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IN THE HIGH COURT OF JUSTICE
IN THE FAMILY COURT
[2020] EWHC 1316 (Fam)

No. BV18D29547

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 1 May 2020

Before:

MR JUSTICE COHEN

(In Private)

B E T W E E N :

ZN

Petitioner/Respondent

- and -

GN

Respondent/Applicant

MS E. CLARKE (instructed by Stewarts) appeared on behalf of the Petitioner/Respondent Wife.

MR S WEBSTER QC (instructed by Mishcon de Reya) appeared on behalf of the Respondent/Applicant Husband.

J U D G M E N T

MR JUSTICE COHEN:

1 Introduction

I am dealing with the financial consequences of the breakdown of the marriage between ZN (who I shall call “the wife”) and GN (who I shall call “the husband”). The husband is the applicant and is aged 49, the wife is the respondent and is aged 48. They started to go out in their teens and married at a young age, the husband being 25 and the wife 24. The duration of the marriage is 22 years.

2 They have three children aged respectively 19, 16 and 10. The children are all in education and their fees are and will be met from family trusts of which the wife or her father is the main beneficiary, although the parents pay the extras.

3 Both parents are devoted to their children and at the forefront of the husband’s case is that he does not want to feel disadvantaged in what he can offer the children by way of lifestyle when they are with him when compared with their lifestyle with their mother.

4 In order to put that in context, it has been necessary to examine the financial history of the marriage. The facts are little in dispute and although the customary attacks have been made on the credibility of the parties in this case, they do not help in resolving the outcome.

5 History

Following their marriage, the parties bought a house in Fulham which they refurbished and then sold to move when the wife became pregnant with their first child in 2000, and they then bought a house on the Chelsea-Fulham border in K Road. This property and its successors were very largely, if not entirely, purchased and refurbished with the assistance of loans from the wife’s family trusts. The loans were interest free and when the properties were sold, the proceeds were, in general, used to discharge loans that had been made for their purchase and refurbishment and the cycle was repeated. K Road was bought by the trust for just over £1.25 million and was the family home from 2000 until 2007. It was a comfortable London terraced property.

6 In or about 2007, the wife became ill and it was decided that a weekend/holiday cottage in the country would be good for her health and recovery, and O Cottage in Hampshire was purchased for £1.3 million.

7 By 2010 they had decided that they liked O Cottage so much as to wish to make their main home in the country; and in that year the husband was made redundant from his work as an insurance broker and with three young children, the youngest either only just having been born or about to be born, he decided that he would prefer to become a self-employed insurance broker based at home in the country rather than an employee commuting into central London. As a result, K Road was rented out until it was sold in 2012 for £3.1 million.

8 Fairly soon after this decision to leave London and live in O Cottage was taken, the

husband and wife started to look for a larger country home and eventually alighted on a nearby farmhouse which they purchased for just over £2.75 million. The purchase was once again funded by trust monies. The parties continued living at O Cottage while their new home was given a substantial renovation. It went massively over budget to the extent that the trustees, who were funding the works, became seriously anxious and both threatened to stop providing further funds and insisted that the terms of the loan included a term that it was repayable on demand.

