and vandalism sections of your buildings and contents policy for the entire time that the keys are not in your possession. These cover levels would only be reinstated when the keys are handed back to you."*

62. HHJ Farquhar varied DDJ Landes' order on appeal, permitting the respondent to remain in the property provided he did **not** *"…engage with the estate agents when they are viewing the property"*. HHJ Farquhar nonetheless

recited in his order that he found the position being taken by Nationwide to be "surprising".

63. When one of the estate agents attempted to view the property, far from "not engaging" the respondent spat in the agent's face.

64. Consequentially, it proved impossible to arrange for a valuer to enter the family home because of the risk to their safety posed by the respondent's conduct. I had to make findings about the value of the property based on drive by market appraisals and I gave reasons for this in my earlier judgment.

65. The respondent now relies on the same email from Nationwide of 1 November 2021 in support of his request for me to vary the part of my order requiring him to vacate the property to enable it to be marketed. I find the respondent's case to be wholly unmeritorious for the following reasons:

   i. It is incredibly common for estate agents to hold a set of keys and to conduct viewings without vendors being present. This is a service vendors have the ability to pay for as part of their contract with an estate agent who in turn owes a duty of care to the vendor (I refer to similar situations that have arisen in the context of decorators - *Stansbie v Troman* [1948] 2 KB 48 - and marketing agents - *Rushbond plc v JS Design Partnership LLP* [2021] EWCA Civ 1889).

   ii. The likelihood of something untoward happening to the former family home during the very short periods of time when a professional estate agent is present (but the respondent is not) is remote and in any event outweighed by the greater risk of something untoward happening if the respondent remains present (such as another assault on an appointed estate agent, as happened during the original proceedings).

   iii. This is a jointly owned property. The applicant has sole conduct of the sale and will also hold a set of keys throughout. The situation has evolved since November 2021 and I have now made final orders which must be complied with.

iv. The suggestion that the respondent should remain present at the same time as the agent/potential buyers are visiting the property is simply unworkable. He will not be able to resist 'engaging' with the agent, such is his anger and sense of injustice at the order for sale.

66. The respondent has also submitted that house prices have fallen since I made the order in January, and he complains that he will no longer receive the same amount of money from the net proceeds of sale as I had envisaged at the time of the original decision. He pursues this point in support of his request for an (indefinite) delay to the order for sale.

67. With his written submissions following the hearing (without permission to do so, and without having provided these to the applicant and the court in advance of the hearing on 15 June 2023) the respondent attached two new valuations for the family home, one at £525,000 and one at £625,000. I had made a finding in the original proceedings that the property was worth £638,000, this being the average of the market appraisals obtained at that time.

68. The order for sale remains executory and so I accept that I have a residual power to vary the order under the so-called 'Thwaite' jurisdiction **if** satisfied that there has been both a significant change in circumstances since the final order was made *and* it would be **inequitable** not to vary the order: *Thwaite v Thwaite* [1981] 1 FLR 26; *Bezeliansky v Bezelianskaya* [2016] EWCA Civ 76 (although the latter concerned an application for permission to appeal).

69. I give no weight to the two valuation reports attached without prior leave and which were obtained unilaterally by the respondent. I do not have any evidence about what was said to the agent to procure these unauthorised valuations and I note that there is also a considerable divergence of opinion between the two agents (the higher valuation being very close to my finding about value in any event) such that they do not provide any further clarity or assistance on the issue.

70. Even if the value of the family home *has* fallen since the making of the final order, fluctuations in in the property price (and uncertainty about what a property will ultimately sell for) do not, in my judgment, constitute a

significant change in circumstances that would justify the exercise of the *Thwaite* jurisdiction in this case. In any event, it would not be 'inequitable' for me to enforce the order for sale. The delay in marketing the property has been caused by the respondent's obstruction and it is the respondent who now seeks to rely on his own behaviour to unpick the financial remedy order.

71. I also observe that if property prices have fallen, then so have the prices of the properties these parties will go on to buy with their respective shares of the sale proceeds such that there is no real prejudice to either of them.

