



Neutral Citation Number: [2023] EWFC 158

Case Number: ZZ20D49528

IN THE FAMILY COURT

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 September 2023

**Before :**

**MR JUSTICE PEEL**

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**Between :**

**Lazaros Panagiotis Xanthopoulos**  
**- and -**  
**Alla Alexandrovna Rakshina**

**Applicant**  
**Respondent**

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 26 September 2023 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

The judge has given leave for this version of the judgment to be published

**Mr Justice Peel :**

1. I shall refer to the parties as husband and wife for convenience.
2. This is an application by the husband for a Legal Services Payment Order to enable him to conduct proceedings in the Court of Appeal.
3. In proceedings under the Matrimonial and Family Proceedings Act 1984, Sir Jonathan Cohen made an order on 17 May 2023 which provided in summary:
  - i) The wife to purchase a property in Greece up to a value of €600,000 which H shall be entitled to occupy for life (subject to other conventional determining events). The property shall be owned by the wife.
  - ii) The wife to pay the husband a lump sum of €60,000 to furnish the property.
  - iii) The wife to make spousal periodical payments to the husband on a term basis to April 2027. It seems that the total of the sums to be paid in that time is £252,500. (£10,000 for 1 month, £6,250 for 10 months and £60,000pa for 3 years).
4. The final hearing took place between 15 and 22 March 2023, with judgment handed down on 4 April 2023. The husband did not attend in person at any point. Shortly before the hearing the husband, who was represented by leading and junior counsel, sought an adjournment, which was refused. On the first day of the hearing following the reading days, the husband's solicitors and counsel withdrew from the case.
5. The husband applied for Permission to Appeal on a number of grounds, essentially contending that the award was too low and that the court should not have refused the adjournment application which had been made on medical grounds.
6. On 31 July 2023, Permission to Appeal was granted by Moylan LJ. The substantive appeal is to be heard on 1 and 2 November 2023.
7. On 15 August 2023, the husband, through new solicitors instructed on his behalf, applied for a LSPO in respect of the appeal, seeking:
  - i) £39,789 in respect of fees already incurred; and
  - ii) £191,390 being anticipated additional costs to the conclusion of the appeal.
8. On 15 September 2023, Moylan LJ directed that the application should be determined by a High Court Judge. It was placed before me.
9. I asked for confirmation from both parties as to whether they were content for me to determine the application on paper. It was obvious that it would be difficult to find a hearing date for the application to be determined in sufficient time before the Court of Appeal hearing in November. The husband had ticked the box at paragraph 5 of his application form stating that he wished the application to proceed without a hearing. The wife by email to my clerk confirmed that she too was content for the matter to be dealt with on paper. I had before me a full bundle which included, inter alia, detailed (arguably over detailed) skeleton arguments.

10. It seems to me that there is jurisdiction to make a LSPO by reason of the fact that the husband's periodical payments order is currently in force, and the term does not terminate until April 2027. It is therefore open to me in principle to make an order. Neither party questioned the existence of the jurisdiction.
11. As for the principles to be applied, there is a dearth of authority and of course, I have heard no oral submissions. Mostyn J stated at paras 48 to 52 of an earlier decision of this very case, reported at **Xanthopoulos v Rakshina [2022] EWFC**, that the jurisdiction to make an order for legal funding in relation to an appeal in children's proceedings should be exercised extremely cautiously, although of particular relevance to Mostyn J was the fact that (unlike the matter before me) Permission to Appeal had not been granted.
12. The principles set out by Mostyn J in **Rubin v Rubin [2014] EWHC 611** continue to govern LSPO applications. In the context of a LSPO for appellate proceedings, I would only add this. At para 13(iii), the following is included as a relevant factor:

“Where the claim for substantive relief appears doubtful, whether by virtue of a challenge to the jurisdiction, or otherwise having regard to its subject matter, the court should judge the application with caution. The more doubtful it is, the more cautious it should be.”

In my judgment, where Permission to Appeal has not yet been granted, the court will evaluate this factor with particular scrutiny. Where, as here, Permission to Appeal has been granted, the court may more readily consider that, for the purposes of a LSPO application, the claim does not fall into the category of appearing “doubtful”.