- 9 The wife thinks that some £3 million was spent on the new property and in 2015, the parties sold O Cottage for £1.625 million which went towards repaying trust loans and moved into their new home, now renamed H House. I shall refer to it variously as “H” and “H House”.
- 10 Fairly soon after the move, the marriage ran into trouble. In October 2018, the wife filed her petition for divorce and a decree nisi was pronounced in March 2019.
- 11 In April 2019, the husband moved out of H House to a rented farmhouse where he still lives, and the wife remains at H House. The children divide their time between their parents, although the two older children, absent lock-down, are mainly at their places of study.
- 12 Following the separation, H House, which is in joint names, was put on the market for sale and one couple were particularly interested and indeed were so desperate to buy it that they eventually offered a sum way over what the estate agents had advised was the proper price. That offer was for £7.5 million. Even with that offer, the wife had, by November 2019, changed her mind and decided that the property should not be sold. She was worried about the emotional health of the younger two children who were plainly suffering from the parental conflict. She unilaterally took the property off the market but has accepted that, for the purpose of these proceedings, £7.5 million is to be taken as the value of the property, even though that may be very optimistic.
- 13 I now turn to the parties’ employment history. The wife has no relevant employment history and has, since she became a mother, not been in employment in any conventional sense, and nor is it suggested that I should attribute an earning capacity to her. She has looked after the children and the homes.
- 14 The husband works in the insurance market and at various times has worked for some of the big names in that world, but he has not climbed the corporate ladder and his income at its highest has not reached £80,000 per annum.
- 15 An argument has arisen between the parties about the extent of the husband’s financial contributions which has added nothing to the case. It is not necessary for me to recite each party’s case because the situation is, to my mind, clear. The husband paid for what he could, which were the housing expenses in terms of the basic running of the properties prior to H House and his own personal expenses. The wife paid for her personal expenses and the children’s expenses.
- 16 The wife’s family trusts provided the funds for the wife to meet her costs and those of the children. The trusts paid for the acquisition of the properties and their renovation and the children’s private education. In addition, the wife’s father has provided the family with a fortnight’s stay in the south of France in his very nice home there and a number of other holidays of the type that the parties could never

otherwise have afforded and he has also heavily subsidised the wife's relatively recent participation in polo. The husband paid for some of the smaller holidays that the family took, although he stepped up his holiday expenditure in the closing stages of the marriage after his mother had gifted him £600,000 towards the end of 2015.

- 17 I regard the wife's argument that this arrangement of the family finances as indicative that they kept their finances separate and that neither took financial responsibility for the other as unreal in the circumstances of this couple. The fact is that it was only because the wife and her family took on the financial burden that they did that the husband's income was able to be appropriated for the specific purposes that it was used.
- 18 In the circumstances of the marriage and the provenance of the wealth emanating from the wife's family, the husband realistically accepted that his claim is a need-based claim.
- 19 Assets
The assets are agreed, and I take the figures from the schedule with which I have been provided. H House, the last matrimonial home, has a notional equity after the costs of sale of £7.275 million and is subject to repayable loans to the parties from the wife's family trusts of £3.388 million leaving an equity of £3.887 million. Both the property and the loans are in joint names.
- 20 The husband has no significant liquid funds and has an outstanding costs liability of around £25,000.
- 21 The wife has £34,000 in the bank and owns polo ponies to a similar value, and she has two pieces of jewellery together worth £750,000. She owes her father £64,000 and £874,000 to two family trusts, which is unsecured and not interest bearing.
- 22 She has a 16 per cent interest in the property in the south of France where her father invites the family to stay and that interest is notionally worth just over £300,000. Her interest was gifted to her by her father and it is plainly not realisable during his lifetime unless he so wishes.
- 23 The husband has, since 2010, been trading on his own behalf in insurance and his company has assets, primarily cash, of £118,000 net of tax and after there has been repaid to him his DLA which stands at just under £49,000.
- 24 He has pension funds with a value of £322,000 at the most recent valuation. I recognise, of course, that all these valuations are vulnerable in the current financial circumstances, but I assume that in due course the values will be restored.
- 25 The wife is the principal beneficiary of two trusts. The DV Trust has assets to the value of approximately £13.5 million inclusive of the loans secured on the matrimonial home of just under £2.2 million and loans to the wife alone of approximately £650,000. The A Trust has assets to the value of around £1.9 million, but that includes a loan secured on the matrimonial home of rather over £1.2 million and £220,000 loaned to the wife personally, so that its cash assets are now only something in excess of £400,000. The R Trust, of which the wife's father is the principal beneficiary, pays the children's education expenses. There are other trusts from which the wife can benefit, but she is more likely to do so after the death of her father when she and her two sisters may receive some provision.

