Neutral Citation Number: [2020] EWHC 2997 (Fam)

Case No: HG15D00182

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2020

Before:

MRS JUSTICE KNOWLES

- -

Between:

IC	**Applicant**
- and -	
RC	**Respondent**

- -
- -

Mr Maxwell-Stewart for the Applicant
Miss Ward for the Respondent

Hearing date: 13 October 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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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 parties 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.

Mrs Justice Knowles:

Introduction

1. This was the Appellant husband's ["the husband"] application for permission to appeal and, if permission were granted, to appeal orders made by DJ Wright on 2 September 2019 and 14 October 2019. The husband sought to set aside those orders following which, on his case, there would be no further financial bonds between him and the Respondent ["the wife"]. The wife opposed the husband's applications. These applications were listed before me by order of HHJ Kloss dated 18 September 2020. I was told that the reason for transfer was because of the issues raised by this appeal, namely (a) should the court have allowed the wife's 2019 application to amend under the slip rule a substantive provision within an order made in 2017; and (b) should amendment have taken place in circumstances where the order itself was no longer said to be extant.

2. In coming to my decision about these applications, I have read a bundle of documents and authorities. As the original appeal bundle was incomplete, I directed the parties to produce further relevant documents by 20 October 2020. I also considered written submissions and heard from counsel in oral argument. I am very grateful to counsel for their assistance.

3. At the outset I record my sympathy for both parties, each of whom have been disadvantaged by what has occurred during the course of their matrimonial litigation. I make it plain that neither has acted in bad faith in their dealings with each other about the financial consequences of their divorce.

Summary of Background

4. I summarise the facts pertinent to the issues in these applications. The husband is now aged 60 years and the wife is now aged 58 years. They married in 1985 and had three children, all of whom are now adult. In 2014, after nearly 29 years of marriage, the parties separated. On 20 November 2015, DJ Wood approved an order in financial remedy proceedings which had been agreed by the parties. Paragraph 24 of the consent order made provision for periodical payments payable by the husband to the wife. Those payments were stipulated to end on the first of the following events to occur, namely (a) the death of either the husband or the wife; (b) the wife's remarriage; or (c) further order. I note that, within the order, the wife was identified as the applicant and the husband as the respondent. Decree Absolute was granted on 24 November 2015

5. In October 2016, the husband applied to vary the periodical payments order on the basis that he could no longer afford to make monthly payments of £2,100. In a letter to the court dated 20 April 2017, the husband made clear that he sought the discharge in its entirety of the periodical payments order. At about the same time as the husband's application, the wife applied for enforcement of the periodical payments order. I have not seen a copy of that application as it has not been found on the wife's solicitors' file. However, it is clear from the judgment given by DJ Wright on 27 April 2017 that substantial arrears of periodical payments had accrued since the husband had not paid the wife anything since July 2016.

6. Both applications were heard by DJ Wright at a hearing on 27 April 2017. The husband represented himself and the wife was represented by counsel. I note the husband was identified as the applicant and the wife as the respondent in the eventual court order. Following a contested hearing, the judge varied the periodical payments to provide that the husband was to pay the wife £600 for each of the following seven months and then to pay her £800 a month from November 2017 onwards. The judge also remitted a portion of the arrears, ordering the husband to make a payment of £3,600 to the wife.

7. The judgment given by DJ Wright set out the context in broad terms at the time the consent order was made. This was a lengthy marriage during which both the husband and wife had made contributions which were regarded as being equal. The parties had agreed the terms of the 2015 consent order which had been approved by the court. DJ Wright accepted that the husband's income had decreased from that envisaged at the time of the consent order and, accordingly, reduced the sum of periodical payments payable to the wife. The judge was, nevertheless, satisfied that the husband had an earning capacity greater than his present income and determined that it was inappropriate to discharge the order for periodical payments as the husband had contended. Paragraph 34 of her judgment stated as follows:

"I understand that he is being treated for his depression and if this improves, he expects to feel more motivated going forward to find work. He has an earning capacity going forward but I am satisfied, even if not as high as his original company was once able to achieve, nevertheless there is an earning capacity greater than he is currently earning although it is difficult for me to quantify that on the evidence available. I am therefore not going to end this order for spousal maintenance as Mr C--- seeks. There is provision for review and there are trigger circumstances in which the order would end."

