

Neutral Citation Number: [2024] EWFC 64 (B)

Case No: 1664-4434-2188-4237

IN THE FAMILY COURT AT BRENTFORD

Alexandra Road,
Brentford, TW8 0JJ

Date: 15 March 2024

Before :

His Honour Judge Willans

Between :

The Husband

Applicant

- and -

The Wife

Respondent

Tosin Oguntayo (Direct Access Counsel) for the Applicant
The Respondent appeared as a litigant in person

Hearing dates: 14-15 March 2024

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

His Honour Judge Willans:**Introduction**

1. I refer to the applicant husband [redacted], as the applicant and to the respondent wife, [redacted], as the respondent. I intend no discourtesy by using these labels. I have considered the documents contained within the hearing and supplemental hearing bundles; the written position notes from each party; their personal live evidence and final submissions. I take of all this into account whether or not I specifically reference it within this judgment.
2. I am asked to provide a final resolution of the parties' financial affairs following their separation and divorce. In doing so I am seeking to provide a fair outcome for both parties and will approach these by reference to the strands of sharing and (particularly) needs. I will analyse the evidence and information by applying the checklist found at section 25 Matrimonial Causes Act.
3. I was impressed by both of these individuals. They have strong and opposing views of much that has happened and differ as to where fairness should lead me but I have no hesitation in concluding that they are each honest and genuine individuals who have engaged with this hearing in a balanced and appropriate manner. I will end up disagreeing to some extent with one or both of them but this does not suggest I have formed a negative opinion about either of them or of the evidence they gave me. I am grateful for the civil and measured way they approached the hearing although I appreciate there may have been times prior to this hearing where they have allowed the underlying stresses and pressures to get the better of them. I am equally grateful for the approach taken by counsel on behalf of the applicant.

Issues

4. The central issue for determination is as to how the proceeds of sale of the former matrimonial home ("FMH") should be divided when it is sold in the near future. Each party argues for a departure from equal sharing in their favour to about 60% of the proceeds. Linked to this question are the following subsidiary points which feed into this assessment (and in no particular order):
 - The parties' likely earning levels in the foreseeable future
 - The parties' respective mortgage capacities
 - The parties' housing needs having regard to the obligation they have for the children of the marriage
 - The applicant's health.
5. Aside from the FMH there are no other assets of significance to finance their future living standards. The parties have reached agreement as to sharing of the applicant's pension rights but this will assist into retirement and will not rehouse either of them. The parties agree that on distribution of the proceeds of sale of the FMH there should then be a clean break. There will likely be ongoing child support payments made. However, pending sale of the FMH the respondent seeks 'bridging' maintenance at a rate of £750pcm. The applicant opposes the same and seeks an immediate clean break.
6. The parties are also before the Court concerning the child arrangements for their younger two children. Resolution of this dispute is not a matter for me but I will be obliged to reflect on the possible outcomes insofar as this may impact on the above questions. I am satisfied

this is not a case which requires adjournment pending determination of the child arrangements. No party suggested this should be the case.

7. Participation directions were used in the form of a screen at the request of the applicant. I make no findings as to the conduct of either party to the other but accepted this would enhance the quality of the evidence I received. The respondent questioned the applicant directly (but from behind the screen).

Background

8. I intend to restrict this section of information to only that necessary to understand the case. There are a number of factual disputes between the parties which are not relevant to my determination and do not require setting out within this part of the judgment. The applicant is aged 59 and the respondent 45. The parties commenced their cohabitation in 2006 and married in the same year. The applicant purchased the FMH prior to the relationship in 2000. The parties have three children, L, S and R respectively.
9. The relationship began to fracture in late 2019 and the parties agreed to separate. Children proceedings were issued and this concluded by consent in March 2020 with an agreement that the children would live with each parent on a 50/50 shared basis. However, the planned separation was then impacted by the covid pandemic and the parties reconciled their relationship in about May 2020. This reconciliation appears to have held until about April 2022 when the parties once again separated. They have not reconciled since.
10. On separation the respondent moved out of the FMH into rented accommodation. She has remained in rented property to date. The children lived with both parents in line with the consent order reached following the first separation. However, in January 2023, S, and then in April 2023, L, stopped spending time with the applicant. R has continued to live with each according to the shared care plan. As a result of this the applicant has issued further children proceedings and the case is currently awaiting an ISW report with a DRA listed in August 2024. The applicant issued his Form A in September 2022 following a process of mediation and exchange of voluntary Form's E. I do not intend to detail the stages of the financial proceedings. All relevant orders can be found in section B of the bundle.

