IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2020] EWHC 555 (Fam)

No.FD18F00083

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 11 February 2020

Before:

MR JUSTICE HOLMAN

(**sitting throughout in public)**

B E T W E E N :

T — Applicant

- and -

T — Respondent

(Application for financial relief after an overseas divorce)

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MR H. CAMPBELL (of counsel) appeared on behalf of the applicant.

THE RESPONDENT did not appear and was not represented.

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J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

1 This is the substantive final hearing of a former wife's application under Part III of the Matrimonial and Family Proceedings Act 1984 ("the 1984 Act") for financial relief after an overseas divorce.

2 I will for convenience refer to the parties as "the husband" and "the wife". The husband, who is Russian and lives in Moscow, has not participated in any way whatsoever in these proceedings. He has made no disclosure at all of his means. He is in breach of several orders to do so. He has ignored, and not paid a penny under, the interim order for maintenance and legal costs funding. He has not attended or been represented at this or any previous hearing.

3 I am quite satisfied that the husband has been served with all those orders and the documents in this case, and with notice of this hearing. His attitude is, accordingly, one of studied contempt for this court and these proceedings; and, frankly, contempt for his former wife, to whom he was married for 25 years and by whom he has two children.

4 The essential facts are as follows. The husband is now aged 50, and the wife is now aged 48. The parties are both of Russian origin and are Russian citizens. The wife, but not the husband, is now also a British citizen. They met in 1989 when the wife was at university and the husband had just left the Russian army. They married in Russia in July 1992. The wife was then aged just 21. Neither of them had any money.

5 The parties have two children. The elder, a daughter, was born in 1996 and is now aged 23. She is currently taking a Master's degree at University College, London. The younger, a son, was born in 2000 and is now aged 19. He is hoping to go to university this year. Both

children have dual Russian and British citizenship and currently live with their mother within Greater London.

6 The wife is highly educated. She has a law degree from Moscow Law Academy and a Master's degree in law from University College, London. She also has an MBA from Chicago Business School.

7 The husband has a Master's degree in finance.

8 In 2001 the husband purchased in Moscow the flat where he still resides at Miusskeya Square.

9 In September 2003 the husband suggested to the wife that she move to London with the children, which she did when she commenced her course at University College, London. She was at the time unaware of the husband's motivation. She, with the children, have lived in London ever since. She studied for her MBA at the London campus of the Chicago Business School.

10 The husband continued to live in Moscow, but travelled to London for several days each month and the marriage remained apparently happy, despite the separation.

11 At Christmas 2016, the parties and their children were all on a skiing holiday together in Andorra. The husband told the wife that he wanted a divorce, and informed her that he was living with another woman in Moscow, by whom he had four children, then aged 13, 11, 7 and 3.

12 It thus follows that the first of those children was born in about 2003 and at about the time that the husband encouraged his wife to move to London. This involves cruel deceit on his part. For 13 years he had lived a double life, completely unknown to his wife. Unsurprisingly, the wife decided that she would divorce him, and commenced proceedings by a petition issued in England in January 2017.

13 The husband avoided service of those proceedings, but in June and July 2017 he did engage in financial negotiations with the wife through English solicitors instructed by each party. During those negotiations, which were inconclusive, the wife held back from advancing her petition for divorce.

14 On 31 October 2017, the husband's English solicitors informed the wife's solicitors that in the meantime the husband had, without her knowledge at all, obtained a divorce in Russia which had become final on 19 October 2017. That involved further treacherous deceit by the husband.

15 However, although she had not had any notice of those proceedings, the wife decided that she would accept the validity of the Russian divorce. No financial provision has been made for her in the Russian divorce proceedings, and she later applied for, and was granted, permission to apply for financial relief after an overseas divorce under Part III of the 1984 Act.