Paragraph 35 made plain the judge's decision that the husband had a continuing obligation to pay periodical payments to the wife.

8. As is common in litigation where one party is represented and the other party is not, the wife's counsel drafted the variation order and submitted it to the judge for her approval. He lodged the draft order by email on 14 May 2017 and the judge approved it by email on 16 May 2017. The order provided in paragraph 1 that the periodical payments to the wife would cease on the following events:

"The above payments shall end on the first to occur of:

(a) the death of either the Applicant or Respondent;

(b) the Applicant's remarriage; or

(c) Further order."

It is apparent that the order as drafted provided erroneously that periodical payments would end upon the husband's remarriage rather than that of the wife as he was identified as the applicant in the 2017 order.

9. Having received the sealed 2017 variation order, the husband organised his life and financial affairs in reliance on that order. On 29 October 2018, the husband wrote to the wife to inform her that he was getting remarried. It was a brief letter which read as follows:

"Dear R

I trust you are well. As J's, A's and J's mother I feel I should let you know that I'm getting married again early next year. I also hope your mum is doing ok.

Regards"

On 9 February 2019, the husband remarried and on 28 February 2019, the husband wrote to the wife to inform her of the date of his remarriage and to tell her that he was no longer going to pay her periodical payments as *"the court order allows for the payments to stop upon marriage"*.

10. During 2019 I understand that the wife was suffering from cancer and continues to do so. On 1 August 2019, the wife through the solicitors then acting for her invited the husband to agree that the 2017 order be corrected. The husband refused, conveying this by email on 7 August 2019. On 22 August 2019, the wife applied to correct the 2017 variation order pursuant to the slip rule. Her application was made on the basis that there had been an error in the drafting of the order, namely that the order provided incorrectly for periodical payments to end on the husband's remarriage rather than her own. The husband was given notice of that application and on 1 September 2019, he wrote to the court objecting to it. His letter made clear his belief that, upon his marriage, the periodical payments were to cease. He objected to the use of the slip rule which he understood to be for minor clerical omissions and typographical errors in court orders, saying *"…This is most certainly not a minor error to me as it has far-reaching implications. My new wife and I have based our whole future on the income we have between us…"*. He expressed concern that the alleged error had not been detected by the wife's legal team or the court at the time the order was made in 2017.

11. On 2 September 2019, DJ Wright made a without notice order on the papers, having read the application made by the wife. The order stated as follows:

"The order of 27th April 2017 be amended under the slip rule such that Clause 1(b) shall read

(b) The Respondent's remarriage; or"

The order also provided that an application to have it set aside, varied, or stayed should be made within seven days of receiving the order by anyone who objected to it.

12. On 20 September 2019, the husband wrote to the court to ask for a review of the order. He also enclosed a copy of the letter he had sent to the court dated 1 September 2019. On 14 October 2019, DJ Wright conducted a hearing at which the husband appeared in person and the wife was represented by counsel. The transcript of that hearing made plain that DJ Wright heard submissions from both parties, the husband

setting out in clear terms the significant ramifications of the apparently incorrectly drafted order on his personal circumstances and finances. The following exchange took place between the husband and the judge:

"JUDGE WRIGHT: ... but I could see when the paperwork came in to amend the order under the slip rule it seemed quite obvious to me that it was something that had just been missed and it seemed to me that I could see why was, it was because, if you like, the status of - of you and - and Mrs C--- had varied at different times in the proceedings where she'd been the applicant at one point but I think in the December 2017 proceedings you'd become….

Mr C---: I had applied for the variation.

