IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2019] EWHC 839 (Fam)

No. FD18F00010

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 15 March 2019

Before:

MR JUSTICE HOLMAN

(sitting throughout in public)

B E T W E E N :

LEILA KASSEM HAMMOUD — Applicant

- and -

TALAL QALS ABDULMUNEM AL ZAWAWI — Respondent

MISS KYRA CORNWALL (instructed by Payne Hicks Beach) appeared on behalf of the applicant.

THE RESPONDENT did not attend and was not represented.

J U D G M E N T

(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

Introduction and the non-attendance of the husband

1 Without any objection by or on behalf of the wife, I heard the whole of this case in public and I now deliver this judgment in public.

2 This is the final substantive hearing of a former wife's claim under Part III of the Matrimonial and Family Proceedings Act 1984 ("the 1984 Act") for financial relief after an overseas divorce.

3 I, myself, have already given interim judgments in the same proceedings on 19 April 2018 and 24 July 2018 which are publicly available on the Bailii website under neutral citation numbers [2018] EWHC 1214 (Fam) and [2018] EWHC 2436 (Fam) respectively.

4 I have also given a judgment on 1 November 2018 in the linked children arrangements proceedings number FD17P00707, which is publicly available under neutral citation number [2018] EWHC 2956 (Fam).

5 Those judgments, which I incorporate into this judgment by reference, explain my reasons for making the various interim orders which I did as to maintenance and costs funding, and my reasons for deciding that the three children should remain living in England with their mother (subject to any decision by the Secretary of State for the Home Department to remove them) and that into the foreseeable future any direct contact with them by their father must take place within England and Wales and requires to be supervised.

6 Tragically, and despite the last sentence of my judgment of 1 November 2018, the father has not since then travelled to England to see his children. He speaks to them frequently, but irregularly, on the telephone, but he has not seen them now since January 2018, although they long to see him and the mother would very much like him to see them.

7 Although they have been divorced in Oman since 2017, I will for convenience refer to the parties as the "husband" and the "wife". The husband, who lives in Oman, has neither attended nor been represented at the present hearing, although he is undoubtedly very well aware that it is taking place here this week and he is a very rich man who can, without the least financial difficulty, afford to attend and/or instruct lawyers as he has done in the past.

8 For several months in the first half of 2018 the husband instructed the prestigious London firm of specialist solicitors, Vardags. Between June and mid-September 2018, he instructed the no less prestigious firm, Stewarts. Both firms of solicitors retained and instructed Mr Charles Hale QC, who represented the husband at the hearings on 19 April and 24 July 2018 (and at an earlier two-day hearing on 28 February and 2 March 2018 before Mr Justice MacDonald in relation to the children).

9 Since 14 September 2018 the husband has chosen, as is his right, to act in person, but he has not actually participated in any of the subsequent hearings. I am in no doubt that he has been well aware of the dates and place of the present hearing for many months. The date was fixed during August 2018, while Stewarts were still acting and on the record, and it was fixed expressly for the convenience and availability of the husband's counsel, Mr Charles Hale QC. It is a virtual certainty that Stewarts will have informed their client of the date so fixed.

10 Further, the wife's solicitors, Payne Hicks Beach, have satisfied me that they have sent several communications to the known email addresses of the husband informing him, or reminding him, of the date. They have sent him as email attachments all the documents prepared for this hearing.

11 On 17 February 2019 the husband, himself, sent an email (from one of those email addresses) to Payne Hicks Beach and my own clerk stating:

> "Kindly ensure that my statement dated 24 July 2018, providing my disclosure (copy attached) is included in the bundle for the judge at the final hearing. Thank you. Kind regards Talal Al Zawawi."

Although that email does not itself expressly refer to the actual date of the final hearing, its tone is clearly that the final hearing is approaching and the writer is aware of the date, for otherwise he would have asked when it was.

12 The husband is, very regrettably, in clear breach of numerous orders of this court. As well as very significant breaches with regard to payments of maintenance, outgoings and school fees, to which I will refer below, the husband has failed to file and serve a financial statement of his means in prescribed Form E within the lengthy and further extended time limits allowed to him.

13 The husband has failed to file and serve any statement dealing with the relevant factors under section 18 of the 1984 Act, either by the time prescribed or at all, as ordered by me on 19 December 2018. He has failed to give any updating, or indeed any proper, disclosure. He has failed to file and serve his open proposals; and in breach of paragraph 22(a) of the order of 19 December 2018, he has failed personally to attend any part of this hearing. He

did not attend when I heard oral submissions on Tuesday, 12 March 2018, and he has not attended today even though he was notified of the precise date and time when I would deliver this judgment.

14 The husband's failure to file a Form E or give any proper disclosure is made all the worse because the whole thrust and burden of his statement dated 24 July 2018 (which he asked to be included in the present bundle, as it has been) is that he is "committed to satisfying my disclosure obligations and will do so as quickly as possible. I want to take a full part in the financial proceedings which I recognise by not yet providing the documents to the court, have been delayed for which I offer the court my apology" (see paragraph 5 of the statement). Paragraph 7 is to the same effect. Paragraph 8 promises that the Form E "will follow shortly". The final paragraph, paragraph 17, concludes:

> "…I respectfully ask the court to grant me an extension to the time for service of my financial disclosure and adjourn the determination of Leila's applications until such time as the court has a full and proper understanding of my finances."

That was dated 24 July 2018.

15 At the hearing on 24 July 2018, at which Stewarts and Mr Charles Hale QC were present on behalf of the husband, I duly further extended the time for filing and serving the Form E to 17 August 2018. Seven and a half months have now passed since 24 July 2018 and the husband has not produced one single page of further evidence or disclosure, whether by 17 August 2018 or at all.