16 I next describe that in April 2011 the husband had asked the wife to sign, and she did sign, on 19 April 2011, a post-nuptial agreement in Spain. It purports to be an agreement under Russian law, but was actually signed before a notary in Barcelona. The wife says that the husband told her that the purpose was to protect property in Russia from possible creditors,

and also that it would make it easier for him to do business in Russia if he no longer had to seek her agreement to deal with the proceeds of any business deals.

17 The wife has been advised that the effect of the agreement under Russian law is that on divorce she would receive the flat at Miusskeya Square but only when the husband's four children who live in the flat are no longer minors. That is in many years' time. She would receive nothing else.

18 In my view that agreement is not, under English law, of any relevance or effect at all, for a combination of three reasons. First, the wife had no legal advice whatsoever prior to, or at the time of, signing it. Although she has academic legal qualifications, she is in no sense a matrimonial or family lawyer. Second, there was no prior disclosure of the husband's means at all. Third, and most conspicuously, the wife was at the time continuously deceived as to the husband's second family and children in Moscow. Frankly, under English law that agreement is not worth the paper it is written on.

THE 1984 ACT

19 There is clearly jurisdiction in this case under section 15(1)(b) of the 1984 Act. The wife had been habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave, and for many years before that.

20 The restrictions under section 20 of the Act do not apply in this case.

THE DUTY UNDER SECTION 16

21 By section 16 of the 1984 Act, I must first decide whether in all the circumstances of the case it would be appropriate for an order for financial relief to be made by a court in England and Wales, and I must in particular have regard to the matters listed in section 16(2) of the Act which I now specifically, but briefly, address in turn:

(a) There is a distinct, genuine, and considerable connection between the wife and England and Wales. She is a British citizen. She has lived here since 2003. The husband has a connection too, although a lesser one. He encouraged his wife and children to move here in 2003 and for many years funded their residence here. Until 2016 he regularly visited and stayed with them here. His marital children are British citizens and have lived most of their lives here.

(b) There is also a considerable connection with Russia, where the marriage was dissolved. Both parties are Russian citizens. They were brought up there. They married there. The husband continues to live there.

(c) The husband has business interests in Spain and jointly owns a hotel there (see below) but, that apart, neither party has any particular connection with any country outside England and Wales than Russia, of which I am aware.

(d), (e) and (f) The wife has not received and is not likely to receive any financial benefit in consequence of the divorce in any country outside England and Wales. No order has been made in Russia for the benefit of the wife, and any possibility of her obtaining and enforcing one is illusory,

as more fully explained by the wife at paragraph 38(iv) of her statement dated 20 November 2018.

(g) There is no known property in England and Wales in respect of which an order in favour of the applicant wife could be made.

(h) The wife recognises – and I recognise – that she may face considerable difficulty and a protracted process in seeking to enforce any order which I may make, but there is a realistic possibility of her being able to do so against assets which the husband owns in Spain. In view of possible changes following on Brexit, she needs to be able to get on with this well before the end of 2020.

(i) The length of time since the Russian divorce in October 2017 is now a little over two years. The wife first applied for permission under Part III in November 2018 and there has been no appreciable delay on her part.

22 In the light of these matters and of the matters which I must shortly consider under section 18 of the 1984 Act, I am well satisfied that it is appropriate for an order for financial relief to be made for the wife in England and Wales, and I now proceed to consider the wife's application substantively.

SECTION 18 OF THE 1984 ACT AND SECTION 25 OF THE 1973 ACT

23 Both children are now over the age of 18, and section 18(2) of the 1984 Act is not in point in the present case. Nor are sub-sections 18 (5) or (6).

24 Section 18(3) imports into these proceedings the matters to which the court must have regard under section 25(2)(a)-(h) of the Matrimonial Causes Act 1973 ("the 1973 Act") and the duties under section 25(A)(1)(2) of that Act. In that regard, I do intend that the order which I make in this case will be, once it has been paid in full, on a clean break basis.