72. Nor do I consider the respondent's health to be a reason to delay implementation of the order for sale. As I have said earlier in this judgment, the respondent's health conditions were all known about and considered at the time of the final hearing and are not new. The reality, in my judgment, is that the respondent wishes to rely on his own delay in complying with the order to attempt to persuade the court to revisit the *weight* to be given to those health conditions and to reopen issues that have already been dealt with comprehensively.

73. There should be finality in litigation. The only conceivable *inequity* that might arise is that that would be caused by permitting the *respondent* to thwart implementation of the final order any longer.

74. Turning to the applicant's case, I have no hesitation in agreeing that the respondent has (i) deliberately not complied with the consequential provisions of the order for sale to date; and (ii) has no intention of doing so in future.

75. I summarise my reasons as follows:

i. Throughout the respondent's documentation and oral submissions he has made it very clear to me that he does not intend to comply with the order for sale by handing over keys to the applicant and allowing the estate agent/potential buyers access to the property in his absence.
ii. On several occasions he has referred to my decision in the substantive proceedings as, variously, "false"; "unjust"; "unfair" and accused me/the family court of "damaging an Egyptian husband in racist revenge" and

"thieving my pension money". The respondent's continued hostile attitude towards the court orders is plain and I now have even less confidence that he intends to comply than I did in December 2022.

iii. It is clear from the evidence filed by the applicant (in the form of email and text message communications from the appointed estate agent) that throughout February and into March (when the application for enforcement was lodged by the applicant) the estate agents tried to contact the respondent on numerous occasions to progress the sale, including leaving voicemails and sending emails. The email address they used for the respondent is the same email address the respondent uses to contact the court. From the numerous communications the respondent sends to court staff from that email account I find he accesses that email account regularly and I find he would have both received and seen the communications from the agent.

iv. As I explored with the respondent in court, and as he admitted to me, the respondent knew in February (from emails sent to him by the applicant's solicitor at that time warning him of the potential for enforcement proceedings) that the estate agent had been trying to get hold of him without success. The respondent did not reply to those emails saying, for example, "the estate agent has not contacted me", or take proactive steps himself to get hold of the estate agent himself. The respondent accepts that even after being sent the enforcement application and statement he has done absolutely nothing to progress the sale or remedy the breaches. I reject the suggestion that the respondent has never received any messages from the estate agent as implausible and I find the respondent has deliberately ignored the estate agent's calls and emails and chosen not to cooperate.

v. The respondent has been similarly uncooperative with the applicant's solicitor who has written to the respondent on several occasions in respect of the sale of the property. The respondent has either ignored the correspondence entirely or responded about a different topic and ducked the issue. He has still not handed over a copy of the keys to the applicant in breach of my order and without any justification.

76. Whilst the respondent told me that if he has to move out of the property before completion of sale he will have insufficient funds to rent, the respondent has already received his share of the balance of the joint account (the best part of £180k) and so he has sufficient capital to use for short term rehousing. He also has the sources of income I found him to have in the substantive financial remedy proceedings. The fact the respondent has done nothing at all since December to obtain work and/or obtain rental money from his Egyptian properties is a situation of his own making and which he should not be permitted to rely on to further delay the sale of the family home.

77. I have thought long and hard about whether I should give the respondent one last opportunity to comply with the provisions of the order for sale in order to avoid the more drastic option of requiring him to permanently vacate the property before sale.

78. Ultimately, I have decided that the respondent has had ample opportunity already (I made the order in January 2023) and that he has taken no steps – including after being served with the enforcement application and, indeed, *after the hearing before me in June*– to show that he will ever be willing to comply whilst he remains in occupation.

79. He has remained defiant and unrepentant in his attitude towards the court and court orders: at §9 of his further written submissions of 22 June he has written (and he has inserted underlining and bold type for emphasis): **"<u>I object and refuse to vacate my house…</u>"**.

80. If the respondent is permitted to remain in occupation of the family home he will continue to obstruct implementation of the court order which will result in prejudice and further financial cost to the applicant.