JUDGE WRIGHT: --- you'd become the applicant and that's - that's where - which is why sometimes it isn't sensible, and it's a learning lesson, frankly, for all of us, Mr C, not to ---"

The judge explained that the 2017 order had been erroneously drafted and made clear to the husband that, if his circumstances had changed and he could no longer pay periodical payments in the sum ordered, he was at liberty to make an application to vary the periodical payments order. Her reasoning for amending the 2017 order under the slip rule was expressed in this way:

"… I can only deal with the issues of was there an error in the drafting of the order that didn't reflect the order that I made that was not picked up on? Yes. The decision that I made is there was an error. Should I, therefore, have corrected it under the slip rule? My decision is, yes, I should have corrected it. Are you telling me that there are consequences on you as a result of that? I understand that but it doesn't alter the principle that my - the order that I made should be accurate and this isn't an opportunity to review the order and say, OK, you meant to make that - because I have to - I'm satisfied that what was written up was not what I intended…"

13. On 29 October 2019, the husband applied for a variation of the periodical payments order and on 20 December 2019, the wife emailed the court indicating that she wished to enforce the periodical payments order. Regrettably, there were several procedural difficulties in listing. On 16 June 2020, DJ Wright listed the husband's variation application for an FDR on 22 September 2020 and on 22 June 2020, the wife issued an application to enforce the periodical payments order.

14. On 23 July 2020, the husband had a conference with counsel via the direct access scheme and he notified the wife's current solicitors of his intention to appeal the orders dated 2 September 2019 and 14 October 2019 on 28 July 2020. His notice of appeal was lodged with the court on 18 August 2020. That notice stated that he had not understood the apparent significance of the correction of the 2017 order until he had a conference with counsel. His decision to seek more specialist legal assistance was prompted by the wife's application to enforce the arrears in June 2020.

The Legal Framework: Appeals

15. This application is governed by Rule 30 and Practice Direction 30 of the Family Procedure Rules 2010 ["the FPR"]. Rule 30.4(2) provides that an appellant must file

the appellant's notice at the appeal court within 21 days after the date of the decision of the lower court against which the appellant wishes to appeal unless the lower court has directed otherwise. Rule 4.1(3)(a) provides that, except where the rules provide otherwise, the court may extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired).

16. Whilst an application for permission to appeal out of time is not an application for relief from sanctions, it is analogous to such a situation (see paragraph 16 of Altomart Limited v Salford Estates (No 2) Ltd [2014]EWCA Civ 1408). FPR Rule 4.6(1) provides a list of factors to be taken into account when considering relief from sanctions as follows:

"(a) the interests of the administration of justice;

(b) whether the application for relief has been made promptly;

(c) whether the failure to comply was intentional;

(d) whether there is a good explanation for the failure;

(e) the extent to which the party in default has complied with other rules, practice directions court orders and any relevant pre-action protocol;

(f) whether the failure to comply was caused by the party or the party's legal representative;

(g) whether the hearing date of the likely hearing date can still be met if relief is granted;

(h) the effect which the failure to comply had on each party; and

(i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant."

I note that, the court is required to consider *"all the circumstances*" when applying rule 4.6(1) and that an application for relief must be supported by evidence (rule 4.6(2)).

17. Paragraphs 40-41 of Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537 provide guidance on the approach to be adopted to applications for relief from sanctions. These can be summarised as follows: (i) if the failure to comply with the relevant rule, practice direction or court order can properly be regarded as trivial, the court will usually grant relief provided that an application is made promptly; (ii) if the failure is not trivial, the burden is on the defaulting party to persuade the court to grant relief; (iii) the court will want to consider why the default occurred. If there is a good reason for it, court will be likely to decide that relief should be granted, but merely overlooking the deadline is unlikely to constitute a good reason; (iv) it is necessary to consider all the circumstances of the case before reaching a decision that particular weight is to be given to the factors specifically mentioned in the rules. In Denton and others v TH White Ltd [2014] EWCA Civ 906, the Court of Appeal affirmed the guidance given in Mitchell and identified in paragraph 24 a three stage

approach to applications for relief from sanctions in the context of the Civil Procedure Rules 1998. The first stage is to identify and assess the seriousness or significance of the failure to comply or default; the second is to consider the reason for the failure or default; and the third is to consider all the circumstances of the case so as to enable the court to deal justly with the application.

18. R (Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1633 dealt with several issues of general application on relief from sanctions. So far as is relevant to financial remedy proceedings, Moore-Bick LJ held as follows;

a) Shortage of funds does not provide a good reason for delay. It is understandable that litigants would prefer to be legally represented and that some may be deterred by the prospect of having to act on their own behalf. However, the inability to pay for legal representation cannot be regarded as providing a good reason for delay. Unfortunately, many litigants are forced to act on their own behalf and the rules apply to them as well (paragraph 43);

b) Litigation is a complex process, and it is understandable that those who have no previous experience of it should have difficulty in finding and understanding the rules by which it is governed. If proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. Being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules (paragraph 44);

c) In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases, the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them (paragraph 46).