25 I thus now address the matters mentioned under section 25(2) of the 1973 Act in turn.

(a) Financial resources

The capital resources of the wife are negligible. She currently has liquid cash of about £15,000 but that will rapidly be outweighed by outstanding legal costs and the costs of enforcement. She does not have, and cannot afford, a car. The wife works as an investment adviser and currently earns £42,000 gross per annum, or about £30,000 net per annum, or £2,500 net per month.

The wife has a good career history, and is well qualified, including having the advantage of being totally fluent in Russian and reasonably fluent in English. I am a little surprised that she cannot command a somewhat higher salary, but I cannot fairly and safely attribute to her any higher earning capacity than that which she currently achieves.

I do not have the slightest information or idea what the current income of the husband is, and very little information indeed as to his property and other financial resources. The wife says that she believes the husband to be worth millions, but not tens of millions, of pounds.

There is good reason to believe that the husband continues to own the flat in Miusskeya Square in Moscow. The wife believes that to be worth the equivalent of about £400,000, and says that in 2017 the husband told her that it was worth that.

There is clear evidence that the husband owns 50 per cent of the shares in three Spanish companies, namely: Blancafort Resort Sociedad Limitada, Blancafort Estate Sociedad Limitada, and Blancafort Invers Sociedad Limitada. The other 50 per cent of the shares is owned by the wife's brother, Lougovoy Sergey, who lives in Russia and from whom, sadly, the wife is estranged, since he, the brother, is firmly aligned with the husband.

These companies appear to own and manage a large hotel and spa in or near Barcelona, of which I have seen some photographs, and which has 155 bedrooms. I have absolutely no idea of the value of it, nor whether there may be significant borrowing secured upon it.

A document from a search company, E-inform, now at bundle pages B52 to B57, appears to give net book values in round figures for the above three companies in 2016 of respectively, €1·7m; €2·3m; and €0·5m. Those sums total €4·5m, of which it appears the husband owns half, or €2·25m.

There is no evidence of, or guide as to, the true value to the husband of those assets.

The wife says that the husband has businesses in Russia known as Mercury, Orenburggrazhdamtoy, Monolit, and Yurpraktika. These are respectively a self-regulated organisation for insolvency practitioners, a construction company in Orenburg, a self-regulatory organisation in the construction business, and a legal consultancy. Whether all or any of these entities currently trade or have any value, and if so, what, or produce any income is completely unknown.

The only other clue as to the husband's wealth is that in June 2017 he sent to the wife an open addendum to the 2011 post-nuptial agreement, which the wife did not sign or agree to, but which offered to her a further £900,000 payable in five annual instalments in addition to the Moscow flat pursuant to the 2011 agreement.

There were also without prejudice negotiations between the English solicitors in 2017 to the existence of which I have referred. Despite the treacherous behaviour of the husband, I have declined to look at, and have not seen, the contents of those negotiations, and I have no idea at all what may have been said, either by way of factual information as to the husband's means, or any offers or proposals.

(b) I am not aware of any particular obligation or responsibility which either of these parties have save to each other and their children and, in the case of the husband, to the four children in Russia.

(c) The wife describes a comfortable but not a luxurious standard of living. The flat in Moscow does not appear to be especially large or

luxurious. Since coming to London she has always lived in rented property, with the husband paying the rent until 2017. For most of that time she lived in accommodation in London owned by the Russian state and the rent was relatively low.

The parties and their children enjoyed good, but not lavish holidays. When they stayed in hotels, they were four or five star hotels. When the husband came to London they ate out at good restaurants. The wife can drive, but does not own a car. The children were privately educated.

(d) The wife is now aged 48 and the husband 50. The duration of the marriage was 25 years.

(e) Neither party has any relevant physical or mental disability of which I am aware.

(f) The wife contributed to the full as a wife and mother to the two children and has, in particular, shouldered the main responsibility for caring for the children since 2003. Insofar as there is now wealth, that appears to have been generated by the entrepreneurial skill or efforts of the husband. Subject to (g) below, a fair appraisal is to view both parties as having during the marriage made equal contributions.