81. I appreciate this will mean that the respondent will have to find alternative accommodation within a short time frame. However, this is again a situation of the respondent's own making. Had he complied with the court order at any point between January and now he would not have found himself in this position. Moreover, as a single man without dependants and with a significant

cash sum that he has recently drawn from the joint account which he can deploy for deposit/rent I am confident he will be able to secure alternative accommodation whilst the parties wait for the home to sell.

82. I am therefore going to vary the consequential provisions of the order for sale so that the respondent must give the applicant sole possession of the property by 4pm on 23 August which gives him 6 weeks (from the date I notified the parties of my decision by circulating this judgment in draft) to secure alternative accommodation. If the respondent remains in occupation of the property or its curtilage after that time he will be trespassing, and the applicant will be able to apply to the court for a warrant to physically remove him from the premises.

*The mortgage payments*

83. As the respondent will have to rent privately I accept he will have insufficient funds to also continue to pay the entirety of the mortgage on the family home.

84. If the applicant were intending to move back into the property herself I would have ordered her to pay the mortgage until sale in place of the rent she had hitherto been paying.

85. However, given the respondent's domestic abuse of the applicant she lives at an address which is confidential. I am satisfied that she cannot move back into the family home pending sale as the respondent would then become aware of her location.

86. I made findings about the respondent's use of litigation to abuse the applicant in my earlier judgment. In these enforcement/variation proceedings the respondent has continued to use litigation to try to intimidate by demanding in court on 15 June that the applicant (who was represented) speak directly to him and also to turn her video on contrary to my participation directions (and claiming, fancifully, that if I did not require her to speak directly to the respondent and to show her face on the video then there was a risk that someone else might be 'impersonating' the applicant).

87. The respondent also appeared before [X] Magistrates' Court on 13 June 2023 when an interim stalking protection order was made against him due to alleged stalking of the applicant. Whilst the criminal proceedings are ongoing (and I am not in a position to make any finding about the events that led to those proceedings being instituted) I am satisfied it would be inappropriate to require the applicant to return to live in the family home in view of the findings of the family court, the respondent's behaviour in court on 15 June, and the ongoing criminal allegations.

88. This means that the applicant will also have to continue to pay rent and so will be in the same financial position as the respondent.

89. In these difficult circumstances I consider the fairest way to deal with the issue of the mortgage (which undoubtedly has to be paid one way or another) is that I will vary the order requiring the respondent to pay all of the mortgage and outgoings on the family home to state that from the time the respondent vacates the family home both parties shall pay the current mortgage and household outgoings in equal proportions and shall indemnify each other in respect of the same.

***House contents ('chattels')***

90. The final order required the parties to exchange a list of chattels that they would each like to retain by 26 January 2023. The applicant sent her list of chattels to the respondent by the ordered date. The respondent, conversely, did not send any list of chattels he would like to retain and nor did he provide any response to the list sent by the applicant.

91. The applicant has asked for what appear to me to be a relatively modest number of items from the family home with the respondent to retain anything not on her list. She asks me to rule on this issue now to avoid further delay. The respondent has claimed that as he paid for certain items of furniture they should be considered to be 'his' chattels and not 'joint' chattels, despite the fact they were bought for the family home during the marriage (such as a dining table and chairs). He has raised a number of new factual issues in his

documentation sent in after the hearing about the location of certain of the items and their provenance.

92. Court orders are not polite suggestions or recommendations, they are orders. They must be complied with. Failure to comply has consequences. The deadline to provide a list of chattels that the respondent wished to keep expired five months ago and the respondent has not seen it necessary to provide any such list in all that time. He has also not responded to the applicant's solicitor's attempt to broker an agreement about chattels.

93. It is not in the interests of justice or in accordance with the overriding objective for me to now list a further hearing to hear evidence about which party has the allegedly greater need for, or sentimental attachment to, the chattels. The cost to the parties of that exercise is disproportionate in view of the likely value of the items in dispute.