19. The approach of the family court to this issue is set out in Cooper-Hohn v Hohn [2014] EWCA Civ 896 where Ryder LJ emphasised the need for compliance with rules and practice directions when dismissing an appeal from a refusal to grant a very late application to adduce expert evidence (see paragraphs 41-46). In Re W (A Child) Re H (Children) [2013] EWCA Civ 1177 the President stated that the court was entitled to expect strict compliance with orders and non-compliance could be expected to have and would usually have a consequence [see paragraph 52]. In Re H (Children) (Application to Extend Time: Merits of Proposed Appeal) [2015] EWCA Civ 583, the President stressed that the approach to relief from sanctions in family cases should not differ from that applied in the ordinary civil jurisdiction. He noted that this was a point that might be considered in more detail on a future appeal whilst indicating that the underlying merits of the case were a potential consideration (see paragraphs 38 and 41).

20. Permission to appeal may be given only where (a) the court considers that the appeal would have a real prospect of success or (b) there is some other compelling reason why the appeal should be heard (rule 30.3(7)). In Re R (A Child) [2019] EWCA Civ 895, the Court of Appeal affirmed the test for the grant of permission to appeal as being that the appeal would have a real prospect of success, namely a prospect of

success which is realistic as opposed to fanciful. There is no requirement that success should be probable or more likely than not (see paragraph 31).

21. An appellate court will allow an appeal where the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings of the lower court (rule 30.12(3)). Paragraphs 11-14 of Re C (Relocation: Appeal) [2019] EWHC 131 (Fam) summarise the correct approach of an appellate court as follows;

> 11. In *Re F (Children) [2016] EWCA Civ 546* Munby P summarised an approach to appeals,
>
> 22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in *SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228* , para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."
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> 23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowska v Piglowski [1999] 1 WLR 1360* . I confine myself to one short passage (at 1372):
>
> > "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973] . An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."
> >
> > It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".
>
> 12. Lord Hoffmann also said in *Piglowska v Piglowski [1999] 1 WLR 1360, 1372* :
>
> "If I may quote what I said in *Biogen Inc v Medeva Plc [1997] RPC 1, 45* :
>
> '…[S]pecific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'
>
> … The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed."

13. So far as concerns the appellate approach to matters of evaluation and fact: see Lord Hodge in *Royal Bank of Scotland v Carlyle [2015] UKSC 13, 2015 SC (UKSC) 93* , paras 21-22:

> ”21 But deciding the case as if at first instance is not the task assigned to this court or to the Inner House … Lord Reed summarised the relevant law in para 67 of his judgment in *Henderson* [*Henderson v Foxworth Investments Ltd [2014] UKSC 41, [2014] 1 WLR 2600*] in these terms:
>
> ”It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.”

14. See also the Privy Council decision in *Chen-v-Ng [2017] UKPC 27* :

Recent guidance has been given by the UK Supreme Court in *McGraddie v McGraddie [2013] 1 WLR 2477* and *Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600* and by the Board itself in Central Bank of *Ecuador v Conticorp SA [2015] UKPC 11* as to the proper approach of an appellate court when deciding whether to interfere with a judge’s conclusion on a disputed issue of fact on which the judge has heard oral evidence. In McGraddie the Supreme Court and in Central Bank of Ecuador the Board set out a well-known passage from Lord Thankerton’s speech in *Thomas v Thomas [1947] AC 484* , 487-488, which encapsulates the principles relevant on this appeal. It is to this effect:

> ”(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge’s conclusion; (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.”

The Legal Framework: The Slip Rule

22. The *“slip rule”* is legal shorthand for FPR Rule 29.16 which reads as follows:

> *“(1) The court may at any time correct an accidental slip or omission in a judgment or order.*
>
> *(2) A party may apply for a correction without notice.”*
>
> Rule 40.12 of the Civil Procedure Rules 1998 is identical to FPR 29.16.

