

Neutral citation: [2023] EWFC 256 (B)

Case number **1670-2562-5459-2129**

In the Bristol Financial Remedies Court sitting at Swindon.

Date: 18/12/2023

Before:

DISTRICT JUDGE HATVANY

Between:

VT

Applicant Wife

And

**Respondent
Husband**

LT

Extempore JUDGMENT

1. This is the final financial remedies hearing. I hope the parties will forgive me if I refer to VT as the applicant wife and LT as the respondent husband.
2. The applicant wife is represented by Mr Franklin of counsel and the respondent husband by Mr Peters. I have had the benefit of a helpful note from both representatives. I have heard evidence from both parties and submissions from both legal representatives.
3. Where I refer to page numbers, these will be to electronic page numbers within the bundle.

4. This was an 18-year relationship that ended in March 2020 when the wife left the husband about a week before Covid struck.
5. The marriage produced three children. The eldest child lives independently. There are two teenage boys who now need their own space. Both parties share care of the children.
6. The husband has remained in the former matrimonial home which he bought into the marriage, and which is in his sole name. The mortgage with the Darlington is a tracker mortgage. When base rates were low monthly payments were just £600 but the husband's evidence today was that these payments have now increased in line with increased interest rates to £1200 a month
7. The wife lives in rented accommodation and currently pays £825 per calendar month. This outlay could be reduced under a shared ownership scheme if the wife were able to pay a deposit.
8. For the purposes of today the parties have agreed a value for the property of £245,000. The mortgage is £123,215. After sale expenses there is equity of about £118,000 which equates to £59,000 each on an equal division basis.
9. At the FDR on 31st of May 2023 it is recorded that the parties agreed that matrimonial debt came to £33,777 in the husband's name and £3922 in the wife's name. I am told that the wife should be in a position to clear her debt excluding legal costs by Christmas.
10. The husband has been and continues to service this debt at a cost to him of approximately £1000 per month.
11. The former matrimonial home has four bedrooms. The husband runs an IT support business from home and shares the house with five employees including two apprentices.

12. Prior to Covid the business rented offices at a cost of £1200 per month. The business was hit hard by Covid and turnover reduced by about £100,000. Despite his anxiety issues, the husband has managed to keep the business going.
13. The business made a net profit of £58,673 for the year ending 30th of April 2022 including a salary of £9564 for the husband. The value of the businesses is uncertain. There is debt due to HMRC in the sum of £50,646. The business essentially provides an income stream. The husband's total income from the business including dividends is about £44,500 pa. He is the sole shareholder.
14. The parties are a long way apart in terms of their open proposals. The wife seeks the sale of the property and £80,000 to her so that she can purchase a three-bed shared ownership property for herself and the children. She does not have secure accommodation at present. She is renting and her tenancy could be terminated at any time on two months' notice.
15. The wife says that the husband can use his superior mortgage raising capacity to assist with rehousing himself hence her case that she should have the bulk of the equity in the property.
16. The husband's proposal is that he should keep the matrimonial home and pay a total of £45,000 to the wife comprising a payment of £20,000 now, and the balance within 18 months. He calculates this based on net equity in the sum of £118,785. From this sum is deducted the agreed matrimonial debt in the sum of £37,699. This leaves a balance of £81,086 to meet needs of which the husband says £45,000 should go to the wife.
17. The husband says that he needs to remain in the matrimonial home to continue to maintain the business. Although both parties have identical housing need for a three-bed property the husband says he needs additional space for the business and to accommodate his two apprentices and other employees- five in total.

18. The wife was concerned that the former matrimonial home should be a home to the children and not an office. The husband countered by pointing out that the property is only used as an office while the children are at school or away and he can be very flexible about this.
19. I accept his evidence that he cannot afford to relocate the business elsewhere or build additional office space.
20. The wife is a shift manager at McDonald's. Her total income of about £29,000 includes £16,000 from universal credit which in turn entitles her to housing benefit that covers the bulk of her rent.
21. Mr Peters tells me that if the wife received the lump sum proposed by the husband, once she has cleared her legal costs, she should still be below the £16,000 capital limit for the purposes of preserving entitlement to housing benefit.
22. I questioned Mr Peters about the fairness of the husband's proposals in that this would leave the husband with the former matrimonial home and the wife without any security of tenure.
23. The response was that it might be possible with the lump sum for the wife in the not-too-distant future to put down a deposit for a shared ownership property.
24. The mortgage raising capacity evidence on the part of the husband was not satisfactory. At page 162 the husband used an online Santander affordability calculator to show that he could raise up to £266,812. This was as at 29 March 2023. The calculation was based on a salary of £9431 and dividend income of £48,000. It also referred to debt for credit cards of £33,777.
25. The confusion arises because of two further mortgage raising capacity reports produced for the husband by an IFA. The first on 15 June 2023 shows a maximum capacity of £92,852, and the second from the same IFA dated 12th of December 2023 shows just £84,113. I am told this was only sent to the wife's

solicitors last Wednesday long after the court deadline following the FDR which expired on 28 of June 2023.

26. These reports refer to the husband as a mortgage prisoner saying he is unable to switch lenders for a better deal or raise further funds.
27. This very late change of position on the part of the husband in relation to his mortgage raising capacity has made it very difficult for the parties to negotiate and achieve early settlement.
28. For my part, I prefer the evidence of the IFA which is tailor-made on instructions rather than that of an online calculator; and so, for the purposes of today, I will take the husband's mortgage raising capacity to be in the region of £84,113 or possibly slightly more given that this figure was based on dividend payments below the sum of £4000 per month referred to in the husband's form E.
29. The wife's mortgage raising capacity is minimal given that the bulk of her income derives from universal credit.

30. Discussion

31. The difficulty with this case is that the court is tasked with creating two households from limited assets. Both parties require a three-bed property. The husband requires additional space to run his business. Both parties make proposals. On the face of it the husband's proposals are unfair because they leave him with a property in his sole name and the wife in rented accommodation and without security of tenure with the hope that she may be able to put down a deposit on a shared ownership property sometime in the future.
32. The wife's proposals are also unfair because they leave the husband with nearly all the matrimonial debt and the wife taking 67% of the net equity or nearly 100% if the matrimonial debt is cleared first.

33. There is no easy answer. The court can only look for the fairest solution in difficult circumstances having regard to the criteria set out in section 25 of the matrimonial causes act 1973. The husband is seven years older than the wife and has been left with the bulk of the agreed matrimonial debt. He has serviced the bulk of that debt since separation in 2020.
34. However, he has the higher earning capacity and higher earnings. He also has the higher mortgage raising capacity.
35. The starting point for an 18-year relationship such as this is one of equality however fairness demands a modest departure from equality in favour of the wife to reflect the section 25 factors that weigh in favour of the husband as identified above.
36. In my judgement, if the husband is to keep the former matrimonial home, he will have to find £20,000 now and an additional £35,000 within 24 months failing which the property will have to be sold with £55,000 to be paid to the wife and the balance to the husband.
37. The husband will remain responsible for servicing the matrimonial debt in his name in the meantime. If the property were to be sold both parties would have no alternative but to look at shared ownership proposals, given they have identical housing need and require a three-bedroom property each.
38. In addition, 50% of the CET value of the husband's pension should be transferred to the wife in the absence of any actuarial evidence to try to achieve some form of equality of income on retirement.
39. There should be a clean break.
40. I will leave it to the parties' legal representatives to agree an order that reflects this judgement.

