This draft judgment was circulated to the parties by email on 14 May 2024. Following receipt of any editorial corrections, the approved judgment was circulated by email on 7 June 2024.

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WXT v HMT (leave to claim financial relief following overseas divorce)

Neutral Citation Number: [2024] EWFC 136 (B)

IN THE FAMILY COURT AT OXFORD

Date: 7 June 2024

Before :

HHJ Vincent

- -

Between :

WXT	**Applicant wife**
- and –	
HMT	**Respondent husband**

- -
- -

The applicant and the respondent both represented themselves at the hearing

Hearing date: 7 May 2024

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JUDGMENT

HHJ Vincent :

1. The parties met and were married in Algeria on 17 April 2001.

2. They have three children together, now aged twenty-one, nineteen, and twelve.

3. After their marriage they lived in [the UK], in a house that was owned by the husband.

4. In 2008 they moved to the United Arab Emirates. The house in [the UK] was sold. At first they lived in an apartment and later in a house.

5. The husband is currently the sole owner of two properties, subject to mortgage, in Dubai:

a. [House A]

b. [Flat B]

6. The family lived in [House A]. [Flat B] was a flat purchased as an investment. Currently, both properties are let to tenants.

7. The family returned to England in 2016.

8. On 3 November 2023 the wife issued an application for divorce in this jurisdiction.

9. The respondent husband filed an acknowledgement of service, in which he asserted that on 10 September 2023, divorce proceedings relating to the marriage were issued/registered in the court at [*redacted*], Algeria.

10. The respondent husband later informed the court that a divorce was granted in the Algerian proceedings on 18 January 2024. He has filed and served documents to evidence the same.

11. The wife confirmed she accepted the validity of the Algerian divorce proceedings, and that they can be recognised within this jurisdiction. She withdrew her petition for divorce. However, she pursues her application for leave to make a claim for financial relief following an overseas divorce, under section 13, Part III Matrimonial and Family Proceedings Act 1984 (the 1984 Act).

12. At a hearing on 7 May 2024, I considered the contents of the parties' witness statements, and I heard submissions.

The law

13. The law is clear, and is found at sections 12 to 18 of the Matrimonial and Family Proceedings Act 1984 (the 1984 Act).

14. Those sections have been considered in a number of leading cases. I have read the following:
    - the Supreme Court's decision in Agbaje v Akinnoye-Agbaje [2010] UKSC 13;
    - Lockwood v Greenbaum [2022] EWHC 845 (Fam), a decision of Moor J.;
    - Potanina v Potanin [2024] UKSC 3, handed down by the Supreme Court in January 2024.

15. Moor J handed down a further judgment on 24 April 2024, TR v XA [2024] EWFC 96, in which he reviewed the decision of the Supreme Court in Potanina.

16. Section 12 of the Act provides that either party may apply to the court for an order for financial relief where a marriage has been dissolved by means of judicial or other proceedings in an overseas country, *'and the divorce, annulment or legal separation is entitled to be recognised as valid in England and Wales.'*

17. In this case the parties' marriage was dissolved by judicial proceedings in Algeria and there is no dispute that it is entitled to be recognised as valid here.

18. Section 13(1) requires that a party to a divorce obtained overseas who seeks to apply for financial relief in this jurisdiction, must first obtain the leave of the court. The court, '*shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.'*

19. Section 13(2) provides that the court here may grant leave even if an order has been made in a country outside England and Wales requiring the other party to make a payment or transfer property either to the applicant or a child of the family.

20. The Court only has jurisdiction to entertain an application for permission if any of the requirements set out in section 15 of the Act is satisfied:

    15 Jurisdiction of the court.

    (1) … the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—

    (a) either of the parties to the marriage was domiciled in England and Wales on the date of the application for leave under section 13 above or was so

domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or

(b) either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or

(c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.