94. Given the respondent's wholesale failure to comply with the order by exchanging a list with the applicant by 26 January, and his failure to do anything to remedy the default or to be cooperative in all the months between then and the hearing in June, I have decided that the applicant shall retain the modest number of items set out on her list, save for the photographs of the children which she shall arrange to be copied at her expense with a copy to be provided to the respondent via her solicitor. I also decline to deal with the items on the list said to belong to the adult children of the marriage. If there is an issue about those items that is something the adult children need to speak to their parents about directly and it is not an issue for the court in these proceedings.

***Pension documentation***

95. The respondent has not completed his part of the pension sharing annex in order to implement the pension sharing order *made in his favour*. The respondent has claimed that there has been a freeze on public sector pension values and that there will potentially be a recalculation of the applicant's pension in the coming months. He says that until he receives clarity from the

applicant about this, he is not willing to complete the documentation he is required to send to the pension provider to implement the order.

96. The pension sharing order was made on 26 January 2023. The parties have had decree absolute since 23 September 2021. The pension sharing order therefore took effect on 23 February 2023 (i.e. 28 days after the final order was made, this being 'transfer day').

97. The applicant has produced a letter from her pension scheme provider that states *"As the PSO was finalised on 26th January 2023, the order effective date is 28 days after this date and therefore the CETV which you have received will not be affected by the change in factors."*

98. The 'valuation day' (the day on which a fresh CE valuation of the pension rights will be calculated by the provider) will ultimately be a date determined by the provider falling within the 'implementation period' as governed by the Welfare Reform and Pensions Act 1999.

99. The implementation period is a four-month window beginning with the date on which the pension provider is served with the order *and* the formal information required by the Pensions on Divorce (Provision of Information) Regulations 2000 (which includes information such as the parties' dates of birth and national insurance numbers which are set out on the Form P1 pension sharing 'annex'). As the respondent is yet to furnish his side of the requisite information, the P1 form has not yet been sent to the provider and so the implementation period has not yet begun (WRPA 1999 s.34(1)).

100. To the extent that the valuation 'day' used by the provider (s.29 WRPA 1999) will differ from the valuation 'date' (the date on which the pension was valued for final hearing purposes), such that the value of the pension credit actually transferred to the respondent as a result of the pension sharing order will likely not be the same amount contemplated at the time of the final hearing[1], the additional delay between the making of the order and the start of the implementation period in this case has only arisen because the respondent has

[1] So-called 'moving target syndrome'. I have drawn on the extremely helpful explanation contained within the judgment of HHJ Hess in *T v T (variation of a pension sharing order and underfunded schemes)*, 1 November 2021

refused to provide the requisite information to enable the annex to be completed.

101. As the order has already taken effect, in any recalculation on the 'valuation day' the provider will take into account market fluctuations but *not* any additional pension contributions (or drawdown) made by the applicant in the intervening period between transfer day and implementation.

102. The rights that are to be valued are those rights in existence on the date the order took effect (i.e. on transfer day, which in this case was 23 February 2023).

103. As the PSO must be expressed as a percentage of pension rights, any market fluctuations will affect both parties. In this case my order was for a pension share of 49.2% of the applicant's pension rights - in other words, the respondent and the applicant will share in any upturn or downturn in the market in almost equal proportions.

104. In any event, I have no power to vary the pension sharing order as decree absolute has already been granted and the order has already taken effect and so the respondent's continued resistance is simply misconceived in law.

105. I will give the respondent until 4pm on 28 July 2023 to complete, sign and return the form to the applicant's solicitor for onward service on the pension provider and I will attach a penal notice to this provision.

106. If the respondent refuses to provide information that is in his possession (such as his national insurance number) which is not currently known by the applicant/the court then the practical effect will be that the pension sharing order cannot be implemented and he will not receive any pension payments. I had initially considered that – given the effect of non-compliance by the respondent would be prejudice to the *respondent* and not the applicant -there was little the court could or should do about this state of affairs.

107. However, I am persuaded (as the applicant submits) that the history of this litigation to date suggests that there is a real risk the respondent may change

his mind in the future and issue further applications and/or pester the applicant or her solicitor in correspondence in respect of the pension sharing order.