- 26 There is one other trust from which she benefits in a small way which I will come onto in a moment.
- 27 It is the case of the husband that there is no prospect of the trustees demanding repayment from the wife and that they will provide whatever sum of money the husband is awarded in these proceedings.
- 28 The trustees have not been joined in circumstances where the wife has made it clear to the court that she will not seek to argue that the husband's claim is unaffordable. She accepts that there is equity in the matrimonial home of around £3.88 million and that she owns jewellery to the value of £750,000. The trustees have made it clear that they will loan to the wife the sum of £2.2 million to settle the husband's claim. Beyond that, the wife must access her own resources.
- 29 I do not feel in any way bound by the trustees' limit of £2.2 million. Whilst the trusts are not under the control of the wife, the trustees have a history of being of assistance to the wife albeit by loan rather than gift, no doubt to maintain the investment value of the settlements, but the wife has her own resources to which she can look.
- 30 Income
I have already described the husband's income history. After adding back the small salary that he takes, the net profits of his business over a four-year average amount to £60,000 per annum gross. I have for these purposes not added back in depreciation, although the husband was unable to tell me what assets actually are depreciated.
- 31 I take £60,000 per annum as his gross income going forward. It is arguable that that is generous to the husband as in the last two years his income has been a little in excess of £70,000 per annum, making up for a poor 2016.
- 32 The wife's regular income comprises the following: £75,000 a year from the DV Trust plus whatever is needed to pay the tax on that sum; £9,000 a year for attending directors' meetings of the HVS and £5,400 a year as her income entitlement from the HV settlement, the trust to which I said I would come back later, so that she has a net income of around £90,000 per annum.
- 33 Over the last couple of years, she has, in fact, received far more than that. Her father has chosen to finance her polo playing activities which have been a large part of her life since 2012. The costs of running H House, the parties' new home, seems to have taken, the wife certainly, maybe both of the parties, by surprise and the wife's father or family entities at his request have assisted in advancing significant sums so that the credits to the wife's bank account in 2018 and 2019 have been analysed respectively to be rather above and rather below £250,000 in the two years, being a combination of trust distributions, some of them one-offs, and gifts and loans from the wife's father.
- 34 The standard of living
The wife makes the important point that the standard of living enjoyed at H House is in a different league to that enjoyed during all but the last three years of this 22 year marriage, but there is no doubt that from at least 2000 the standard has been comfortable and from 2015 very comfortable. H House is a lovely home with every

facility, including games rooms, a swimming pool, though I am told that has been unusable for over a year, a tennis court and extensive grounds in a beautiful situation, but it does not represent what the family has enjoyed before, which never involved a property on anything like that scale.

- 35 The wife has always been a full-time mother with only part-time help around the house and with the children prior to H House. The parties did not have a second home available to them except for the period between 2007 and 2010. Prior to the wife taking up polo in 2012, they did not have particularly expensive hobbies or indulge in high-end shopping.
- 36 I accept the wife's evidence that even if the trustees permit her, as I believe they will, to stay in H House and thus not demand immediate repayment of the loans, she does not expect to stay there beyond the next three years by which time their eldest child should be in employment, their second child will be away at university and their youngest will have started public school. I do not regard the husband's wish to have a home and lifestyle referable to that at H House as reasonable bearing in mind its recent duration and likely limited lifespan. I would reach the same conclusion even if the wife remained there longer than three years.
- 37 Likewise, their expenditure over the last three years of the marriage is unrepresentative of the marriage as a whole. The husband had received a significant sum of money as a result of his mother's generosity in 2015 and the parties had all the expense of their grand new home to meet and a live-in couple to help them run it as well as the costs of the wife's equine activities.
- 38 I find that those days are largely gone. The husband no longer has spare capital, as that has gone, principally on his legal costs. The wife says that she is giving up most of her polo activities as a result of a combination of a shoulder operation and the need for economy, and the couple have departed to be replaced by a three-and-a-half-day-a-week housekeeper.
- 39 I have no doubt that the wife's family will continue to be generous to her. The house in the south of France will be available for holidays as may be the occasional use of her father's homes in Africa. The wife's basic income of £90,000 net a year is likely to be a minimum and I have no reason to doubt that her father will continue to be generous with other cash provision whether directly or through settlements. In addition, whilst she remains at H House, she will have the opportunity to let out and receive the rental income of two other units of accommodation.
- 40 The parties' positions
The Husband properly accepts that his claim is needs based and comprises the usual two elements of housing and income. He says to meet those needs he should receive £5 million on top of his pension funds of £320,000. How this award divides between housing and income is a moveable feast.
- 41 In closing, Mr Webster QC, on behalf of the husband, suggested a housing fund of £3 million inclusive of SDLT and an income fund of £2.3 million of which some £300,000 is represented of the husband's pension fund, so as to produce £125,000 per annum on the assumption of an earned income of £40,000 per annum gross until age 67, which is his retirement age. If the income fund was reduced, then, says the husband, the housing fund should rise. The required income fund to produce £125,000 a year on a Duxbury basis would fall to some £1.45 million if the