21. In this case, the jurisdiction requirements in both section 15(1)(a) and 15(1)(b) are met.

22. Section 16 sets out the factors to consider when determining whether there is substantial ground for making an application in England and Wales:

16 Duty of the court to consider whether England and Wales is appropriate venue for application.

(1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

(2) The court shall in particular have regard to the following matters—

(a) the connection which the parties to the marriage have with England and Wales;

(b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;

(c) the connection which those parties have with any other country outside England and Wales;

(d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;

(e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief

given by the order and the extent to which the order has been complied with or is likely to be complied with;

(f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;

(g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;

(h) the extent to which any order made under this Part of this Act is likely to be enforceable;

(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

23. In Agbaje, the Supreme Court interpreted 'substantial ground' for making an application as meaning 'solid'. Per Lord Collins at paragraph 33:

'In the present context, the principal object of the filter mechanism is to prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse. The threshold is not high, but is higher than 'serious issue to be tried' or 'good arguable case' found in other contexts. It is perhaps best expressed by saying that in this context 'substantial' means 'solid'.

24. At paragraph 52 of the judgment, he continued:

'The whole point of the factors in section 16(2) is to enable the court to weigh the connections of England against the connections with the foreign jurisdiction so as to ensure that there is no improper conflict with the foreign jurisdiction.'

25. In Potanina, Lord Leggatt suggested that putting a gloss on the words of the statute, or bringing in tests from other jurisdictions may not be helpful. Potanina was particularly concerned with the law and procedure in respect of applications to set aside the granting of permission, where permission had been obtained without giving notice to the respondent (as had become normal practice over the years). Discussion of the test for setting aside the grant of permission, involved consideration of the need or otherwise for the respondent to establish a 'knock-out blow', and whether the applicant was required to establish 'a real prospect of success'. I do not have to be concerned about that for the purposes of the application before me.
26. In respect of the application to grant leave, Potanina has not changed the basic test, which is set out clearly in the statute.

27. In the leading judgment, Lord Leggatt simply stated that, *'the judge will need to consider whether, on the factual basis alleged unless it is clearly without substance, there is a substantial (in the sense of solid) basis for saying that in all the circumstances of the case, and having regard in particular to the matters*

specified in section 16(2), it would be appropriate for an order for financial relief to be made by a court in England and Wales.' (paragraph 92)

28. So, quite simply, in deciding this application, my task is to have regard to all the factors at section 16(2) and determine whether there is substantial ground for allowing an application for financial remedies to proceed in this jurisdiction.
29. The parties' connection to the jurisdiction is one of the factors to be taken into account, and, by virtue of section 15, is an essential 'gateway' factor to the court considering the application in the first place. However, although it is listed first on the list of section 16(2) factors, the parties' connection to this jurisdiction is no more important than any of the other factors, which must all be weighed in the balance.
30. If the court is satisfied that in all the circumstances of the case it would be appropriate for an order for financial relief to be made by a court in England and Wales, section 17 gives the court wide powers to grant financial remedies. Section 18 deals with the matters to which the Court is to have regard in exercising its powers. Broadly speaking, the court has power to make any order for financial relief which it could make if the parties had been divorced in England and Wales.
31. The husband has asserted that where the divorce is pronounced under Algerian law, only Algerian law can apply to any application for financial remedies. He relies upon Articles 12 and 13 of the Algerian Civil Code. I would accept that only Algerian law applies to the procedure for applying for and obtaining a divorce in Algeria, and to the means of assessing a claim for financial relief upon divorce. But that does not mean that an Algerian citizen would be prevented from pursing a claim in the courts of any other jurisdiction, most particularly of a jurisdiction in which they live and work as citizens of that country.
32. I have not been shown any legal provision, case law or other source material that would suggest that Algerian citizens are excluded from consideration under part III of the Matrimonial and Family Proceedings Act 1984.
33. The fact that a divorce was obtained in Algeria is what triggers operation of the 1985 Act. Where a divorce has been obtained overseas, but the parties have a connection to this jurisdiction, the Act specifically invites consideration of whether the proceedings should continue in the overseas jurisdiction, or whether in all the circumstances, an application for financial remedies should be allowed to proceed in this one.