Evidence

11. I focus on those aspects of the evidence relevant to the above issues.

Future arrangements for the children

12. The applicant considers the current arrangements have in part followed from the financial dispute between the parties. He is concerned a snapshot of circumstances today which determines the finances and fixes each parties' available resources may prevent later reconciliation with the children and a return to the previous 50/50 care plan. He accepts the older children are not seeing him although he sees some signs of thawing in that S has accepted a present from him and L is communicating with him. He accepts any future orders will not include L given his age. He thinks in the foreseeable future L will return to staying with him whether or not this is on a shared care basis. He hopes there will be a return to shared care for all children. In any event R is happy with how things are.
13. The respondent told me she would not obstruct the children seeing their father but indicated this would be a matter for the children. When asked she appeared to accept there

was a potential for L returning to spend time with his father although not on a shared care basis. She felt L had wanted a single stable base and the shared care was not permitting this with a weekly change of residence. She was more cautious with regards to S who she told me is more opposed to her father and is not communicating with him. The sense was that within the foreseeable future both R and L might be spending meaningful time with their father but she would be providing the 'lion's share' of caring duties. I of course bear in mind that these matters will be determined in separate proceedings later this year.

Parties' respective earning capacities

14. The applicant is employed with a gross income of c.£129k per annum. This equates to a net income of c£79k per annum (or £6,588pm). He has recently seen an advancement in his employment role and in 2023 became entitled to be considered for annual bonuses. In 2023 he received a net global bonus of c.£15,000. He made clear this bonus is discretionary in form and there is no guarantee as to future receipt or levels. He told me a new manager is less supportive of bonuses and he indicates his work levels have suffered with the litigation and recent events. He questions the likelihood of future bonuses and submits his income should be limited to his basic net income.
15. The respondent is currently unemployed and in receipt of benefits. Her current benefits including child benefit total c£34,000 per annum although the universal credit cap will apply from July 2024 reducing this closer to c£28,000. Until September 2023 the applicant was employed as a lawyer and had a gross income of £92k per annum. She left this post by mutual consent and argues this was due to reduced work within her department meaning she could not meet her billable hours set by her employer. In any event she told me that it was proving difficult to maintain this employment given its demands together with the demands of caring for the children. The respondent accepts, indeed bases her case on a return to work within the year. She argues this will likely see her income levels reduce (when compared to previous employment) as she is unable to maintain the level of commitment and work levels required in the sector in which she was previously employed. She contends this will likely be at a gross income of c.£70k per annum, equating to a net monthly income of about £4,200. The applicant questions this and argues the respondent can and should return to work at a level similar to that previously held by her. Separate to the above the applicant pays child support to the respondent for the older children at a rate of £12,843 per annum. This would change if the children were to return to their previous arrangements. No sum is payable with respect to R.

FMH value

16. The Court previously directed the obtaining of professional valuations and the averaging of the same (mean) to provide a value for final hearing. Notwithstanding this having been done the parties are surprisingly apart as to the appropriate figure to be used. This is because the applicant has used the sums provided as to achievable sale price and has reached an average of c.£501k (or c.£486k after costs at 3%). The respondent has used the marketing price sums leading to an average of £520k (which would be c.£504k after 3% costs). It seems clear to me applying the Court direction, and indeed given my duty is to assess the likely sale price not the price it will be marketed at, the lower sum is the appropriate one. However, this means I must apply the same logic when looking at the costs of replacement property.