husband was expected to downsize his housing when he retires and produce £1 million in 18 years' time to add to his income fund. There are, as everyone recognises, endless variations that can be devised.

42 On behalf of the wife, Ms Clarke says that a proper housing fund is £1.8 million inclusive of SDLT and thus her offer on behalf of the wife of £2.2 million all in releases £400,000 which, on the assumption that the husband earns £75,000 a year gross until retirement, would permit him to live at the standard of £80,000 per annum net until he retires and thereafter at two-thirds of that level, say some £53,000 a year.

43 Both parties have been excellently represented by solicitors and counsel and I thank them for their help. Of course, such expertise does not come cheap, and between them the parties have spent approximately £800,000 in costs, all paid so far as the wife is concerned and very largely paid so far as the husband is concerned.

44 The law

The law is clear and undisputed. I have to consider all the section 25 factors in conducting the discretionary exercise that I do, but in this case in particular I must take into account: (a) the scale of the parties' wealth and available resources; (b) the length of the marriage; (c) the applicant's age and health; and (d) the standard of living. That is all made clear from various authorities and in particular *BD v FD* [2017] 1 FLR 1420 and *FF v KF* [2017] EWHC 1093.

45 In considering the standard of living, I look at the whole of the marriage and the longer the marriage, the more relevant that factor becomes, although it cannot be allowed to dominate the exercise.

46 I remind myself that I must not be guilty of gender discrimination and treat the applicant less generously because he is a man, especially in circumstances when he will be playing an equal part in the care of the children.

47 Housing

The wife has put forward four properties in the range of £1.5 - £1.75 million. Unsurprisingly, from the estate agents' particulars they all appear to be very desirable country houses in the vicinity of the current home. Two of them have four beds and two at £1.75 million have six bedrooms. All have outbuildings and land varying between 0.6 of an acre and 5 acres. The more expensive ones are similar to O Cottage.

48 The husband has put forward five property particulars in the wide bracket of £2.5 million - £4 million. None of them has less than six bedrooms, all have outbuildings and land between 1.9 and 8.5 acres. They are considerably grander properties than those which the wife has put forward.

49 The husband's fear is that unless he has a property within his bracket, he will be seen as a poor relation and the children will be more reluctant to spend time with him. He says that the youngest child has already expressed that view about the husband's present rented property, but that is largely self-inflicted as the husband has chosen not to furnish it or make it homely.

50 The husband accepts that the wife's selected properties are nice, but he says of the two with six bedrooms, one is in need of modernisation and one has some rooms

which a tall man, not that the husband is especially tall, would find unacceptable. The wife says that the properties are very similar to O Cottage.