Analysis of the section 16(2) factors

34. I now turn to deal with each of the factors in turn as they apply to the circumstances of this case.

    (a) ***the connection which the parties to the marriage have with England and Wales;***

35. The parties have been married for twenty-three years.

36. After their marriage in 2001, they lived in [the UK] until 2008, when they moved to the United Arab Emirates. The house in [the UK] was in the husband's sole name. He sold it and purchased property in Dubai. The family lived in a flat first, and then a house.

37. The parties and their children returned to England in 2016.

38. The older two children were born in this country, the parties' youngest son was born in the UAE. Their daughter, now nineteen, was at secondary school in England and is now studying at an English university. Their youngest son, twelve, attended an English primary school and is now at secondary school in [Oxfordshire]. Their oldest son is twenty-one. He attended secondary school in England. At the moment he is in Algeria. His father says he is planning to go to university in Algeria, his mother says he is intending to return to the UK.

39. The parties have dual nationality (British/Algerian). The husband was a British citizen at the time of the marriage, the wife obtained citizenship two or three years later.

40. They both live and work in this country. The husband is a business consultant. He says he earns about £80,000 a year. He has a small occupational pension, which he says this started about three years ago and is now worth about £27,000.

41. Within the marriage, the parties took on traditional roles, with the husband going out to work, and the wife working within the home, raising the children and taking care of all domestic tasks[1]. More recently, the wife has been working part-time as a teaching assistant for children with special needs. She receives benefits relating to her own disability from arthritis, and child benefit.

42. The parties are separated, but remain living in the home they have occupied since their return from the UAE in 2016. It is rented. The lease runs out in July 2024.

(b) ***the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;***

[1] In his response to the judgment, the husband says, *'The marriage was not a traditional one. [The wife] has been working for the last 10 years with my moral and financial support. During the 8 years in the UAE we had a maid who did everything. From the beginning of the marriage, I encouraged and funded [the wife's] education to pursue her own professional career. [She] attended the following:*

a. Started again her Baccalaureate;
b. Attended a private English Language School;
c. Obtained a certification in Microsoft tools (Excel, Word and PowerPoint);
d. Obtained a diploma in graphic design;

I also encouraged her to learn driving and funded all her driving lessons and tests.' I do not know if the wife accepts this account. It does not make any difference to my analysis or conclusions.

43. The husband and wife were both born in Algeria and spent the majority of their lives before marriage there. They were married in Algeria, but have never lived there as a couple.

44. The husband's family owns some property in Algeria. He says that is a flat he shares with his brothers, and a piece of land, also inherited and shared with other family members.

45. Both have family members in Algeria.

46. The wife last went to Algeria in December 2023, but before that the last time she visited was in 2018.

47. The husband says he would like to spend more time in Algeria. He says it is his intention to retire to Algeria next year when he turns sixty-five.

(c) ***the connection which those parties have with any other country outside England and Wales;***

48. Apart from one trip in 2017, the parties have not returned to Dubai since 2016.

49. The two Dubai properties are in the husband's name. His intention is for these properties to remain in his sole ownership and eventually to be passed to his children. Both properties are currently rented out to tenants. The husband told me that the rent he receives goes entirely to cover the mortgage payments on the villa, and on top of that he pays service charges on both the villa and the flat. He told me there is about £100,000 outstanding on the mortgage. He told me the equity in the villa is around £1.1 million, and the flat is worth about £280,000.

50. The husband has one or two bank accounts in Dubai, and an offshore pension, which the wife thought was worth about £100,000 but the husband said it was currently worth about £70,000 because he has already started drawing down from it to supplement his income.

(d) ***any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;***

51. The wife has not applied to the Algerian court for financial remedies.

(e) ***in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;***

52. There are no ongoing proceedings for financial remedies, and no orders have been made there or in any other jurisdiction concerning any property or assets which might form the subject of proceedings in this jurisdiction.

53. The Algerian court has left the proceedings open for the wife to make an application for financial relief should she choose to.