Housing needs

17. Within the papers is reference to properties which now fall outside of the area of consideration in the light of the available resources. The parties have come to focus substantially on properties between £400-500k but particularly at the upper end of this range. These are 3-bedroom properties and it is important to note this is the format of the FMH. Both parties contend for a necessary 3-bedroom property. The applicant argues the parties have equivalent needs and their housing should be assessed equally. The consequence is that he identifies a need for properties around the £475k mark. The respondent challenges the suggestion of equality of housing given her primary role in housing the children. Whilst she does not object to the applicant having a 3-bedroom property she would argue if 'push came to shove' then he could be housed in a 2-bedroom property. In any event she submits his housing need is lower than her need. In the bundle the lowest valued property is at £430k, although I note all prices are marketing prices and some discount should be applied to create parity with the calculations at §16 above. I note for the FMH this is a discount of about 3.7%. I note this would amount to a £475k property achieving a sale price of c.£457k with a property at £430k reducing to c.£414k.

Mortgage capacity

18. The parties were directed to obtain expert advice in this regard. The advice provides a range of possible outcomes based on (a) the parties' gross incomes taking the respondent at her previous income of £92k and the applicant on basic income only; (b) with or without the child maintenance continuing, and; (c) with or without existing liabilities being settled prior to mortgage. This creates four permutations. It is premised on mortgage until retirement age. For the applicant the maximum mortgage is c.£194k. The real issue for the applicant is the short period over which the mortgage would have to be repaid (7 years). There is also a significant potential issue as to recent ill-health as shown on payslips (see below). This level of mortgage would be associated with monthly repayments of £2,800. For the respondent given her age there are a broader range of options. The available mortgages range from £199k (based on debts unpaid and maintenance stopping) to £399k (debts settled and maintenance continuing). I note for debts paid and maintenance not continuing the suggested figure is c.£341k. At £92k income this equates to a multiple of 3.7 x income. I make this point as I am asked to reassess income at £70,000. I also note that the maintenance payment appears to increase mortgage by £58,000 whether or not debts are paid. There was limited questioning directly on this point. The questioning was on the related issue as to earning capacity (see above).

Health issues

19. The respondent has no health issues. The applicant has recently received a diagnosis of prostate cancer. It is too early for him to comment on the form of treatment that will be suggested. The respondent points out the statistics for a positive prognosis with this cancer are good. The point is that there is some uncertainty and this may impact on future employment. However, there is some read across with the issue of the respondent's re-employment. Both applicant (ill-health) and respondent (employment) raise an issue which impacts on the global assessment. However, each take an optimistic view (as they are obliged to do) in contending they will be employed in both the near and more distant future.

Other issues

20. The applicant was questioned as to the drawing down of pension lump sum funds. It transpired that whereas the documents referenced this being at around £60k it was in fact closer to £100k. The respondent suggested this was unaccounted for by the applicant with

the suggestion it had been wrongly used or perhaps even remained available. The applicant gave a detailed account of how the funds had been used to include on legal costs and renovating the family bathroom. The funds had been drawn down around a period of unemployment and had been used on the family whilst the parties remained in a relationship. I was puzzled as to the fact of a £100k draw down given the normal principle of a 25% maximum tax-free lump sum and the fact the remaining fund is around £216k not £300k. However, the applicant explained he had incurred a tax charge and when this was considered the figures made sense. It seems (at £216k) the maximum lump sum would be £72,000. The sum taken was about £28,000 in excess of this. A tax charge of £10,000 was incurred. This is about right if this excess was taxed at 40% as it likely would be.

21. There was questioning as to the applicant's potential inheritance rights. He told me he had received £10,000 and would receive no more.

The maintenance proposal

22. The respondent seeks £750pm until the property is sold whereupon the payments would end on a clean break basis. She explained this by reference to her excess of needs over income at this time and with particular regard to her housing costs. She drew attention to the fact the applicant remains in the FMH which is mortgage free. She was questioned as to the inter-relationship between the payments and sale of the property and re-employment. What would happen if the property sold before she obtained employment and how she would then manage with maintenance ceasing? I acknowledge at this point the applicant would be incurring housing costs which currently do not arise. The sense of her answer was that this had not been fully considered. Alternatively, I enquired as to why maintenance should continue if she in fact obtained re-employment prior to sale (whether at £70k or £92k). I noted the increase in her net income would be significantly greater than either the £750pm or the suggested monthly deficit of about £1,000. Her answer was somewhat unclear but again appeared to suggest her needs exceeded even her previous level of income whilst paying rent.