23. The slip rule is the mechanism whereby a clerical error of the court or its officials can be corrected or where error arises from some accidental slip or omission. Attempting to define in the abstract what constitutes an accidental slip or omission has been resisted in case law: as Goff LJ said at 195 of Mutual Shipping Corporation v

Bayshore Shipping Co [1985] 1 Lloyd's LR 189 *"the animal is, I suspect, usually recognisable when it appears on the scene"*. Correction pursuant to the slip rule is, however, limited to genuine error and cannot be used to correct an error of substance (see R v Cripps ex parte Muldoon [1984] 1 QB 686 CA; 3 WLR 465 at 473A-D).

24. It is possible under the slip rule to amend an order to give effect to the intention of the court though the slip rule cannot be used to enable the court to have second or additional thoughts. Once an order is drawn, any mistakes of substance must be corrected by an appellate court (see paragraph 25 of Bristol-Myers Squibb Co v (1) Baker Norton Pharmaceuticals Inc (2) Napro Biotherapeutics Inc [2001] EWCA Civ 414 per Aldous LJ).

25. Mubarak v Mubarak [2007] EWHC 220 (Fam) was a case where the very experienced counsel and/or judge made an error by an accidental slip or omission in the drafting of an order following a trial. Holman J corrected the order so that it properly reflected the court's judgment thereby permitting the wife to apply to vary the postnuptial settlement. The court was satisfied that the earlier judge had not intended a once and for all order with respect to capital, but had in fact intended expressly and deliberately to keep the power to vary a postnuptial settlement open until the husband had paid the lump sum in full.

26. I note that, in Swindale v Forder [2007] EWCA Civ 29, the Court of Appeal held that there was an inherent jurisdiction to amend an order to make the meaning clear and to reflect the intention of the court [see paragraph 24].

The Parties' Positions

27. Mr Maxwell-Stewart submitted that the issues raised by this appeal were sufficiently compelling for the grant of permission to appeal out of time. His case was that the 2017 order could not be amended under the slip rule because it was no longer an extant order. By the terms of the 2017 order, he submitted a clean break had been effected between the parties and there were no longer any legal relations between them subject to a court order. Thus, the court acted beyond its powers. He relied on the proposition that there was no reported case, on his research, where the slip rule had been used to revive an order that had ceased to have effect.

28. The grounds of appeal were as follows:

a) The court was wrong to make the 2019 orders allowing the 2017 order to be amended under the slip rule;

b) The court was wrong to amend the 2017 order under the slip rule because it had no power/authority/jurisdiction to amend under the slip rule an order that had ceased to have effect. Conversely, the court could only amend an order under the slip rule where it was an order which remained in force;

c) The court was wrong to amend the 2017 order on a without notice basis and should have had an initial full hearing. The decision to amend under the slip rule without notice was procedurally irregular and prejudiced the husband in that it put the onus on him to argue why the without notice order should be set aside when in fact it should

never have been made and/or never should have been made without a full hearing; and

d) Even if it had the power to amend the 2017 order pursuant to the slip rule, the court was wrong to do so because (i) of the delay between the making of the 2017 order and the application to amend; (ii) the husband had arranged his personal and financial affairs in reliance on the 2017 order; and (iii) the husband had no other remedy whereas the wife had a remedy against her former lawyers.

29. Mr Maxwell-Stewart placed much reliance on the fact that the 2017 order was no longer extant because the husband had remarried, thereby effecting a clean break between the parties with respect to financial provision following their separation and divorce.

Discussion

30. I have decided to examine the merits of the appeal first as my conclusions are likely to guide my decision on permission and relief from sanctions.

31. Turning first to the court's jurisdiction to amend the 2017 order under the slip rule, I am quite satisfied that the court had the jurisdiction to do so. FPR Rule 29.16(1) states that "the court may **at any time** correct an accidental slip or omission in a judgment or order" (my emphasis). The words *"at any time"* require no additional gloss or explanation and, further, there is no relevant ambiguity in the wording of the rule as a whole. Had it been intended that the jurisdiction pursuant to FPR Rule 29.16(1) only extended to extant orders, the rule would have so stated. It does not. I note that CPR Rule 40.12 is in identical terms to FPR rule 29.16 and likewise contains no provision limiting its application to extant orders.

