Neutral Citation Number: [2025] EWFC 14 (B)

IN THE FAMILY COURT

Royal Courts of Justice

Strand, London, WC2AA 2LL

"T v T and Others (Disregard for Procedural Rules, Adjournment)"

Before:

RECORDER CHANDLER KC

Hearing on 29 January 2025

MR MICHAEL BAILEY (instructed by MB Law Ltd), who appeared on behalf of the APPLICANT

The FIRST RESPONDENT represented himself;

The SECOND RESPONDENT represented herself;

The THIRD and FOURTH RESPONDENTS did not attend and were not represented

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Introduction

1. The family court is used to dealing with cases that have not been prepared properly: bundles that are too large, exclude important documents or contain irrelevant ones; witness statements full of invective and opinion; position statements which are too long and unfocused. The failure to comply with rules, practice directions and guidance, adds significantly to the burdens upon the court in terms of the time it takes to read into a case, concentrate on the key issues and avoid getting drawn down false alleys. The lack of an agreed trial template often leads to unrealistic expectations in terms of the preparation of a judgment, causing cases to go part-heard.

2. In *Re W (A Child)* [2013] EWCA Civ 1177 at [50] Sir James Munby P described "…a deeply rooted culture in the family courts which, however long established, will no longer be tolerated… the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders".

3. In *Xanthopoulos v Rakshina* [2022] EWFC 30 at [3], Mr Justice Mostyn condemned the husband's "…utter disregard for the relevant guidance, procedure, and indeed orders [as] totally unacceptable", and commented that, despite the warnings contained in judgments such as *Re W*, "…nothing seems to change".

4. Too often, lay parties who have waited months for a final hearing, come to court and face the unedifying spectacle of a judge struggling to make sense of a badly prepared case, taking up valuable court time by teasing out issues and arguments which should have been clearly articulated in advance. In many cases, to their credit, family judges manage to keep calm, carry on and roll up their sleeves, hacking through the papers to reach a judgment, even where this involves hours of additional work, which might otherwise have been avoided by an earlier focus on the issues.

5. But even in the family court, there comes a limit.

6. And that limit has been grossly exceeded in this case, which has come before this court for a listed 3-day hearing in such a disordered and chaotic state that it is simply impossible to proceed in a fair way.

Factual background

7. The main parties (i.e. the wife and husband) in this case are aged 42 and 41 respectively. They married in July 2015 and separated in October 2018, although there is a factual issue about the latter date. There are two children of the marriage aged 7 and 8 who live mainly with their mother.

8. This application for financial remedies in this case was issued nearly two years ago on 23 March 2023 which, prior to today's hearing, has been heard at the family court in Uxbridge.

9. There have, in total, been *seven* directions hearings in this case. The applicant has been represented by counsel at three and has acted in person at the other four. The respondent (husband) appears to have been represented only at the First Appointment and has since acted in person.

10. On 8 March 2024 DDJ Emanuel joined three further respondents: namely the Husband's mother (2nd Respondent), his sister (3rd Respondent) and the executor of his late father's estate (4th Respondent), who in general, have either not attended court or have attended in person.

11. Today, none of the respondents were at court at the allocated start time of 10.00. I put back the start time to 10.30 when only the Wife and her counsel, Mr Bailey, were in court. The Husband and his mother arrived at court at around 10.45, without representation.

12. At 10.20am, shortly before I started the case, I received an email from a paralegal at Solidum Solicitors to the effect that they would be instructed by the second respondent, in the following terms:

> "…due to the short notice of instructions and the Second Respondent's financial constraints, it has not been possible to retain counsel… for today's hearing. As a result, we are unable to attend court… we respectfully request… relief from sanctions… *we will attend court tomorrow* to represent the Second Respondent" (my italics)

13. At this stage, I make no finding of fact as the actions of any of the respondents, save to record that there is an arguable case that one or more of them have deliberately sought to frustrate this litigation, by not responding to orders, failing to disclose documents and generally dragging their feet to the inconvenience of the Wife. In particular, on 24 May 2024, DJ Jordan made a series of 'unless orders', relating to the Husband's failure to comply with an earlier order to file a witness statement, and the other respondents' failure to file a defence to the applicant's points of claim. While the paralegal who wrote the above email couched her message in apologetic terms, I consider it quite

extraordinary that any court should receive a message to the effect that a lawyer proposes to attend mid-way through a final hearing.

14. Accordingly, this is unquestionably a difficult case for the Wife and her advisers, who have been recently instructed, where the other parties appear to either be ignoring or deliberately flouting the court's directions. I also bear in mind that the applicant's lawyers are acting under a legal aid certificate.

15. However, in my judgment there is no excuse for the following in terms of the applicant's disregard for procedural rules in preparing for this final hearing.