Analysis

General principles

23. I remind the parties my search is for a fair outcome. In this case the dominant strand is the needs of the parties in the light of the available resources. In my assessment the simple application of the sharing principle would likely lead to an equal division of the FMH notwithstanding it preceded the relationship given its centrality to the relationship; the length of the relationship and the enduring obligations deriving from the marriage. However, the final position will be shaped by the respective needs of the parties. The parties have agreed an outcome on pensions. I do not feel the need to revisit this agreement notwithstanding the point made as to the accrual of these rights in part pre-dating the relationship.

Section 25

24. The first obligation on the Court is to identify the available resources. Having regard to the central issue in the case the relevant resources include the equity in the FMH; the earning capacity of the parties and their respective mortgage raising capacity. As in any case consideration as to future property purchase is speculative with the Court simply identifying the reasonable housing needs, the available resources, and the consequent implications for

the case. The Court does not select the appropriate property or compel a party to use the provided funds in a specified manner. It is inevitable that as the assessed cost of a property is increased so the purchase of the same requires either an enhanced mortgage (other things being equal) or a greater deposit. In a case involving two parties each seeking replacement property the Court has to be astute to the fact that increasing the take by one party has an opposite impact on the other. Ultimately the Court will have regard to the global resources available; the global housing needs and the global borrowing capacity. The aim must be to find a fair way in which the global equity plus the global borrowing permits a fair outcome for both parties.

25. I have already commented on the equity in the FMH. The average (mean) of the three valuations is £501k. I will use this figure. Taking likely sale costs at 3% this reduces to **£486,000**. I consider both parties have an earning capacity that can be realistically obtained within the foreseeable future.
- In the case of the applicant and notwithstanding his ill health I proceed on the basis that his employment will continue. He has not advanced a contrary case and to do so would fundamentally reset the calculations on which he relies. As such he has a basic income as set out above. I consider it is unrealistic to simply ignore his bonuses paid in 2023. They were the first opportunity on which he could receive bonuses and the sums received are significant in the context of this case. I appreciate and accept they are not guaranteed. However, I consider it likely he will on balance receive future bonuses of varying levels. I have received no information to shape my understanding of future levels. I do not consider the sums are likely to assist with mortgage capacity but they will inevitably assist with actual affordability and the meeting of daily needs. For the purpose of this evaluation, I am going to take a mid-point between no bonus and that received in 2023, i.e., £7.5k net, leading to a global annual net income of £88.6k (or £7,387pm before child maintenance)
 - In the case of the respondent, I am persuaded she will return to work within the foreseeable future. This is a temporary period of unemployment and she has the skills, commitment, and incentive to return to the labour market. I have some sympathy with the points she makes as to the challenge of maintaining her previously role whilst being the main carer for the children. I also note the points made by her as to the niche field in which she previously worked. I accept that she will obtain re-employment within the next 6 months or so (and this is likely all things being equal to be at a point not far from the likely sale of the property) and that this will be for at least a level of income of £70k per annum (gross). I am not confident she will simply return to the previous level of earning. Doing the best I can I consider her likely gross earnings will be at a rate of about £80k per annum. This equates to a net income of about £53.5k per annum (or £4,458pm before child maintenance).
 - I work on the premise child maintenance will continue to be paid. On the information before me it seems likely the father's relationship with each child may improve but it is less likely this will simply rebound to the previous position within the foreseeable future. As such I consider the payments at £12,843 per annum (£1,070pm) will continue leading to a net result for the **applicant of £6,317pm** and for the **respondent of £5,770pm** after child maintenance and child benefit receipt. I note between them they have a likely global income resource of a little under £12,000pm.
26. As to mortgage capacity I accept the information provided from the expert. This case has proceeded on the basis of using the applicant's maximum mortgage capacity of **£194,300**. I note this will cost a likely £2,800pm which is a very high figure but reflects the short length of the mortgage. I note this would leave the applicant a disposable post mortgage and child