32. There is a good reason for the absence of any time constraint in the ambit of the slip rule. This case is a perfect example. The error in the 2017 order - unrectified – deprived the wife of her entitlement to periodical payments once the husband remarried. That represented a significant injustice to her and moreover did not reflect the court's intention at the time of the 2017 hearing and order. There is an additional and important point, namely that court orders should be accurate. In that context, I note that FPR Rule 29.12(2) provides that a copy of an order made in open court will be issued to any person who requests it. That provision underscores the need for accuracy in a court order which, in those circumstances, is available to **anyone** who asks for it (my emphasis). The requirement for accuracy in an order made otherwise than in open court is equally compelling because a party's rights or entitlement to a remedy may be lost, or a party may be disadvantaged if the order is inaccurate. The erroneous 2017 order meant that the wife apparently lost her entitlement to periodical payments when the husband remarried, and the husband was financially disadvantaged in reliance on an inaccurate order. Correction of accidental slips or omissions at any time is thus consistent with the interests of justice and the fair resolution of proceedings.

33. In Space Airconditioning Plc v Guy [2012] EWCA Civ 1664, Mummery LJ stated in paragraph 53 that:

"I start from the elementary proposition that, if a judgment contains what the judge acknowledges is an error when it is pointed out, the judgment should be corrected unless there is some very good reason for not doing so. A judgment should be an accurate record of the judge's findings and the reasons for the decision…"

In my view, that elementary proposition applies with similar force to an erroneous court order.

34. I was unpersuaded by Mr Maxwell-Stewart's submission that the slip rule should not be used to correct an order which was not extant at the time of correction, in that here the husband's remarriage had created a clean break between the parties in respect of any obligation to pay ongoing periodical payments. If I were to accede to that submission, I would be permitting the husband to benefit from an error in the order in a manner which the court never intended. That would be profoundly unjust to the wife.

35. Mr Maxwell-Stewart referred me to two decisions: Munks v Munks [1985] FLR 576 and T v T (Financial Provision) [1988] 1 FLR 480. Neither assisted his case.

36. In Munks, the registrar made an order by consent on 9 February 1983 which purported to dismiss all the wife's claims for financial provision. On 17 February 1983 decree nisi was pronounced and on 4 May 1983 the marriage was dissolved by decree absolute. On 12 September 1983, the wife applied for financial provision which the husband countered with a plea of res judicata based on the consent order made on 9 February 1983. The wife challenged that order for want of jurisdiction as it was made before decree nisi was pronounced. A trial was held of a preliminary issue, namely whether the order made on 9 February 1983 was valid. Ewbank J ruled that the order was invalid or ineffective because ss. 23 and 24 of the Matrimonial Causes Act 1973 provided that the power of the court to make orders for financial provision arose on granting a decree of divorce or at an time thereafter and not otherwise. He considered that the error might be corrected under the slip rule by amending the date of the 9 February 1983 order to 17 February 1983, the date of decree nisi. The wife appealed and the Court of Appeal held that the registrar had no jurisdiction to make the order on 9 February 1983 as it was made before decree nisi. Ewbank J was also wrong to have used the slip rule in an effort to preserve an order made without jurisdiction. Munks can be distinguished from this case as, here, the District Judge did have the jurisdiction to make the order she did in April 2017. Correction of the erroneously drafted order in 2019 was not done to confer on the District Judge a jurisdiction which she did not have at the time she made the 2017 order.

37. In T v T, the parties had divorced. Following the divorce, a periodical payments order was made in favour of the wife and took effect until either the wife remarried, or the husband retired from his specified job or further order. After the husband retired, the wife applied for variation of the periodical payments order and her application was dismissed for want of jurisdiction. The wife's appeal was dismissed as the periodical payments order could only be varied up until one of the specified events occurred, in this case, the husband's retirement. That event brought the order to an end and the words "*until further order*" could not be relied upon to vary an order which had already terminated. Mr Maxwell-Stewart relied on this authority to demonstrate that, once an order had expired, there was no power of the court to revive it. The circumstances in this case are quite different as the wife did not apply to vary the

2017 order. Instead, she sought a correction of the erroneously drafted 2017 order. That was completely different to seeking a variation of an order after it has terminated and where that order was correctly expressed the court's intention.