16 In those circumstances, I have had no hesitation in proceeding with the present hearing, despite the respondent husband being neither present nor represented. Frankly, the husband

has displayed a wholesale failure to engage with this court or these proceedings since last July, or at the very latest mid-September when he terminated his instructions to Stewarts. He is very well aware of the proceedings and of the hearing dates. A respondent cannot simply ignore court orders and hope that the proceedings will go away.

17 I must, of course, nevertheless strive to reach an outcome which is just and fair to both parties, and during the hearing Miss Kyra Cornwall on behalf of the wife was at pains to ensure a fair and objective presentation of her client's case. Nevertheless, it is no fault or responsibility of anyone but the husband himself that I have had the difficult task of deciding this case without any submissions or argument on behalf of the husband; without any oral evidence from him; without any cross-examination on his behalf of the wife; and with very little evidence of his means, save that supplied with his statement of 24 July 2018 and that produced by or on behalf of the wife.

The facts

18 Where I make findings of fact I do so on the ordinary civil standard of the balance of probability. The essential facts and chronology are as follows.

19 The husband is now aged forty-eight. He is a citizen of Oman and lives there. The wife is now aged thirty-six, her date of birth being 11 June 1982. She is a citizen of the Lebanon, but has lived in London with the children since September 2015.

20 The husband is one of the eight children of the late Qais Bin Abdulmunim Al Zawawi. He appears to have been a very prominent person and politician in Oman and a very successful businessman. He was killed in a car accident in September 1995 while travelling in a car with the present Sultan of Oman who, himself, survived.

21 Under the law of Oman, sons inherit two shares of the estate for every one share inherited by a daughter. The deceased father was survived by four sons (including the husband) and four daughters. So it was that, long before these parties first met, the husband became heir to two-twelfths (*vis* one sixth or 16.66 per cent) of his father's business interests and wealth.

22 These parties first met in February 2005 and married in July 2005. There were lavish wedding ceremonies in both Oman and Lebanon, of which I have seen some photographs and which the wife has said cost over $5.5million plus the cost of a specially chartered aircraft. The husband says the cost was over $3million. Either way, it was a display of considerable wealth and set the tone for the scale of expenditure and standard of living during the marriage.

23 The parties lived for about ten years at the husband's house within the Al Zawawi compound or estate in Oman, known as Al Bushra. The wife has described this as a "palace". It is not on the scale of Buckingham, Blenheim or Versailles palaces and "palace" may be a hyperbole. But I have seen photographs of it. It is very large indeed and a magnificent house surrounded by its own enclosed lawns and gardens with several separate guest houses, tennis courts, indoor and outdoor swimming pools, stabling and a nightclub.

24 The wife says that the house and grounds were so large that it was necessary to travel around by golf cart. She says that there were about ninety staff in total, including about fifteen maintenance staff, fifteen drivers, ten gardeners, staff to care for the dogs and horses kept at the property, and several butlers and cooks. The people living there in all this luxury were the husband and wife, their children and the husband's widowed mother.

25 The children are twins, H (a girl) and Q (a boy), born in August 2006, and N (a girl) born in October 2009, so they are now respectively aged twelve and a half (the twins) and about nine and a quarter.

26 There was a rift between the parties in 2013 and an Omani divorce, but they resumed marital relations and formally re-married about a month later. For the purposes of the present decision and judgment, I treat the marriage as of seamless duration until the final separation in July 2017.

27 In September 2015 the family moved to live in London, as both parties wished their children to receive an English private education, which they now do. In November 2015 they bought a house in Clancarty Road in Fulham, London SW6, which cost just over £3million. I accept that this was a stop-gap home until the ultimate location of the children's schools was settled and a larger and more suitable house found. The house was bought in the name of the wife, although heavily mortgaged.

28 During 2017 the parties negotiated to buy a larger and more prestigious house in Clareville Street, South Kensington, London SW7. They offered £5million, although this was later rejected by the vendor.

29 On 30 May 2017 the husband caused his personal assistant in Oman to send an abrupt email to the wife. It reads:

> "Subject: Instructions from Mr Talal Al Zuwawi.
>
> Dear Madam,
>
> Greetings!!!
>
> FYI, Mr Talal Al Zuwawi has instructed us to cancel all your

transactions/allowances from next month onwards until further instructions.

Thanks and warm regards,

M Hameed Sherieff."

As the wife had been permitted until then to spend very lavishly, freely and without any restraint, this message must have been very devastating to her.

30 On 24 July 2017 the wife presented a petition in England for an English divorce. On or about the same day, and before that petition could be served upon him, the husband flew to Oman. The parties have not lived together since then and I treat July 2017 as the end of the marriage, making it one of twelve years' duration.

31 Before the wife could obtain an English divorce, the husband divorced her in Oman in October 2017 by pronouncing a unilateral Talaq without notice to the wife. The Talaq was registered on 19 October 2017. The wife has since accepted that that process resulted in the dissolution of the marriage, and the English divorce proceedings became ineffective.

32 On 6 February 2018, at a hearing at which both parties were represented, Mr Justice Keehan declared that the divorce obtained in Oman "is recognised as valid under section 46(1)(a) and (b)(ii) and (iii) of the Family Law Act 1986". Those provisions of that Act relate to "an overseas divorce…obtained by means of proceedings".

33 I thus proceed upon the basis that this court has already held and declared that the Omani divorce was obtained by means of proceedings, as section 12(1) of the 1984 Act requires as the gateway for an application under Part III. No financial provision has been made for the wife in Oman, so she sought and was granted permission to apply for financial relief in England and Wales under Part III of the 1984 Act.