13. I take the following into account:
  - i) On the available evidence, the husband has insufficient resources to meet the costs of the appeal. He is not able to obtain a litigation loan and his newly instructed lawyers will not enter into a Sears Tooth agreement. The wife acknowledges in her skeleton that he probably has no means of funding the appeal other than by her.
  - ii) By contrast the wife's resources were found at trial to be about £12.9m, including £7.7m in bank accounts. There is no suggestion that she does not have readily accessible, liquid funds to meet a LSPO.
  - iii) Permission to Appeal has been granted which indicates at least some prospect of success. Put another way, it cannot be said at this stage that the appeal is hopeless.
  - iv) True, Sir Jonathan Cohen found that the husband's litigation misconduct in the first instance proceedings had resulted in a “horrendous haemorrhage of costs”. It is also the case that the husband has changed lawyers on 7 occasions and made 11 LSPO applications, from which he received substantial sums. The wife seeks further to argue that the appeal is wholly unmeritorious. However, as I have indicated, Permission to Appeal has been granted and it seems to me that I should not prospectively conclude that the appeal will fail.

- v) It is suggested that if the LSPO application is granted, the husband carries no risk. I do not agree.
- a) If he succeeds on the appeal, and the Court of Appeal makes a costs order in his favour, the sums received under a LSPO would likely be netted off against such an order. No prejudice to the wife would flow.
- b) If, by contrast, he loses on appeal, he may have to repay the LSPO award to the wife, as well as make a costs award in respect of the wife's own legal fees. The LSPO would operate as in effect of a loan by the wife to the husband, and would be fully capable of readjustment once the appeal has been determined; see the decision of Sir Andrew McFarlane P in **A1 M [2021] EWHC 303 (Fam)** at para 9. Although it will be a matter for reconsideration at that stage, I see no reason in principle why the husband should not, if unsuccessful, be required to repay the sums advanced, and (if applicable) the wife's costs out of the sum of £252,500 which he is due to receive under the term periodical payments order, and perhaps also out of the €60,000 furnishings lump sum. He may say that to do so would be to interfere with the carefully calculated sums deemed by Sir Jonathan Cohen as appropriate for his needs, but the courts have repeatedly said that a party who is guilty of misconduct (including litigation misconduct) cannot be immune from the consequences of that misconduct, even if that means invading a needs based award: see for example **Rothschild v de Souza [2020] EWCA Civ 1215**.
- vi) I take the view that it is important for the husband to be represented on appeal. On any view, these are complex proceedings, and it would be inequitable for the husband to be without legal representation, whereas the wife would continue to have the benefit of representation by her high-quality team.
14. I have reached the conclusion that a LSPO should be made. The next question is in what amount. The total sum sought is £231,179 (see para 7 above). I regard that as an excessive figure, even allowing for the fact that, as I have commented, this is a complex case. All documents for the appeal have been filed apart from the bundle, so that the main future cost is attendance. I have considered the legal costs budget attached to the application. I do not think this is a case where I can and should go line by line through the budget. I consider that I should approach it broadly. One figure which leaps out is the cost of leading and junior counsel in the total sum of £126,000, although others also seem to me to be overstated.
15. I consider that a reasonable total sum would be £175,000, instead of the figure of £231,179. One way of looking at it is to adopt the approach taken in some cases (for example Cobb J in **BC v DE [2016] EWHC 1806 (Fam)**) of applying a deduction to the sums claimed to reflect a notional standard basis of assessment by way of cross check. The figure of £175,000 adopts a discount from the sum claimed of about 25%. In any event, it is in my judgment a more reasonable overall figure.
16. I will therefore order the total sum of £175,000 by way of LSPO, to be paid as to:
- i) £75,000 by 4pm on 28 September 2023

- ii) £100,000 by 4pm on 5 October 2023.
17. This case is extensively in the public domain. It has been reported in unanonymised form in a number of judgments, including the judgment delivered by Sir Jonathan Cohen following the final hearing. In the Court of Appeal, it will be heard in open court, absent any order to the contrary, and any judgment is likely to be unanonymised. In the circumstances, I direct that this judgment be handed down and released in unanonymised form.
  18. The costs of this application shall be reserved to the Court of Appeal, to be considered as part of any overall costs argument at the conclusion of the appeal.