38. Further, I was unconvinced by Mr Maxwell-Stewart's submission that the principles which arose on an application to set aside a financial remedy order were applicable. He relied on the following principles derived from J v B (Family Law Arbitration: Award) [2016] EWHC 324 (Fam) namely, (i) the application should be made reasonably promptly; (ii) the applicant must be able to show that he cannot obtain alternative mainstream relief which has the effect of broadly remedying the injustice caused by the absence of true facts; and (iii) the application if granted should not prejudice third parties who have, in good faith and for valuable consideration, acquired interests in property which is the subject matter of the relevant order.

39. An application to correct under the slip rule is simply not comparable to an application to set aside a financial remedy order for mistake. Put simply, an application to set aside an order based on mistake may be granted where the true facts on which the court made the order were not known by either the parties or the court at the time the order was made. In this case, there was no mistake as to the facts but there was an accidental error on the face of the order. I was not convinced that the principles derived from the case relied on by Mr Maxwell-Stewart could be properly applied to this application to correct under the slip rule. This was because the interests of justice in correcting an erroneous order outweighed the effect of delay in making the application especially in circumstances where rights had been lost. It also struck me as contrary to the interests of justice to require the wife whose rights had been extinguished or seriously compromised by an error on a court order to search for alternative and uncertain legal remedies outside those which would normally be available to her as divorced wife. The prejudice to her of not granting the application under the slip rule far outstripped any disadvantage to the husband. Finally, there was no comparable prejudice to third parties in this case as neither the husband nor his second wife had acquired an interest in property which was the subject of the disputed 2017 order. Property in this context cannot encompass an order for periodical payments.

40. It was clear that, in April 2017, District Judge Wright did not accede to the husband's request to discharge in its entirety the periodical payments order. Paragraph 35 of her judgment made plain his ongoing liability for periodical payments to the wife. The judgment contained no discussion as to any variation of the trigger events which might bring that liability to an end. Neither did the transcript of the hearing. In the absence of anything that suggested that the District Judge was proposing to vary the trigger events terminating liability on the part of the husband to make periodical payments, I am satisfied that the court's intention was to maintain the trigger events contained in the 2015 consent order. In coming to that conclusion, I am also fortified by the nature of the error in the 2017 order. It arose because, in the draft submitted to the court for approval, counsel then acting for the wife adopted the wording of the original 2015 order instead of altering paragraph 1(b) to reflect the fact that the wife was the respondent in the 2017 proceedings rather than the applicant (as she had been in the 2015 order). The error was wholly accidental and genuine though it was very unfortunate that it was not detected and corrected earlier.

41. The case law is plain that the slip rule can be used to correct an order to give effect to the court's intention. That was the case here. The error here was not one of substance because the court had made no determination altering the trigger events which would bring the husband's liability for periodical payments to an end. This was a case where the error on the face of the 2017 order was an error in expressing the manifest intention of the court.

42. It follows that grounds one and two lack merit and should be dismissed.

43. Ground three attacked the making of an order without notice to the husband. I can deal with this briefly. FPR Rule 29.16(2) permits an application under the slip rule to be made without notice. Having amended the order on the papers and without notice to the husband, District Judge Wright properly attached a notice to her order permitting the husband to apply to set aside, vary, or stay her order. He did so and the District Judge listed a hearing on 14 October 2019. The transcript of that hearing demonstrates that the court listened carefully, sympathetically and with an open mind to the matters raised by the husband. There was no prejudice to the husband in the procedure adopted by the court. Ground three lacks merit and should be dismissed

44. Ground four complained that the District Judge was wrong to exercise her discretion to amend the 2017 order. Mr Maxwell-Stewart complained that the wife's delay in making the application pursuant to the slip rule should have militated against the correction of the order and said that the court should have taken into account the husband's reliance on the 2017 order as originally drafted. He submitted that the husband had no remedy by which he might extinguish his liability for ongoing periodical payments.