34 The children spent a holiday with their father in Oman during October 2017 and he saw them from time to time in London; but, as I have said, very tragically they have not seen him at all since late January 2018. No doubt the father would be delighted if his children were to travel to Oman to stay with him there, but, as I explained at paragraph 38 of my judgment on 1 November 2018, the risk that they would not be returned to their mother is so high as to be completely unacceptable.

35 At paragraph 35 of the same judgment I said that:

> "I am quite satisfied to the required standard that this is a father who has, as the mother said, treated her with no respect as a wife or mother but as a 'slave'. He continues to exert tight control over her from afar."

Four months later that control has not diminished, but has become ever tighter. The husband has now sold the BMW 7 Series car which he owned and provided for the wife in London. The driver whom the husband employs here, who was one of his bodyguards, has been instructed only to take the children to school at their normal school times and to collect them from school at their normal school times. If a child stays late at school for an out-of-school activity, the driver, controlled by the father from Oman, does not pick that child up. The now-hired car and the driver are no longer available to the wife for her own use at all.

36 The nannies remain paid by the husband. There are two, who broadly each work six month shifts and then respectively return for six months to Oman. The wife said ruefully during her oral evidence that the husband continues to pay for the schooling in Oman of the nannies' children, although he has stopped paying for that of his own. Thus, as the wife said, the nannies inevitably obey him not her.

37 In breach of court orders, the husband ceased paying any school fees after those for last summer term, and ceased making any direct payments of maintenance, although he does still pay staff wages and he funds household purchases by the housekeeper whom he supplies with allowances for food etc. To date, the husband still pays the mortgage instalments, but has threatened to stop doing so.

38 As of this week, the husband is in arrears of about £605,000 in maintenance payments, plus this term's school fees of about a total of £30,000 for the three children, and a costs order made on 19 December 2018 in the sum of £3,965, which he was ordered to pay by 18 January 2019 but has not paid. So the total arrears to date are just under about £640,000.

39 I agree with the comment of Miss Cornwall at paragraph 6 of her opening note for this hearing that "The husband has determined to pull up the financial drawbridge, unless payment is on his terms."

40 The wife has been forced to sell jewellery and to borrow from relatives and friends. She currently has debts of about £1,047,000, and in addition owes her solicitors a total of £603,780 in relation to these financial proceedings, the child arrangements proceedings and the regularisation of the immigration and visa status of herself and the children.

41 It is small wonder that the wife described herself during her short oral evidence as feeling suicidal at times. She said that she is being chased with bills. Next term's school fees of about £30,000 in total must soon be paid. She said "I am terrified. I don't know what I'm going to do." She said, deeply tragically, that her elder daughter, H, who is well old enough to appreciate the situation, cries all the time and says that her father is sick. The wife said

that she, herself, is taking antidepressants. Meantime, the husband appears to continue to live his life of luxury in the house in Oman.

The 1984 Act

42 Jurisdiction in this case is clearly founded on section 15(1)(b) of the 1984 Act, namely that the wife was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave; and, indeed, also throughout the period of one year ending with the date the divorce in Oman took effect in Oman. Accordingly, the restrictions under section 20 of the 1984 Act are not in point and do not apply in this case.

The duty under section 16

43 By section 16 of the 1984 Act I must first consider whether 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, and must in particular have regard to the matters listed in section 16(2) of the Act which I now specifically address in turn.

(a) There is a distinct, genuine and considerable connection between both parties and England and Wales. They both moved here in September 2015 in a joint decision that they would make a home here, at any rate for the duration of their children's school education. At that time the youngest child was only just six. They bought a home here and negotiated to buy a better one. The husband bought a restaurant business here, which he later dissolved in May 2018 after the breakdown. The children are now well settled here and, unless the SSHD were later lawfully to remove them, are likely to remain living here at least until they respectively become adults.

(b) The connection with Oman in which the marriage was dissolved is also considerable. The husband is a citizen of Oman. He lives there now and has a very large business base there. The wife is not a citizen of Oman and was not brought up there, but she married there and lived there for ten years until 2015. She says, however, that she hopes never to have to return there.

(c) The wife does have a connection with other countries. She was born in Syria. She is a citizen of Lebanon and was brought up there. Her parents both died in 2003, but she inherited and still owns a share in some property in Lebanon.

(d) , (e) and (f) I will deal with the matters in these three subparagraphs compendiously. An Advice on Omani/Islamic law dated 19 February 2018 by the very well-known expert, Mr Ian Edge, makes clear at paragraph 19 that there is no community of property in Oman, and the entitlement of the wife to either capital or maintenance is either non-existent or very limited indeed, both as to quantum and duration. The husband may have to provide accommodation for an ex-wife where the wife is exercising rights of custody as a mother. However, the current state of court orders in Oman is that it is to the husband and not the wife that custody has been awarded.

There is currently an order of the Court of First Instance of the Sultanate of Oman made on 23 October 2018 (now at exhibits bundle, tab 14, p.162) which provides at bundle p.164 that, until the children return to the Sultanate (which the Omani court order requires them to do), the husband must pay a monthly allowance to the children of 2,000 Omani Rials which equates to about £4,000 per month. However, that is dwarfed by the English court order of which the

husband remains in breach, and I am not aware that he is identifiably making those payments, although he may be able to assert that he is doing so indirectly by paying the mortgage instalments, the wages of the nannies, and other expenditure which he does continue to meet.