108. In those circumstances, if the respondent does not complete the P1 Form by the date I have ordered I give permission to the applicant's solicitor to write to me (on notice to the respondent) to inform me of this and I will make an order directing disclosure of the respondent's national insurance number from the Department of Work and Pensions and thereafter execute the documentation on his behalf.

*Metrobank joint account*

109. I will give the respondent until the same deadline – 4pm on 28 July 2023 – to complete the paperwork to enable the parties' joint account to be closed. In the event he does not do so the court will execute the documents.

**The risk of future non-compliance**

110. Following circulation of this judgment in draft the applicant, through counsel, has invited me to order that, in the event that the respondent does not pay his half share of the mortgage and outgoings, the debt that would then be owed by the respondent should automatically be paid to the applicant directly out of the proceeds of sale of the property (i.e. out of the respondent's share).

111. This is an understandable request to make. Clearly, the applicant is keen to avoid further costly enforcement steps and hearings in the event of future non-compliance.

112. However, I do not consider it appropriate at this stage to, in effect, make a charging order 'in default' against the respondent's share of the proceeds of sale when he is not currently in breach.

113. In the event that the respondent does not pay the sums I have ordered, the applicant will have a judgment debt (i.e. the arrears) which she can then apply to be secured by way of a charge against the respondent's share of the proceeds of sale and that debt will also carry interest at the High Court rate

(i.e. 8%). I think that is the fair and appropriate way to deal with the potential for future non-compliance.

114. I will reserve any future applications for enforcement to myself for case management and will deal with applications on paper where it is appropriate to do so.

**Costs**

115. These proceedings and the hearing on 15 June have been required because the respondent has failed to comply with several provisions of the final order. I have largely acceded to the applicant's applications aimed at enforcing those provisions and I have rejected the respondent's applications. I have found that the respondent continues to obstruct implementation because he is unhappy with my earlier decision and wishes to undermine it.

116. It is right and fair that the respondent pay the applicant's costs relating to the enforcement applications and I consider that, in view of the high degree of unreasonable conduct on the part of the respondent in attempting to obstruct implementation of the final order, those costs should be awarded on an indemnity basis.

117. The total costs incurred by the applicant in connection with the applications and hearing are £16,514 inclusive of VAT. This seems to me to be a modest and reasonable sum considering the amount of work that has been involved, both in the preparation for the hearing on 15 June and at the hearing itself. I will summarily assess costs in the full sum of £16,514 which the respondent must pay within 14 days. Simple interest (at the High Court judgment debt rate) will attract in the event the respondent does not pay the full sum by the date ordered for payment.

**Publication and anonymisation**

118. I have determined that this judgment should be published, but in anonymised form.

119. It might be questioned why I have allowed the parties' names to be anonymised and whether – particularly in view of the continuation of the

respondent's poor attitude towards the court and court orders – the respondent is being able to hide behind a cloak of anonymity that would not be afforded to him if, for example, these were committal proceedings being heard in open court.

120. However, I am mindful of the fact that if I were to name the respondent then it would become impossible to prevent the applicant's name being in the public domain by association. I am concerned about the potentially detrimental and harmful emotional impact of this on the applicant – who has merely tried to enforce the court's orders and obtain the financial remedies to which I have found her to be entitled – of her name being associated with the facts of this litigation, including the fact of her having been a victim of domestic abuse.

121. I am also concerned that revealing the applicant's name in a published document (even indirectly by her association with the respondent) may make it easier for the respondent to then learn of the applicant's confidential location.

122. Moreover, the respondent's son is a doctor who has a similar name to the respondent and I would need to take additional steps to ensure that there was no misidentification (and harm or embarrassment to that third party) resulting from the publication of the parties' names.

123. In carrying out a balancing exercise, I consider that a reader of this judgment will still be able to adequately understand the reasons for my decision and the general background facts without needing to know the parties' real names, whilst also being mindful of the strong public interest in ensuring that the court's processes (particularly when it comes to enforcement of court orders) remain transparent.