(f) ***any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;***

54. The wife does have the right to apply to Algeria. She has not done so because she is sceptical about what she would receive from the Algerian court. Another, perhaps more significant reason, is that she does not live there, does not travel to Algeria with any frequency, and is not in funds to do so, nor can she afford to instruct a lawyer to represent her in the Algerian courts.

55. She told me that it would not be at all easy for her to take time off work in order to travel to Algeria, in order to take part in court proceedings. Nor could she easily leave her youngest son at home while she travelled[2].

56. If she were to obtain orders against the husband in Algeria, it would be difficult for her to enforce those orders in the Algerian courts, for the same reasons.

(g) ***the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;***

57. There are no assets of the marriage within this jurisdiction, but neither would there appear to be any in Algeria.

(h) ***the extent to which any order made under this Part of this Act is likely to be enforceable;***

[2] In his response to the judgment the husband points out that the wife left their youngest son with him for ten days when she travelled to Algeria in December 2023. However, this would not be possible if both parties were required to be in Algeria for Court proceedings but the parties' youngest son had to remain in the UK to go to school.

58. There are some potential issues presented by matrimonial properties and other assets being in Dubai or offshore.

59. However, any difficulties that may present in respect of enforcement would not be reduced by the proceedings taking place in Algeria.

60. If orders for spousal or child maintenance were made, they would be more readily enforced in this country as the husband works in this jurisdiction and his employer is based here. He has a small pension from this current employment.

(i) ***the length of time which has elapsed since the date of the divorce, annulment or legal separation.***

61. The Algerian divorce was obtained in September 2023. Proceedings for financial remedy could be pursued either in Algeria or in this jurisdiction.

Conclusions

62. The husband says that the wife's application should be struck out because the wife is refusing to engage with the Algerian court, which is now seized of their divorce application. The documents he has submitted show that the court is awaiting an application from her, and if she were only to engage, he says she would obtain the financial remedies she seeks within those proceedings.

63. However, given that the parties are habitually resident here, the legislation gives the wife a choice. She is not compelled to make an application for financial remedies in Algeria.

64. I reject the husband's submission that the wife is required to see the Algerian proceedings through to their conclusion before applying to this court.

65. He submits that this court can only grant permission to the wife to issue her financial remedy application here, if satisfied that the Algerian court either has or is likely to make inadequate financial provision for her. This is an incorrect statement of the law. Permission may be granted, having regard to the particular circumstances of the case, and the factors on the section 16(2) checklist, if there is substantial ground to make an application.

66. In order to make my decision, I do not need to, and should not come to any conclusion about what the outcome of proceedings in Algeria might be.

67. My decision is not based on the wife's assertion that she would achieve a more favourable result here than in Algeria; it is not for me to make that assumption,

although the ability of the parties to enforce any orders made is relevant to my determination.

68. Having regard to all the factors on the section 16(2) checklist, it is my conclusion that the wife has shown she has a solid, or substantial ground for making an application from this jurisdiction. Pursuant to section 13 of the 1984 Act, I grant her permission to make her application for financial remedies within this jurisdiction.

69. Both parties have a strong connection to this jurisdiction. They have lived in this country for the past eight years, and also lived here for the first fifteen years of their marriage. The wife could make an application in Algeria, but in my judgement, she should not be compelled to travel there, nor to instruct solicitors based in a different country in order to conduct proceedings there, when she can participate in proceedings here by representing herself, and making her own way to the court at minimal expense. Neither she nor the husband live, work, or jointly own property in Algeria. They have never lived there during their marriage.

70. In all the circumstances, the section 13(1) test has been met; '*there is substantial ground for the making of an application for such an order.'*

71. The wife is granted leave to make an application for financial remedies.

72. Once she has submitted her application, the Court will make directions for the parties to give financial disclosure, and will list a hearing.

HHJ Joanna Vincent
Family Court, Oxford
Draft judgment sent: 14 May 2024
Approved judgment sent: 7 June 2024