With that possible exception, there is no order by a court outside England and Wales requiring any payments for the benefit of the wife or the children. There is no financial benefit which the wife or children have received or are likely to receive in consequence of the divorce by virtue of any agreement or the operation of the law of Oman or any other country outside England and Wales; and, as Mr Edge explains, any right which the wife has, or may have had, to apply for financial relief in Oman is of negligible reach or value in the context of this case. It is probably for that reason that the wife has not even tried to do so. It would not be cost-effective.

(g) Due to the persisting failure of the husband to give proper disclosure of his means and as to the disposition of his assets, it is unclear whether there is any property in England and Wales in respect of which an order under Part III of the Act could be made. The house at Clancarty Road is in the name of the wife already, so the small equity in it is already hers. The wife has said that she believes that the husband owns, beneficially if not legally, a valuable house in Halkin Street, London SW1 but there is currently no proof of that or of its actual location in the street. This is not, however, a case in which I am asked to make or contemplate making an order "in respect of" any specified or particular property whether here or abroad; but, rather, an order for the payment of a lump sum or payment of capital in lieu of maintenance.

(h) The wife recognises, and I recognise, that she may face considerable difficulties in enforcing any order I may make, especially if she cannot identify any property, or any sufficiently valuable property, in England and Wales against which an order in enforcement may later be made. The non-engagement and breaches by the husband of existing orders do not bode well. However, the husband himself has invoked the jurisdiction of the English court in relation to his children who continue to live here and I am not willing to dismiss the present application, pursuant to section 16(1) of the Act, simply on the basis that enforcement may be difficult. To do so would be to give in to a form of blackmail and would serve as an invitation to many overseas respondents simply not to participate in proceedings under Part III, but to raise the spectre of the difficulty of enforcement. I do not regard these proceedings, or the making of an order within them, as pointless on the basis that any order would inevitably be ignored or disobeyed, unenforceable and ineffective.

(i) The length of time since the Omani divorce in October 2017 is now about seventeen months, which is relatively short. The wife issued her present application very promptly in February 2018 and it is largely the intransigence of the husband which has led to any delay (which he, himself, recognised in paragraph 5 of his own statement of 24 July 2018 which I have already quoted).

After this review of the matters prescribed in section 16(2) of the 1984 Act and anticipating my consideration of the matters to which I must shortly have regard under section 18 of that Act, I am well satisfied that it is appropriate for an order for financial relief to be made by a court in England and Wales for both the wife and the children, and I now proceed to consider the application substantively.

Section 18 of the 1984 Act and section 25 of the 1973 Act

44 Sections 18(5) and (6) of the 1984 Act are not in point in the present case nor, so far as I am aware, is section 18(3A). By section 18(2) I must have regard to all the circumstances of the case and give first consideration to the welfare, while minors, of the three children of the family, none of whom have attained the age of eighteen.

45 Section 18(3) imports into these proceedings under Part III the very well-known list of matters mentioned in section 25(2)(a)-(h) of the Matrimonial Causes Act 1973 ("the 1973 Act") and the duties under section 25(A)(1) and (2) of that Act. In that regard, I do intend that the order which I make in this case will be (once paid in full) on a clean break basis. I thus now address the matters mentioned in section 25(2) of the 1973 Act:

(a) Financial Resources

The wife currently owns the house in Clancarty Road. It has been valued by Savilles at £2,650,000 and its equity is about £443,000. She owns quarter shares in two properties in the Lebanon which she and her siblings inherited from her parents. Her shares (not readily realisable) are valued respectively at the equivalent of about £169,000 and £69,000. These assets total about £681,000.

The wife has about £35,000 in a bank current account, but debts to friends and family and others of about £1,047,000, plus the costs of just under £604,000 owed to her solicitors. Overall, therefore, the wife is currently net in debt to the

order of about £935,000 if one assumes, artificially, that her property assets are liquid.

The wife has no income other than anything her husband pays to her and I am satisfied that no earning capacity should be attributed to her on the facts or in the circumstances of this case, nor that it would be reasonable to expect her to take steps to acquire one. She met the husband when she was aged twenty-two and married him when she was just twenty-three. He was a very rich man. They lived a life of luxury, as I will later describe. She wanted for nothing and was never expected to work or, therefore, to further any career. She now has three dependent children and will be close to fifty when her youngest child is fully adult.

Much more complex is the financial situation of the husband, about which I have negligible information from him. He, himself, stated at paragraph 6 of his statement dated 24 July 2018 that "my net wealth is estimated to be…circa £34.2million. Almost all of these assets were inherited from my late father and are now held either through the family business or jointly with my siblings and, as such, are illiquid and unrealisable."

As to income, the husband stated that his only source is the annual dividend received from the family company, typically around £800,000. He said that this is insufficient to meet all his outgoings and liabilities and that he has been forced to borrow significant sums from immediate family members, and that he also owes the family business more than $8million "which I must repay as quickly as I can".

Additionally, the husband states that the family company held "a substantial interest" in Carillion Plc so that his own wealth and his likely future income are further impacted by the well-known collapse of that company.

The husband attached to the statement dated 24 July 2018 a so-called "Net worth statement and auditor's report as at 30 April 2017." The auditor's report is dated 11 July 2017, a year before the husband's own statement in these proceedings. The auditor's report appears to be addressed to the husband himself and says merely that the auditors "have examined the accompanying personal net worth statement…in accordance with generally accepted auditing standards…and…such tests of accounting records and such other auditing procedures as we consider necessary in the circumstances."

The net worth statement itself consists of two sheets of paper and is brief in the extreme and lacking in any detail or particularity. The notes on the second page refer to eleven specified properties in Oman consisting of "villas, house, plots, open land, agricultural land and others" and the statement asserts that the overall value of the husband's interests in them is 8,750,000 Omani Rials. The list does not refer to, or include the house at Al Bushra where the parties formerly lived and the husband still does live and which I have described above.