- 51 I think that the husband over-played the poor relation card. I think the children will be happy to stay with him in any of the properties that either party has put forward. All provide comfortable, spacious and good quality accommodation with room outside as well as in, at least as good as they have enjoyed prior to the move in 2015 to H House. I accept, of course, Ms Clarke's point that at the current time, discounts are highly likely to be available and secondly, Mr Webster's point that the husband should be provided with a fund for doing up the property so as to make it look the way he likes.
- 52 I am satisfied that a property at the upper end of the wife's bracket is appropriate. I shall assume a purchase price of £1.7 million as I would be very surprised if a property on the market at £1.75 million could not be negotiated to that figure and if I add SDLT, that brings the figure required to £1.817 million.
- 53 I will allow an additional sum which would bring the Husband's award, other than in respect of income, which I will come onto separately, to £2,050,000. I calculate that as being the sum needed to clear his costs' debt and leave him with about £200,000 to do what he wishes with his new home by way of works or refurbishment. It is, of course, entirely up to him how he chooses to use the fund.
- 54 For the avoidance of doubt, I regard the housing that the husband seeks as being significantly beyond what is reasonable in the context of the standard of living enjoyed for nearly all the marriage, but if I had allowed a property of that nature it would very likely have been at the cost of more or less eliminating the income fund by reason of the cash injection that I deem it would be reasonable to expect by downsizing at retirement age.
- 55 Income
I have taken the husband's income as currently running at the rate of about £60,000 per annum gross. He puts his income needs in the budgets that he has produced as respectively £160,000 for himself and £35,000 for the children, and £170,000 for himself and £27,000 for the children. These include some £55,000 a year for holidays, £19,000 for staff and £28,000 for running his car. I regard these budgets as significantly on the high side and I regard many of the expenses as exaggerated. He says that they are low and do not even represent what the family used to spend, but it is clear that sort of money was never available before 2015.
- 56 The wife's income from the trusts did not exceed £4,000 pm before then and the husband's net income was not much more. I am of the clear view that the husband's budget was designed to achieve a broadly similar standard of living to that which he thought the children would enjoy with their mother. Budgets are, of course, forensic tools and Mr Webster suggested that notwithstanding his client's expressed need, I might find that a budget of £125,000 a year was a reasonable figure. Ms Clarke suggested £80,000 a year.
- 57 As it happens, I consider the correct figure to be £100,000 a year until retirement. I have no doubt that if the husband is in possession of a net income of £100,000 a year, he will be able to provide a very comfortable standard of living for himself and the children when with him. I do not consider it will be in any significant respect inferior to that which the children enjoy with their mother. Whilst it might

mean that the children will not be spending a summer holiday with him in a lovely villa in the south of France for two weeks, I mean no disrespect in saying that they might have more fun with their father having an entirely different sort of holiday which would cost much less than a stay on the Riviera.

- 58 I think Ms Clarke is right when she says that a step down in expenditure should be anticipated when the husband retires, not just because he will be retiring, but because the children will then be aged between 28 and 37 and their need for financial support from him ought to be a great deal less.
- 59 I have alighted on the figure of £70,000 per annum after retirement. That is the equivalent of a net income from all sources gross of about £110,000 a year. The husband's net income will approximate to the wife's income from the DV Trust and although she will probably receive additional sums on top, there is that element of comparability.
- 60 Those figures fed into a Capitalise programme produce a required capital sum of £1.238 million from which it is agreed I should deduct the husband's pension fund of £320,000. I deduct also the capital in his business at a discounted figure of £118,000 net, that is ignoring the DLA, which rounding up means that there is an additional income need of £800,000.
- 61 Thus, there will be a total award of £2.85 million. I have taken the view that it would not be right to work on the assumption that the husband will or should trade down in his housing, although that, of course, is his option, but it would be an expensive way of bolstering retirement income.
- 62 I have played around with these figures and in particular wondered whether I have cut the husband's housing fund too fine or whether I have been overgenerous with his income fund, but I have decided that this award strikes the right balance.
- 63 I treat the husband's pension fund as cash, as the parties have invited me to do. He will end up with a total figure of £3.27 million out of the £4.55 million of the parties' personal assets after repayment of the joint and the wife's trust loans. That is something over 70 per cent, and if the trust loans are ignored, it still comes to over 60 per cent. Those figures, of course, include the wife's non-matrimonial jewellery.
- 64 I recognise that percentages are of relatively little value in a case of this nature, but I have done the cross-check as a further way of satisfying myself that there is no unfairness. I am satisfied that it is an award the wife can afford. If the trustees will not help her out over and above £2.2 million, then she will have to make her own decisions as to what she sells.
- 65 Other matters of these parties' division of and separation of their assets are agreed. The husband will transfer H House to the wife, and she will indemnify the husband against any liability under the loans made by the trust to him and she will transfer to the husband her small shareholding which she has in his business. There will be a clean break between the parties and there will be no maintenance order in respect of the children, the parties having agreed that they will share the extras on the school bill.

CERTIFICATE

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