maintenance income resource of £3,517pm. In the case of the respondent, I have to bear in mind my reduced assessment of her likely gross income. Applying the multiple noted above (§18) this would suggest a mortgage maximum of about £350,000 (after allowing the addition for maintenance paid). In the hearing the applicant advanced the use of a lower figure of **£341,177** and so it can be seen the change in income assessment has not had a material impact at the mortgage accessibility stage. A mortgage at this level would cost about £2,100pm and I note this would reduce disposable income after mortgage to £3,670pm. For the time being I note the various other permutations referenced in the mortgage report. I particularly note the respondent advocates for a mortgage of about £250,000 and I see this would cost closer to £1,600pm as per the report (leaving if so a net disposable income of £4,170pm).

27. I do not factor in any other resources. I accept the pension drawdown has been spent and there are no grounds for adding any part of it back given its likely use in meeting both day to day expenses and some home improvements. I do not factor in the inheritance which again appears to be included in the current additional resources to the extent it has not been spent already. The parties' bank balances are limited and required for daily living. I place no weight on chattels in use or on jewellery in the possession of the respondent.
28. In summary the resources are therefore:
- Equity in property: £486,000
 - Global mortgage capacity: £535,500
 - Global income: c.£12,000pm
29. I turn to needs. The key needs are housing and living costs. In the case of housing, I accept this is a case with similar but not exact housing needs. On the information available to me at this time the respondent needs a 3-bedroom property for three children who live with her. The applicant has a need for a 3-bedroom property to accommodate three children when they may come to spend time with him. He continues to have R half of the time. I consider this may come to be reflected in the ultimate balancing equation in a search for fairness where the resources cannot provide equality of housing.
30. In the course of the hearing both parties appeared to concede an acceptance that their actual housing might cost £475,000 before any costs. This was a realistic concession given their reference to properties on offer at £500,000 (see §17 above). However, applying a discount to asking price I observe a property with an asking price of £475,000 would discount closer to £450,000 on sale. I appreciate this is far from scientific but I must reflect this factor given I am doing the same with the FMH. I accept these properties (which are all 3-bedroom) are basic in nature but I assume the same applies to the FMH given its value. There is a range of properties (as will always be the case) and I accept the bottom of that range is around the level of the property at £430k found in the bundle. Applying the same discount that property would sell at about £414,000. In my judgment the reasonable housing need range in this case is a relatively narrow one between £415,000 - £455,000 (properties marketed at £430-475k).
31. As to living costs I reference the schedules within the bundle. Thankfully I was spared any consideration of these budgets. I note each has a now and future approach to spending. The now schedule totals almost £12,500pm (£5,333 applicant / £7,140 respondent). The future schedule totals £13,700 (£6,288 applicant / £7,413 respondent). I remind myself the global resource in this case is £12,000 in the future. Something will plainly have to give. This is accepted to be the case. The respondent was clear in accepting maintenance will end on sale of the property. At this point her income (see above) will be £5,770pm and she will have to

cut her budget by about £1,650pm to return to balance. The applicant would have an income of £6,317 and would have an excess of income over claimed needs of about £50pm.

32. Each of the parties have liabilities. I accept the respondent's liabilities are at about £48k and I agree she will look to settle these by way of mortgage to reduce the monthly costs. They cost her about £1,000pm. The applicant's debts are at about £25k. He does not propose to settle the same although I note they cost him a suggested £450pm.
33. I consider each party can bring their budget into balance. By way of illustration, the respondent argues for a mortgage of £250,000 costing around £1,600pm yet she allows £2,400pm for the same in her budget. The applicant increases his balance by about £1,000 between now and the future whilst including a new item for mortgage of £2,400. Plainly in doing so he saves about £1,400 (the difference between the two) from his current budget to enable this to be the case.
34. I can travel through the balance of section 25 matters in short order. This is not a conduct case whatever may have been put in statement evidence. I have not been provided with any live evidence supporting such a contention. This is a significant relationship with ongoing responsibilities. The contributions are equal albeit they will have been different from time to time. I have noted the applicant's health situation and the parties' ages. The losses on divorce will be met by the agreed pension order. I consider the parties enjoyed a middle-class standard of living commensurate with both being high earners (when compared to the general population). However, they will both have to adjust to their straitened circumstances.