The net worth statement refers to the husband having invested funds in twenty companies in Oman, whose *net book value*, according to the last audited financial statements of those companies is 9,954,777 Omani Rials. The companies are not in any way identified.

The researches of the wife have actually identified that the husband has, or has had, shares in at least forty-nine companies in Oman as set out in a schedule

produced on behalf of the wife and first sent to the husband on 14 December 2017. That schedule is now in the exhibits bundle at tab 14, p.38. The husband was well aware of that schedule, as is plain from paragraph 10 of his statement dated 16 April 2018 in which he expresses concern about how the wife "came to be in receipt of the confidential company information set out in Payne Hicks Beach's letter of 14 December 2017."

The net worth statement refers to "properties overseas" said to be worth 3,088,993 Omani Rials. The notes state that the properties are houses and apartments "at England and USA" but they are not further identified.

The net worth statement asserts that the husband has 337,171 Omani Rials in bank balances, which, according to the notes, "include funds with local and foreign commercial banks" which are not otherwise identified.

The net worth statement states that the husband has "assets wholly-owned" said to consist of boats and vehicles worth 95,645 Omani Rials, and "shares listed in stock market" which are not identified but are said to be worth 15,281 Omani Rials. There are asserted debts by way of bank personal loans of 1,741,706 Omani Rials. No other loans or debts are referred to, whether to the "immediate family members" to whom the husband referred in his own statement, or the family business or otherwise.

The bottom line of the net worth statement is 20,400,661 Omani Rials, which equates to about £40 million, 1 Omani Rial being worth approximately £2.

As an evidenced statement of the husband's means, the so-called net worth statement is, frankly, useless. It is largely unparticularised assertion and is wholly unsupported by any documents or other evidence at all.

At paragraphs 20 to 35 of her statement dated 15 February 2019, the wife gives a narrative account with such detail as she knows, or has been able to muster, of the husband's overall financial circumstances and wealth. That passage is too long to reproduce in this judgment, but I incorporate it into this judgment by reference. In the absence of any evidence from the husband to the contrary, apart from his net worth statement and bald assertions, I accept the broad picture described by the wife.

The gist is as follows. The main repository of the family's wealth is the Zawawi Group. The husband has by inheritance a 16.66 per cent share in it, a fact which he himself now acknowledges at paragraph 8(ii) of his statement of 24 July 2018. 16.66 per cent is one sixth. At paragraph 12 of his earlier statement of 16 April 2018, the husband asserted that "it is incorrect that my shareholding amounting to anywhere near circa 18 per cent of my family's business interests. In fact, I have a very small shareholding amount to approximately one sixteenth of the family-owned company, Zawawi Group, which was established by my late father in 1975." That was not true.

The wife has said in a number of documents within these proceedings, starting with her Form E dated 5 April 2018 at paragraph 4.2 (now at bundle tab C, p.46), that often during the marriage the husband told her that the overall value of the Zawawi Group is about $3billion of which one sixth is $500million or about £380million.

Publicly available documents clearly indicate the Zawawi Group to be a highly diversified and successful conglomerate. They describe the Zawawi family as one of the biggest players in Oman's business landscape and as being one of the wealthiest in Oman. According to the Washington Post, if one drives through one end of Muscat to the other it is "Zawawi this and Zawawi that - just read the signs, Zawawi…Zawawi…Zawawi…"

The Zawawi Group's own website reveals that it is "a diverse group of more than twenty companies operating in a variety of sectors from banking to construction, pharmaceutical and tourism." "In recent years the Group has achieved rapid growth across a wide spectrum of its businesses and investments." "…the Group strives to maintain their matchless repute of low-debt levels, focus on profitability, diversification, de-centralisation and highly professional management". The website refers to the husband's late father, who was "head of…one of Oman's greatest merchant families…" and that "the Zawawi Group of companies has grown over ten times since 1995", being the year that the father died.

Of course, none of those statements give any direct indication of the actual size or value of the Group, but, in the absence of any reliable evidence from the husband to the contrary, I accept the wife's repeated evidence (of which the husband is well aware) that he told her on different occasions during the marriage that the Group was worth about $3billion and, accordingly, that his own share is worth the equivalent of about £380million.

I do not say that as a matter of inference, but because I accept the evidence of the wife, which has not been contradicted by any evidenced case other than the bald assertion of the husband in his statement of 24 July 2018 and the net worth statement, whose evidential value I have already described as useless.

The husband's own net worth statement refers to his having a share in properties "at England and USA" and at paragraph 31 of her statement dated 15 February 2019 the wife describes researches which indicate a clear connection between the husband and a development in Orlando, Florida, known as Hawthorne Grove, and another in Texas. She states at paragraph 35 that the value of his interests in these companies and developments may be about $9.7million or about £7.3million. Such assets may become very relevant to enforcement but are, frankly, dwarfed by the value of the husband's holding in the Zawawi Group.

The husband attached to his statement dated 24 July 2018 a document addressed to him by the Financial Controller of Alawi Enterprises LLC, which the husband describes as the holding company of the Zawawi Group, and which asserts that, as of 31 December 2017, the husband owed unaudited $8,150,325 to Alawi Enterprises LLC and, as of 31 December 2016, audited $3,654,599. However, there is no reference to any money owed to Alawi Enterprises LLC in the net worth statement as at 30 April 2017.

On the basis of this material, the overall net worth of the husband may be of the order of about £400million, namely his shares in the Zawawi Group of £380million, plus the other net worth admitted to in the net worth statement of about £40million, less some indebtedness. However, in order to guard against the possibility that this is an overstatement, I intend to decide this case on the

basis that the overall worldwide net worth of the husband is not less than £300million.

