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Neutral Citation Number: [2024] EWHC 2547 (Fam)

Case No: FA-2024-000097

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2024

Before :

MR JUSTICE PEEL

Between :

GH

Appellant

- and -

GH

Respondent

Michael Glaser KC (instructed by Charles Russell Speechlys LLP) for the Appellant
Rosanne Godfrey-Lockwood (instructed by Clintons) for the Respondent

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. Today, I heard an appeal against interim orders made by a judge in the course of financial remedy proceedings. One of the orders made was to dispense with a Financial Dispute Resolution (“FDR”) and proceed straight to a final hearing, which has not yet taken place. I dealt with the appeal by an ex tempore oral judgment, but decided to commit to paper my reasons for overturning the judge’s decision to bypass the FDR procedure. This is my judgment on a narrow but important point. I shall refer to the parties as “W” (Wife) and “H” (Husband).
2. By FPR 9.15(4)(b)
 - (4) The court must direct that the case be referred to a FDR appointment unless—
 - “(a) the first appointment or part of it has been treated as a FDR appointment and the FDR appointment has been effective; or
 - (b) there are **exceptional reasons** which make a referral to a FDR appointment inappropriate.” [highlighting added]

In this case (a) does not apply. Under (b) the words “exceptional reasons” need no gloss or interpretation.
3. By para 6.1 of PD9A:

“A key element in the procedure is the Financial Dispute Resolution (FDR) appointment”.
4. The judge seems to have taken the view that the FDR should be dispensed with for two reasons:
 - i) There was an ongoing factual dispute about the wife’s earning capacity;
 - ii) The wife’s position had not crystallised so as to enable the FDR process to be successful.
5. The FDR (which for these purposes includes the increasingly popular Private FDR) is an integral part of the court process. Its value has been proved time and again. Its without prejudice status allows the judge to look behind the litigation posturing which is so familiar in these cases and give clear, robust views. Anecdotally, it facilitates settlement in a significant number of cases. It is not only relatively straightforward cases which are susceptible to settlement at FDR. So, too, are complex cases. In my personal experience, even the most intractable case can yield to settlement at the FDR. The purpose of it is to enable the parties to hear (probably for the first time) an independent evaluation of the likely outcome, and the risks (in terms of costs, uncertainty, delay and emotional toll) of continued litigation. The FDR judge is there to tell the parties if their proposals are sound or devoid of merit, or if particular points or arguments are or are not likely to find favour at trial. It is often those hard cases where one or other party appears utterly intransigent that the FDR judge’s indication and observations can be of greatest utility. The FDR judge is well able to deal with factual issues (such as, in this case, W’s earning capacity), not by determining them but by expressing a view as to how they appear on the available evidence and how relevant

they are. The FDR judge is also well able to give a clear overview even if (as the judge assumed to be the case here) one or other party's position is not fully crystallised.

6. It is very hard to envisage a situation where the FDR should be dispensed with. Perhaps if one party has not engaged at all, including not attending court hearings, and has stated that they will not attend the FDR. No doubt there are other situations which might justify proceeding from First Appointment to final hearing without the FDR. But these will be very few and far between.
7. In this case in my judgment the judge should not have dispensed with the FDR. The essential facts and resources are clear and there is no impediment to the parties making offers, or to the court giving a firm steer. I am not aware that any attempt at Non Court Dispute Resolution has been attempted, nor have the parties attended round table meetings, nor have they even exchanged offers, all of which makes the need for a FDR all the more pressing.
8. I shall direct that the parties attend a court FDR. I shall make orders for them to file without prejudice proposals beforehand.
9. Although this appeal was heard in open court, I have anonymised this judgment because of the gravity of medical issues and consequential impact on wellbeing of one of the parties.