Procedural breaches

(1) Size of bundle

16. In this case, the applicant's solicitors filed two court bundles. The first, described as 'main bundle' is 1,158 pages. The second, described as 'supplemental' is a further 1,589 pages, making a grand total of 2,747 pages.

17. The bundles were uploaded to the portal late, respectively, at 12.42pm on 28 January (yesterday) and 11.57am on 27 January 2025 (two days ago). It is unclear if arrangements were made to send hard or soft copies to any of the respondents.

18. At no stage at any of the seven case management hearings has permission ever been granted (or seemingly, requested) to lodge a bundle in excess of 350 pages, pursuant to FPR PD 27A para 5.1. I am not willing to retrospectively allow in an additional 2,400 pages so that this hearing can proceed. I have considered, but reject, the suggestion that it might somehow be possible to 'fillet' the bundles by removing documents that have been duplicated (as Mr Bailey suggested), while somehow keeping this hearing on track to be heard within its allotted time estimate.

(2) Missing statements of case

19. Neither bundle contains any of the following documents which might have provided some assistance in my judicial pre-reading:

(a) A case summary in ES1 format;

(b) A chronology;

(c) A statement of issues

(d) A trial template

The bundles were not properly bookmarked, whereby I had to spend some time adding these. In fairness, the bundle did contain an ES2 spreadsheet although this is largely useless since it is incomplete and contains statements such as "*Applicant Wife beliwves [sic] the Respondent has an interest in the following properties*" – i.e. three unidentified addresses, to which no figures are attached. Consequently, I was unable to make head nor tail of the papers until I received counsel's position statement.

(3) No open proposals

20. The bundles did not contain any open proposals, either because none have been sent (per Mr Bailey's note, para 2(vi)), or because "…the Wife might have sent one, but it isn't in the bundle" (per Mr Bailey's oral submissions).

(4) Late lodging of counsel's position statement

21. Mr Bailey sent me his case summary by email at 9.16pm on the night before the hearing, without any explanation as to why it was being filed so late. This is bad enough in itself.

22. It is a particularly egregious breach in this case where the other parties are litigants in person. However badly they might have behaved in this litigation (which is in dispute), in my judgment, the applicant's advisers are under a heightened obligation to ensure the necessary position statement is *at the very least* filed on time, i.e. by 11am on the day before the hearing.

23. Indeed, it is arguable that position statements should be served earlier than that. In *Re B (Litigants in Person: Timely Service of Documents)* [2016] EWHC 2365 (Fam), Peter Jackson J (as he then was) stated (with the President's approval):

> "… [2] Where one party is represented and the other is a LIP, the court should normally direct as a matter of course that the Practice Direction documents under PD27A are to be served on the LIP at least three days before the final hearing
>
> [3] It is obvious that the right to a fair trial includes the right to know the case one has to meet. Court hearings are already difficult for LIPs, but many, being inexperienced, are hesitant to complain about matters such as late service"

While *Re B* related to child abduction, where other factors arise, I see no reason in principle why that guidance should not apply equally to a claim for financial remedies. I appreciate there will be exceptions, where it might not be possible to provide a position statement 3 days clear in advance, but for counsel to make arrangements for a copy of this note to be sent to the respondents *on the morning of the hearing*, without (as here) bringing hard copies to court, involves a real risk of procedural unfairness. In point of fact, the Husband and his Mother told me that, because they had driven to court and not accessed their emails, they had not received Mr Bailey's position statement at all.

(5) Further documentation filed on morning of hearing

24. At 8.48am on the morning of the hearing, Mr Bailey emailed me directly a raft of further documents which, if anything, only add to the general state of disarray:

(a) The ES1 stated, incorrectly, that there are two expert reports. In fact, no expert evidence has ever been admitted in this case. The ES1 wrongly described various 'trust documents' as expert evidence.

(b) A different version of the ES2 was produced, which is almost as incomprehensible as the first. This now includes the addresses of the six (originally five) properties the Wife extends a claim over, although it only includes gross values since, apparently, the amount of the secured mortgages is unknown. The ES2 does not set out who are the legal owners or what the Wife asserts is the Husband's beneficial share. (That seemingly has never been addressed by the Wife: her points of claim refer to the Husband having "a beneficial share").

(c) Finally, a further 48 pages of bank statements were included, which brings the total amount of documentation contained in the bundles to over 2,800 pages.

25. For the avoidance of any doubt, I would not want to give the impression that I am unsympathetic to the Wife's plight. She clearly has pressing financial needs and bears the main responsibility for the parties' two young children. Moreover, the respondents appear (from the content of the previous directions orders) to be far from blameless in this case. They have missed numerous deadlines and unless orders have been made. I troubled by the actions of the 2nd Respondent, who appears to think that lawyers might helpfully turn up mid way through a three day hearing.