Since the award is ultimately "needs based", as I will later describe, it would not lead to a higher award even if his net worth is indeed £400million.

At this point it is perhaps appropriate to state that with wealth of that order, this case concerns, in current circumstances, the rich but not the super-rich. The husband is a multi-millionaire, but there is no evidence that he is remotely a billionaire, whether measured in sterling or even US Dollars.

(b) Save to each other and their children, I am not aware of any particular obligations and responsibilities which either of these parties have. I will consider financial needs below.

(c) The standard of living enjoyed by the family before the breakdown had undoubtedly been very high. I have already described the house and its staff levels in Oman. It does need to be recalled, however, that in 2015 the family had moved to live in London in the much more modest circumstances of a house in Clancarty Road, Fulham and a prospective house in Kensington, and that that was the term-time base and scale of accommodation for the last nearly two years of the marriage from September 2015 to July 2017.

More generally, the wife describes the standard of living during the marriage as "exceptional". They stayed in suites in the finest hotels in Cannes, London, Paris and elsewhere, such as the Dorchester Hotel in London and the Georges V in Paris. They sometimes flew business class, but at other times first class or in

hired private jets. They went on very expensive skiing holidays. They regularly chartered yachts for several weeks each year whose weekly charter rate was about €85,000.

Even when living in London, the staff included two nannies, a governess, two drivers, a bodyguard and a housekeeper. The wife was permitted to spend freely at some of the most expensive stores, and the husband once challenged her and some friends to use his credit card and see how much they could spend in twenty minutes. The children were all taught to play polo. Even the children's birthday parties regularly cost tens of thousands of pounds. A birthday for the wife attended by four hundred guests, including a number of celebrities, cost about £400,000. This was a very high standard of living, commensurate with the wealth of the husband.

(d) As I have stated, the parties are now aged, respectively, forty-eight and thirty-six, and the duration of the marriage was twelve years.

(e) The wife says that her mental wellbeing is currently under great stress, as I have described, but I am not aware that either party has any physical or mental disability.

(f) Until he "pulled up the drawbridge", the husband clearly made a massive financial contribution. He entirely funded the entire lifestyle which I have described. He was also, so far as I am aware, a good and loving father to his children. Regrettably, it is now the wife and the wife alone who looks after the home and cares for the children. It is likely that they will remain living in

London for the rest of their childhoods and attending private schools in London or the Home Counties.

I do sincerely hope that the father will re-enter their lives, but I must proceed on the basis, and take into account, that it is the wife who will now shoulder the main or whole contribution of looking after the home and caring for the children until they become fully adult. By then the wife will be about fifty.

(g) The litigation conduct of the husband has been very bad, but I do not approach this case on the basis that there has been any conduct by either party of the kind contemplated by paragraph (g) which impacts on the overall size of the award.

However, the husband has been, and is, highly controlling of the wife, as I have described, and has shown himself to be totally unreliable as a payer of maintenance. I do take into account that history in deciding, as I do, that all obligations of a continuing nature to pay maintenance, school fees or any other outgoings in relation to either the wife or the children should be terminated as soon as possible and substituted by quantified final capital payments.

(h) I am not aware of any loss of any benefit by either party of the kind referred to in, or contemplated by, paragraph (h).

46 Turning to section 25(3) of the 1973 Act, which is imported by section 18(4) of the 1984 Act, I will consider the financial needs of the children below. None has any income, earning capacity or financial resources of his or her own, and none has any relevant physical or mental disability. They are all being privately educated within the English private system and that is the manner in which both parties expected them to be educated.

Analysis

47 In *Agbaje v. Agbaje* [2010] UKSC 13, [2010] 1 AC 628, Lord Collins of Mapesbury stated at paragraph 71 that:

> "…the proper approach to Part III simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England."

I have already considered *seriatim* the many matters listed in sections 16 and 18 which imports section 25 of the 1973 Act. In the present case there are "substantial connections" with England as I have described. No, and certainly no adequate, financial provision is available for the wife or the children from the only available foreign court, namely that of Oman.

48 At paragraph 72, Lord Collins stated that:

> "It is not the purpose of Part III to allow a spouse… with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases."

The present case is a so-called big-money case. At paragraph 73, Lord Collins stated that:

"The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice."

49 Pausing there, I must therefore take into account the legislative purpose which is the alleviation of the adverse consequences of no adequate financial provision being made by, or available in, an Omani Court; but I am not limited to awarding the minimum amount required to overcome injustice.

50 At paragraph 73, Lord Collins sets out three general principles which should be applied, namely: first consideration being given to the welfare of any children; secondly, that it will never be appropriate to make an order which gives to the claimant more than he or she would have been awarded had all the proceedings taken place here; and, third, that where possible provision is made for the reasonable needs of each spouse. Lord Collins continued that, "Subject to these principles, the court has a broad discretion" and that "Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings."

51 In the light of that clear guidance from the Supreme Court that the court has "a broad discretion" which must be exercised by a careful application of sections 16, 17 and 18, it does not seem to me necessary, or even helpful, to cite from other authorities, all of which are fact and context specific.

52 Applying the provisions of those sections and the guidance of the Supreme Court, I reach the following initial conclusions. First, as I have already said, this is a case in which it is appropriate for an order for financial provision to be made under Part III for both the wife and the children.