45. I reject these submissions for the following reasons. First, the discretion to correct an order must be exercised in the light of the overriding objective in FPR rule 1.1(1) which is to deal with cases justly. Just dealing required the court to correct an accidental error on the 2017 order which, if not corrected, deprived the wife of her entitlement to ongoing periodical payments and failed to give effect to the court's intention. Second, the husband did have a remedy in respect of his liability for periodical payments, namely he could make an application for variation. That application would allow the court to examine his present circumstances alongside those of the wife and take into account, as a relevant matter, his reliance to his detriment on the erroneous 2017 order. Indeed, I note that the court is presently seised of precisely such an application. The passage in the October 2019 transcript cited in paragraph 12 above made plain that the District Judge took both those factors into account when reviewing her decision. Further elaboration by her was unnecessary.

46. Third, the complaint that the wife delayed in making the application suggested some sort of deliberate default on her part. I do not consider that to be a submission of any real substance. It is easy to see how both parties relied on an erroneous order and did not appreciate the significance of the error on its face. The husband was a litigant in person and relied on what was stated on the face of the 2017 order without apparently appreciating that the court had in no way altered the 2015 trigger events. The wife left court with an understanding that, though the amount of the periodical payments had reduced, nothing else had changed with respect to them. She was legally represented and, unsurprisingly, did not feel the need to scrutinise the order when it was approved. The husband's letter in October 2018 would not have alerted her to the error on the

face of the 2017 order – it did not even mention it. That letter read as a polite if brief notification of the husband's remarriage and gave no precise date for that event. The letter to the wife on 28 February 2019, after the husband's remarriage, did place her on notice that he would no longer make periodical payments in reliance on the 2017 court order. She consulted her former solicitors, and they wrote to the husband on 1 August 2019 about the 2017 order. It is not disputed that the wife was suffering from cancer in 2019 and I consider that this might have understandably caused her to prioritise her health and treatment. In any event, I observe that any delay in applying for correction of the 2017 order may not, of itself, have operated to disadvantage the husband if he had already made new financial arrangements at about the time of his remarriage.

47. Finally, I consider it undesirable for an application pursuant to the slip rule to be rendered unnecessarily complex. The court will properly have regard to all the circumstances when considering such an application, but it seems to me that, save in the most unusual of circumstances, the interests of justice in correcting an inaccurate order are likely to prevail over other considerations. There was no good reason in this case not to correct the erroneous 2017 order.

48. I dismiss this appeal by the husband. I do so in the knowledge that both parties have been affected by the error on the 2017 order and sympathise with them both. The husband's variation application will provide a proper opportunity for the court to scrutinise the parties' financial affairs and to make the orders it considers just having done so.

49. Turning to the grant of permission, I would not have granted permission to appeal. This case did not cross the threshold of having a real prospect of success on appeal as the above analysis demonstrates. Additionally, there was no other compelling reason to hear this appeal. The absence of decided case law on this very narrow issue was insufficient to warrant the grant of permission and there was no important point of law which needed clarification. Whilst I do not doubt that this decision will serve as a salutary reminder to practitioners and judges to exercise great care in the drafting and approval of court orders, that circumstance alone cannot justify the grant of permission let alone the costs incurred by both parties.

50. Should the husband be entitled to an extension of time to make his application for permission? His application for permission to appeal was made very late indeed. The delay was substantial and there was simply no good reason for the husband's failure to make a timely application. The fact that the husband was, until very late in the day, a litigant in person did not constitute a good reason for failing to comply with the rules. Likewise, the husband's failure to seek legal advice until about eight months after the time for appealing the order of 14 October 2019 had expired cannot justify the length of the delay in this case. Finally, the wife has been put to inconvenience and expense in defending this appeal and, in uncertain health, had to await the resolution of this appeal before the husband's variation application could be once more listed for financial dispute resolution. It remains to be so listed and is likely to be much delayed.

51. Taken together, all those relevant matters in FPR Rule 4.6(1) militate against the grant of relief from sanctions. Standing back and looking at all the circumstances including any necessarily limited consideration of the merits, I have decided that I should refuse

an extension of time for the husband to pursue his application for permission to appeal.

Conclusion

52. I repeat my sympathy for both the husband and the wife. That sympathy does not, however, justify the husband's application in this case.

53. That is my decision.