(g) The litigation conduct of the husband has been very bad, as I have already described. He deceived the wife by obtaining a Russian divorce behind her back, while masquerading as negotiating with her in the context of her English divorce proceedings. He has totally ignored all

orders of this court and has, as I have said, demonstrated contempt for this court and contempt for his wife as an entitled applicant to it.

In my view, there is also in the history of this case marital misconduct which it would be inequitable to disregard, or which, in the language of now historical authorities, is both obvious and gross. For 13 years from 2003 to 2016 the husband kept the wife and their children well away from Moscow and cruelly deceived her as to his double life with another woman by whom he had had no fewer than four children, for all of whom he appears to have been (and still is) providing. Although that story is not unique, it is hard to imagine a more grave or more sustained assault upon a marriage, apart from severe abuse and/or criminal behaviour.

I do have regard to that conduct under section 25(2)(g) but I do not add to the wife's award because of it, or as a penalty for it, since her award is in any event essentially needs-based (see below).

(h) I am not aware of any loss of benefit by either party of the kind referred to in, or contemplated by, paragraph (h).

ANALYSIS

26 At paragraphs 47 to 51 of my own relatively recent judgment in *Hammoud v Al Zawawi* [2019] EWHC 839 (Fam) I summarised the approach to cases of this kind based upon *Agbaje v Agbaje* [2010] UKSC 13. I will not repeat that summary, which is publicly available on the BAILII website.

27 The scale of the present case is much smaller than that of *Al Zawawi*, and indeed the present case cannot in modern times be characterised as a "big money" case.

28 The present case does raise in very acute form the difficulties faced by a court when there has been no disclosure whatsoever and the court has negligible information about the respondent party's means. These difficulties were considered now several years ago by Mr Justice Mostyn in *NG v SG (Appeal: non-disclosure)* [2012] 1 FLR 1211, and very recently by the Court of Appeal in *Moher v Moher* [2020] 1 FLR 225.

29 I am not willing in the present case even to hazard a "stab" at assessing the husband's overall wealth or income. I observe only that in 2017 he appeared to contemplate that the wife should receive the Moscow flat and an additional £900,000 payable by instalments. The E-inform material suggests minimum wealth of about €2·25m in Spain plus the Moscow flat, so total wealth of at least about £2·5m to £2·7m.

30 The wealth of the husband could be much more, and the husband only has himself to blame if I order more than he could reasonably afford to pay if the full facts were known.

31 I must guard against "a cheat's charter", and I bear in mind the proposition in paragraph (viii) of paragraph 16 of the judgment of Mr Justice Mostyn in *NG v SG* that the court must be astute to ensure that a non-discloser should not be able to produce a result from his non-disclosure better than that which would be ordered if the truth were told. This appears to be reflected also in paragraph 91 of the judgment of the Court of Appeal in *Moher*.

32 This remains a case under Part III and the sharing principle does not apply. In any event, I cannot evenly share wealth of an unknown amount, so Mr Harry Campbell, on behalf of the wife, has firmly pinned his case on need.

33 I agree that the wife is entitled to the security of owning her own home, albeit that she has been in rented accommodation for many years. She currently rents in the Northwood area, being unable to rent on the open private market more centrally. However, the Russian-owned premises were in Highgate and that is the area to which she and the children are accustomed.

34 Some representative particulars have been produced of flats in the Highgate and London NW5 and NW6 areas. These satisfy me that the wife reasonably needs about £2m with which to purchase a flat, and £200,000 for stamp duty. A reasonable figure for acquisition and moving expenses, redecorating, and re-equipping such a flat is £50,000, and I assess the wife's overall housing need at £2,250,000. Within such a sum there is a margin for trading down when the children are fully independent, and the wife may need to liquidate some capital to support her in older age.