53 Second, this is not a case in which "the application should be treated as if it were made in purely English proceedings". The English connections with the case are certainly now very strong. The whole family moved here consensually in 2015. They all lived here together until 2017. The wife and children are likely to remain living here until, at least, the adulthood of the children. But the connections with Oman are also very strong. The husband is a citizen of Oman. Apart from the sojourn in England between 2015 and 2017, he has always lived there and lives there now. The parties married there and for the first ten years of the marriage made their home there, and the wife voluntarily subjected herself to the law of Oman. The husband obtained a divorce in Oman by a lawful process, and that divorce has been recognised as valid here.

54 Under the law of Oman, no or negligible provision would be made for the wife. I must alleviate that adverse consequence, and I am not limited to awarding "the minimum amount required to overcome injustice". But in my view I should in this case, whose connection with Oman is at least as strong as it is with England, pay some regard to that state of Omani law, and should not treat these proceedings as if they were "purely English proceedings". The fact is that the husband, who was entitled to do so, lawfully divorced the wife in Oman, and it would be wrong of me to approach the case simply as if that had not happened and the wife had obtained a divorce here.

55 Third, this is not a case for the application of the English concept of "sharing" in matrimonial financial relief cases, and should essentially be decided by reference to needs considered in the light of all the circumstances and all the relevant matters in section 25 of the 1973 Act as imported by section 18 of the 1984 Act. That follows from the second conclusion immediately above. Additionally, in the present case there may be no marital

acquest to share, even if I was deciding this application as if it were made in purely English proceedings.

56 The husband's wealth is essentially derived from inheritance after the death of his father ten years before these parties ever met. It is true that the Zawawi website, quoted above, refers to the Group having grown ten times since 1995. I do not know when that growth took place. I do not know to what extent it is so-called passive growth. I do not know what endeavour the husband personally contributed to it during the subsistence of the marriage. It is highly speculative whether there is any acquest in this case to share. For these reasons, my approach to this case will be essentially needs based.

57 Fourth, as I have already indicated, this is a case in which I should make final capital provision for both the wife and the children. Subject to liquidity, the husband has the means to provide capital. His record of paying maintenance and school fees is now abysmal. Further, in relation to a party of the marriage, section 18(3) of the 1984 Act imports the duties under section 25A(1) and (2) of the 1973 Act, which include considering whether the financial obligations of each party towards the other should be terminated as soon as is just and reasonable.

Needs

58 As all specialist family financial lawyers and judges know, the concept of "needs" is, in any but a subsistence level case, extremely elastic. It is in the evaluation of "needs" that the broadest discretion to which Lord Collins referred may lie.

59 In *FF v. KF* [2017] EWHC 1098 (Fam) (not a Part III case), Mr Justice Mostyn observed at paragraph 18:

"So far as the 'needs' principle is concerned there is an almost unbounded discretion. The main rule is that, save in a situation of real hardship, the 'needs' must be causally related to the marriage…Plainly 'needs' does not mean needs. It is a term of art…The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise."

60 In *Juffali v. Juffali* [2016] EWHC 1684 (Fam), which was a Part III case, Mrs Justice Roberts conducted an exhaustive analysis of authority, and summarised it in relation to needs at paragraph 79 as follows:

"Thus, what I collect from these decisions are the following principles:

(i) The first consideration in any assessment of needs must be the welfare of any minor child or children of the family.

(ii) After that, the principal factors which are likely to impact on the court's assessment of needs are (i) the length of the marriage; (ii) the length of the period, following the end of the marriage, during which the applicant spouse will be making contributions to the welfare of the family; (iii) the standard of living during the marriage; (iv) the age of the applicant; and (v) the available resources as defined by section 25(2)(a).

(iii) There is an inter-relationship between the *level* at which future needs will be assessed and the *period* during which a court finds those needs should be met by the paying former spouse. The longer that period, the more likely it is that a court will *not* assess those needs on the basis throughout of a standard of living which replicates that enjoyed during the currency of the marriage.

(iv) In this context, it is entirely principled in terms of approach for the court to assess its award on the basis that needs, both in relation to housing and income, will reduce in future in an appropriate case."

61 I agree with, and will adopt, the thrust of that passage, which echoes an observation by Baroness Hale of Richmond in Miller v. Miller, incorporated into paragraph 76 of the judgment of Mrs Justice Roberts that:

> "The provision should enable a gentle transition from [the marital standard of living] to the standard that she could expect as a self-sufficient woman."

62 In the present case the open proposal of the wife, dated 4 March 2019, seeks capitalised maintenance for the wife in the sum of £46,362,804 and an overall award of about £56.75million.

63 The basis of that very precise capitalised sum is a Duxbury-based Capitalise calculation calculated to produce £120,926 per calendar month, or £1.45million per annum, index linked for the rest of the wife's life expectancy of fifty-three years. This, in turn, is based upon the detailed budget dated 4 April 2018 attached to the wife's Form E, which has a bottom line total of projected estimated expenditure of £120,925 per month after deduction of expenses specific to the children. That budget includes mortgage repayments of just over £18,000 per month of which the wife will be relieved if the husband obeys the order and provides the required amount to purchase a new home mortgage-free, thereby reducing the total monthly figure to about £103,000 or £1,236,000 per annum.

64 The budget for the wife alone includes £120,000 per annum for clothes; £24,000 per annum for shoes; and £60,000 per annum (year on year) for the purchase of jewellery and watches.

In addition to an already very comprehensive budget, it includes £60,000 per annum for "pocket money/personal items"; £60,000 per annum for "spectator events"; and £400,000 per annum for holidays. These items are merely illustrative of the overall scale of the budget and spending for which the wife wishes to be provided for the rest of her life.