(6) Lack of clarity as to the Wife's case in law

26. But even if I was somehow to bend the rules to allow in a 2,800 page bundle and proceed on the basis that the two respondents who attended hadn't even seen the position statement, there is the question of whether the Wife has yet adequately set out her case.

27. The Statement on the Efficient Conduct of Financial Remedy Hearings, which appears to have been totally overlooked in this case, requires position statements (at para. 24) to concisely… (c) "define and confine the areas of controversy".

28. The first half of Mr Bailey's position statement (pages 1-5) sets out in broad terms his client's case. The second half (pages 6-11) effectively cuts and pastes the court's directions from a number of the earlier hearings, which was perhaps otiose as the bundle contains the original documents in terms of the directions orders.

29. At paragraph 16 of his note, Mr Bailey helpfully articulates his client's objective, possibly for the very first time in nearly two years:

> "At a minimum and on a needs basis W needs a transfer of *[Property A*]… [which] is adequate for her children's housing needs... she also seeks the transfer of one other investment property to provide an income…. The court is asked to consider whether the sharing principle is engaged".

30. Office copy entries for *[Property A]* show that it is co-owned by the Husband's mother (i.e. the Second Respondent) and the estate of his late father (i.e. the Fourth Respondent). As to how the Wife lays claim to this property which is held in the legal ownership of joined 'third parties', Mr Bailey asserts in his note that the Husband "…has a beneficial interest in [six properties], evidenced over the course of the marriage by H's involvement with the running of and financial benefit…" (para 18), whereby the Wife seeks declarations that the Husband is entitled to a beneficial owner of all six of them.

31. While I have reached no settled view on the legal basis of the Wife's case, it strikes me that Mr Bailey's argument is framed in unorthodox terms. A constructive trust is normally understood to arise where a claimant establishes (1) common intention and (2) acted to his or her detriment in reliance thereof. I am unaware from the authorities as to how a beneficial interest could arise from a party running, or drawing a financial benefit from, a property rental business, <u>*unless*</u> he thereby acted to his detriment or otherwise changed his position.

32. The Wife's points of claim [C158-162], drafted by Mr Bailey, is a short document, prepared in narrative form, which does contain a prayer (in terms of what declarations and orders are sought) and concludes that:

> "…the basis in equity for the Respondent's beneficial interest is… a constructive trust based upon the property being held by the parents of the Respondent as bare trustees with the Respondent having effective control… alternatively… a proprietary estoppel exists, based on the oral representation by the Respondent's parents that all of the properties… will be transferred to him given his running of the family rental business and where the Respondent has placed reliance on this representation and acted accordingly".

33. The points of claim assert that the Husband's parents allowed him "…complete freedom to do what he wanted with the family business rental properties", and that the Husband "…had sole access to and control of this rental income…".

34. I remain in some doubt, having carefully read the points of claim, if the Wife has set out any case in terms of the Husband's detriment (or change of position), which I take to be an essential component of a constructive trust argument (*Hudson v Hathway*

[2022] EWCA Civ 1648 at [3], [153]) or proprietary estoppel (*Gillet v Holt* [2001] CH 210 at p. 232)

35. On this point I will err in the Wife's favour and give her advisers one final opportunity to clarify the legal basis of her case by serving a skeleton argument within 14 days.

Lack of a Qualified Legal Representative

36. Finally, in fairness to Mr Bailey, he points out that the court has made a series of orders for the appointment of a QLR, without any effect. It appears that a QLR has not been appointed.

37. He submits that the hearing could not have proceeded because of the absence of a QLR, since the Husband has been forbidden from putting questions to the Wife due to a background of alleged abuse.

38. While I have not been able to get to the bottom of why a QLR has not yet been appointed in this case, the problems here are more fundamental in terms of the applicant's inexplicable failings to follow what are well known rules in terms of (a) the length of the bundle, (b) its contents, (c) sending open proposals, (d) the filing of a position statement in good order, and (e) generally, the articulation of issues and legal argument.

Conclusion and adjournment

39. In the circumstances, unusually, I reach the conclusion that the applicant's breaches of the various procedural rules is so significant that I have no option but to adjourn the final hearing.

40. I have considered if the remaining two days can be put to any use in this case. But, having now made directions with the objective of getting this case back on track, I have concluded that no progress can be made until the various procedural breaches are resolved.

Costs

41. No party has made an application for costs. The applicant is legally aided, and the respondents are all in person (albeit the second respondent has lately approached a

solicitor who intends to come on the record). I am unpersuaded that any purpose would be served by making a costs order but in other circumstances I would be making a costs order against the applicant, potentially on the indemnity basis.

42. That is my judgment.