35 Additionally, the wife seeks a further capital sum to reflect capitalised future periodical payments. The figure suggested in the wife's solicitor's open proposal of 6 February 2020 was £1,731,600 representing £3,700 per month multiplied by an actuarial future life expectancy of 39 years. That calculation was not done on a *Duxbury*-type basis and is on any view too high. Using the *Duxbury* table in At a Glance, Mr Campbell suggested a figure of about £770,000, representing capitalised maintenance of £40,000 (£3,333 per month) over the life expectancy. Either approach depends on assuming the wife's income need to be about £72,000 per annum (£6,000 per month) for the rest of her life as claimed in the form E, and deducting the wife's own net earnings of £2,500 per month.

36 Although I am sympathetic to the position of the wife in this case, and highly critical of the husband, I cannot accept that approach. This wife is well qualified. She has a good working

record. She currently earns £42,000 gross per annum. She is aged 48. This is a claim under Part III of the 1984 Act, which, as Lord Collins of Mapesbury said in *Agbaje*, at paragraph 71, is directed to "… the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court".

37 I cannot in this case require, or assume, a long term continuing maintenance obligation towards a wife who is capable of standing – and does stand – on her own two feet. For that reason there will be no continuing order for maintenance once the lump sum has been paid in full, and no additional element to the lump sum to represent capitalised maintenance.

OUTCOME

38 The husband must pay or cause to be paid to the wife a lump sum of £2,250,000. Although the wife's solicitors' proposal letter of 6 February 2020 proposed or offered six months in which to pay, I see no reason to allow to the husband more than four months (*viz* until 12 June 2020) in which to pay, after which the wife should be entitled to commence enforcement proceedings if not paid, and after which any amount outstanding will attract interest at the judgment rate from time to time.

39 The interim order for maintenance under paragraph 6 of the order made by me on 26 September 2019, namely £2,600 per month backdated to 23 November 2018, must remain in full force and effect until payment of the lump sum in full; and I revoke paragraph 6(3)(iii) of that order. Until the wife receives the capital and can purchase her own home, she has the additional expense of renting, for which the husband must fund her.

40 The husband has not paid a penny under paragraph 7 of the order of 26 April 2019 which provided for four monthly payments of £3,000 per month as a legal services order. I now

set aside that paragraph, of which he is in complete breach. Instead, there will be an order that the husband pays the whole of the wife's costs of and incidental to these proceedings on the indemnity basis, to reflect the husband's gross litigation misconduct which has inevitably significantly increased the costs to the wife of these proceedings.

41 I will hear submissions from Mr Campbell later as to whether I should, on the indemnity basis, summarily assess those costs or they should be the subject of detailed assessment by a costs judge.

42 The assessed and quantified order for costs made on 26 September 2019 itself, at paragraph 10 of the order of that date, will stand in the amount already assessed and ordered, and must of course be excluded from the overall assessment, so there is no double counting.

43 The wife's solicitors in their proposal letter of 6 February 2020, and Mr Campbell by his submissions, propose that I should, within the substantive order, make an order for the transfer to the wife of the husband's shares in the Spanish companies if the lump sum is not paid in full. I am not prepared to do that. The wife may be able to take enforcement proceedings directed at those shares in Spain, but it is not appropriate that I should make any such order at this stage of substantive adjudication of the claim. The wife does not want those shares, she wants a lump sum. Further, I could not transfer the husband's half interest in a quasi-partnership without at the least giving notice to the partner, who is unlikely to be willing to share as a partner with the wife, who is his sister from whom he is estranged.

44 For the avoidance of doubt, once the lump sum has been paid in full, the wife must relinquish any interest in, or claim to, the flat in Miusskeya Square, Moscow, notwithstanding the terms of the post-nuptial agreement dated 19 April 2011.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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** This transcript has been approved by the Judge (subject to Judge's approval) **