65 The wife says, and Miss Cornwall submits, that this merely reflects the scale and standard of living during the marriage. However, as the authorities and indeed sections 18 and 25 themselves all indicate, the standard of living is but one of the relevant matters. It is not reasonable to suggest that a wife still aged thirty-six should, after a marriage of twelve years' duration, be supported, whether by maintenance or capital, at the same rate and standard of living for the further fifty-three years of her life expectancy.

66 I must give first consideration to the welfare while minors of the children, and I extend my consideration of them until they all attain the age of about twenty-two and may be expected to have completed university or other tertiary education and to be becoming more independent of their mother. Until then, she has to maintain a home and a lifestyle for them which bears some comparison with that which they enjoyed while still living in Oman, and which their father still does enjoy now.

67 In my view, an assumed annual budget for the wife until she attains the age of fifty of £600,000 per annum amply does that. It would allow her to maintain and properly staff a very comfortable home in London for herself and the children. It would enable her to take very good holidays several times a year with the children, and to fly at least business class and on occasions first class. It would probably not extend to chartering large and expensive yachts.

68 But, as Baroness Hale of Richmond said, there must be a gentle transition to a lower standard of living, and it simply is not reasonable or fair to expect the husband to continue to maintain the wife at that standard, whether by payments of maintenance or capital, for the next fifty-three years after a marriage of only twelve years. I have, however, accepted that by the time she is fifty, the wife will not have any, or any significant, earning capacity of her own. At that point, her needs and notional maintenance should, in my view, decrease by one third to £400,000 per annum which the husband must fund. A Capitalise calculation to produce £600,000 per annum for the wife until her fiftieth birthday, and thereafter £400,000 per annum for the rest of her life expectancy, all index-linked, is about £14.6million.

69 These figures may seem to be highly arbitrary. I could, without error, have selected higher or lower figures, and two or more judges would almost certainly have selected different figures; but they are not arbitrary. At paragraphs 68 and 69 of my own judgment in *Robertson v. Robertson* [2016] EWHC 613, I tried to describe the difference between a decision which is arbitrary and one which is the product of judicial discretion. The figures which I have selected in this case are the product of the judicial discretion (which, as Lord Collins said, is a broad one) which Parliament has conferred upon judges and which it is my duty to exercise.

70 I now turn to consider housing. I accept that the house in Clancarty Road was a stop-gap. The parties offered to purchase in Kensington at £5million. The wife has produced a range of house particulars which satisfy me that a suitable five bedroomed house in the Chelsea or Kensington area can be purchased for, but will require, about £5million and the SDLT (Stamp Duty Land Tax) upon a house at that price is about a further £500,000. The wife needs £5.5million with which to purchase a new and better located home.

71 The wife needs her own car, and the approximate cost of a car which bears some relationship to the many luxury cars owned by, or available to, the husband both during and since the marriage is at least £75,000.

72 The wife must be in a position to repay all her debts, including to her solicitors, for otherwise her Duxbury fund will immediately be eroded. As I have already stated, her overall net indebtedness (after crediting her with the equity in Clancarty Road) is now about £935,000 including what she owes the solicitors.

73 Aggregating these figures, the wife needs £14.6million for capitalised maintenance, plus £5.5million for a new home, plus £75,000 for a car, plus £935,000 with which to pay her debts; or £21,110,000 in total which I will order the husband to pay her. As a cross-check, this represents about seven per cent of his minimum wealth of £300million.

74 With regard to the three general principles stated by Lord Collins at paragraph 73 of *Agbaje*, an award of this size and amounting to that proportion of the husband's net wealth is less than, and certainly not more than, what would have been awarded to the wife if all the proceedings had taken place within this jurisdiction. It leaves the husband with over £270 or £280million and, therefore, provision is still made for his own reasonable needs.

75 I will hear further submissions from Miss Cornwall (the husband still being neither present nor represented, although he was informed of the date and time when judgment would be given) as to instalments and the structure of the order.

The children

76 I now turn to the children. The husband is not paying the ordered maintenance and he is not now paying the school fees. In my view, provision for the children, as for the wife, now

requires to be made by a one-off capital payment. Schedule 10 of the wife's budget attached to her Form E lists claimed future outgoings in relation to the three children (apart from school fees) at the rate of £26,544 per month or £318,528 per annum inclusive of the wages of a nanny.

77 In my view, that budget, too, includes inflated items. There is a figure of £500 per month for "school fees" which seems to be a mistake since they are claimed separately. There is a total claim for holidays and summer holiday activities of £70,000 per annum. There is a claim of £24,000 per annum for dentist/orthodontist, which seems very high year on year even for three children. In my view, a more realistic figure for the three children, excluding school fees, is £15,000 per month or £180,000 per annum, which is £60,000 per child per annum until they respectively attain the age of twenty-two.

78 Applying the same arithmetic as the wife has done at footnote 10 to paragraph 77(ii) of her statement dated 15 February 2019 (now at bundle p.122), this requires a capital payment of £600,000 for each of the twins and £780,000 for the youngest child making a total of £1,980,000. The solicitors have calculated, and I accept, that a capitalisation of the projected remaining school and university fees of the three children is about £983,793.

79 The total for the children is therefore £2,963,793, which I propose to round up to £2,965,000 and which the husband must pay as a capital sum on the basis that, once he has paid it in full, he is under no further liability to provide for the education of any of the children or for their maintenance while living with their mother. Of course, during any time they may spend with him - as I hope they will - he will be responsible for all expenditure actually incurred while they are with him.

80 The overall order will not be for a single sum, but must clearly identify the different elements of it. But the overall net effect is that the husband must now pay or cause to be paid to the wife the total sum of £24,075,000 for herself and the children. Once he has done so, a firm line will be drawn and, so far as concerns finances, each will go their separate ways.

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CERTIFICATE

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