Conclusions

35. I turn to the fair outcome in this case. I bear in mind the first consideration for the court is the welfare of the children. This has particular traction when considering housing and general needs. As I made clear at the hearing, I am conscious that I am providing a solution based on a snapshot at this time and that either party may feel future events impact on the fairness of that assessment. But this does not change my duty to make the right decision on the available information carrying out reasonable assessments of what the future holds based on the available evidence.
36. In my judgment the fair and appropriate solution in this case which balances the matters detailed above is as follows:
 - On sale of the property from the equity of £486,000 there should first be paid to the applicant £25,000 and to the respondent £48,000 to meet their debts. This will leave £413,000. This will enable each to make monthly savings by shifting these liabilities onto a mortgage.
 - Of the balance of £413,000, 53.5% (£221,000) will be paid to the applicant and 46.5% to the respondent (£192,000).
 - The applicant will use his mortgage of £194,000 to enable purchase of a property at about £415,000 [£221,000 + £194,000]. The respondent will use her sum and a mortgage of about £258,000 to buy a property at about £450,000 [£192,000 + £258,000].
 - This disparity reflects the respective responsibilities for the children, the earning capacity of the parties and their respective ages and related mortgage capacities.
 - The applicant gets 51% of the proceeds of sale and the respondent 49%. This marginal departure from equality is justified in the light of the competing factors noted in this judgment.

37. The consequence for each is as follows. The applicant's future needs increase from £6,287 [future needs in his schedule] to £7,308 with mortgage increasing by £400 (from £2,400 as per the schedule to £2,800); debt servicing dropping out (£449) and child maintenance being payable (£1,070pm). I have assessed his monthly income at £7,387 (\$25 above).
38. The respondent has suggested future needs of £7,413pm which will reduce by £800 (as mortgage reduces from £2400 to £1600) to £6,613pm. I have assessed her income (\$25) at £5,770pm. She will need to save a further £850pm. I agree this can be done. I am confident she can make these savings; indeed, her case has been premised on such an ability.
39. I am satisfied that at the point of sale the parties can adjust to a clean break without undue hardship and I will order accordingly. I agree the interim situation is different. Pending employment, the financial position for the respondent is much harder whereas in simple terms the applicant is benefitting from no mortgage costs until sale. It would be most unfortunate if the ability of the respondent to re-house the children on sale was stifled due to her debts escalating whilst she waited for sale due to a lack of income. In my assessment the request for maintenance until sale is well made and justifies a payment of £750pm. I note in the interim the applicant is not paying the future mortgage of £2,800pm but is managing his debts (£450pm). In simple terms he is better off by about £2,400pm compared to the situation after sale. He can plainly afford this request until sale. In contrast the respondent has similar needs to that which she will have in the future but is living on benefits. I consider she needs £750pm and order accordingly. I do not consider this should end on employment but should continue until sale. On employment whilst the position for the respondent will improve it will differ from post-sale due to the costs of servicing debt. The applicant's position will remain positive as above. It should continue to sale irrespective of employment.
40. I therefore order:
- Sale with distribution linked to debts as above with a % division of the balance as above:
 - Maintenance at £750pm being £395 on 31 March 2024 and £750pm until sale (daily rate of £24.65) if mid-month.
 - Clean break on sale
 - Pensions as per agreement
 - Chattels by agreement with default clause if not agreed within 56 days.

Epilogue

41. Following judgment it transpired a point was being taken as to the impact on the respondent of receiving maintenance whilst in receipt of benefits. This point had not been addressed in evidence or submissions but it was agreed a significant part of the maintenance paid would not be received by the respondent. I reflected on my conclusions and particularly the implications for the respondent if support were not received, her debts escalated and housing was thus not affordable on future sale. I determined the appropriate solution was for a lump sum to be paid equal to the sum that would otherwise have been paid under the maintenance between the date of the order and sale of the property.

His Honour Judge Willans