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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. 1662-1352-4258-6866

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 13 October 2023

Neutral Citation: [2023] EWHC 3098 (Fam)

Before:

MR JUSTICE MOOR

(**In Private**)

B E T W E E N :

ABIGAIL LAURA WILLIAMS — Applicant

- and -

ANDREW JOHN WILLIAMS — Respondent

MS R LLOYD (instructed by Vardags) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

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MR JUSTICE MOOR:

1 An application has been made to me pursuant to the case of *Hadkinson* to prevent the respondent, Mr Williams, from playing any part in this litigation unless he complies with the orders that have already been made against him. I have long taken the view that *Hadkinson* applications have no place in financial remedy proceedings prior to a final order being obtained. I first said this, in 2013, in the case of *Young v Young* [2013] EWHC 3637 and have made the same point in other cases over the following years.

2 I do understand that different considerations can apply after a final order has been obtained and where there is a default in complying with the terms of that final order. On occasions, the defaulting party then makes applications which are costly to defend and may justify a *Hadkinson* order. In this particular case, however, I would welcome applications from Mr Williams because, to do so, he must begin to engage in the proceedings. Section 25 of the Matrimonial Causes Act 1973 applies to this case. The court has to investigate. It has to satisfy itself as to his financial circumstances. It has to make orders on the basis of the circumstances set out in the checklist in s.25(2). It is impossible to do so if a party is forbidden from playing any part in the proceedings.

3 Everything that I have been trying to do today has been the opposite of preventing Mr Williams playing a full part in the proceedings. My orders have been designed to get him to engage in these proceedings and to provide the financial evidence and information that is required. With the greatest of respect to those who drafted this application, I take the very clear view that it should be dismissed. If an application does not have merit, a judge should not permit it to proceed, even in circumstances where the respondent to it has behaved in the way that this respondent has. The application is, therefore, dismissed whether it has been issued or not.

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4 This is an application that is made for a legal services funding order in relation to the costs, not just of the financial remedy proceedings in this case, but also in relation to overseas enforcement of orders that have been made in this jurisdiction. It is as bad a case of non-compliance with court orders as this court has ever seen. Mr Williams, the respondent, has resolutely refused to engage with the court proceedings. Indeed, at present, the allegation made against him is that he does occasionally engage with Mrs Williams's solicitors, but only, in fact, to cause trouble, rather than to be constructive. There are numerous orders that have been made against him that he has simply failed to comply with.

5 Equally, the disclosure that I have seen suggests that, apart from some jewellery, Mrs Williams has no assets in her name whatsoever, whereas there is documentary evidence in the case that indicates that Mr Williams may be a billionaire, but, because he has not filed his Form E, despite numerous orders that he should do so with penal notices attached, leading to applications for committal to prison for failure to comply, we simply do not know what is the current position. This situation, of course, inevitably increases Mrs Williams's costs considerably. It means that the entire burden of establishing the financial position in this case to date has been down to self-help, rather than compliance by Mr Williams with the rules. Moreover, she is not in a position to fund the litigation herself because he has not given any assets to her during the marriage.

6 I am quite satisfied that she has not been able to obtain any further LSPO funding. She has had funding with an organisation called Schneiders, who have provided £204,000 to her, but they have refused to fund the matter any further. Indeed, I am told that they are going to

recoup the £86,000 worth of costs orders that have already been made against Mr Williams once enforced via the third-party debt order that have only just made.

7 Equally, I am quite satisfied that, in accordance with the law that an applicant needs two show evidence of two refusals of funding, a further application was made to an alternative provider and this has been unsuccessful. The applicant, Mrs Williams, therefore, complies with that aspect of the legal requirements before an order can be made. I am also told, and, of course, accept, that the position of her solicitors, Vardags, is that the firm will not operate on a *Sears Tooth* agreement, whereby they would receive their costs out of any eventual settlement. Indeed, I am told that the firm would have to cease acting for her if its costs are unpaid.

8 I am, therefore, clearly of the view that an LSPO order is suitable in this case. I am entirely satisfied that, despite his nondisclosure, the respondent has the means to fund her litigation. There has been disclosure that has shown over £1 million in UK bank accounts that can be enforced against. It, therefore, simply comes down to a question of what is reasonable and whether I should direct that the resulting sum be paid by instalments.

9 Ms Lloyd, who appears on behalf of Mrs Williams, submits to me strongly that this is not a suitable case for payment by instalments because Mr Williams simply will not pay and, therefore, there would have to be enforcement proceedings on each such occasion. I accept that submission and, therefore, exceptionally, take the view that this is not a suitable case for payment by instalments.

10 I now have to consider how much he ought to be directed to pay in total. There are, of course, a number of authorities about what should happen in relation to costs that have already been incurred. I do take the view that this is one of those cases where it is suitable for Mrs Williams to have her outstanding costs reimbursed. It is abundantly clear to me that those costs have been incurred primarily as a result of the obfuscation and breach of orders by Mr Williams. She has had £204,000 worth of litigation funding from Schneider. If Mr Williams had cooperated with his obligations and duties, I am satisfied that this sum, of itself, would have been sufficient to have got Mrs Williams past a Financial Dispute Resolution appointment. It has not been nearly sufficient, solely as a result of Mr Williams' defaults and, in those circumstances, it is, therefore, appropriate that her aged debt, if I can put it that way, should be covered. That amounts to £190,420.

11 It is then said that, going forward, the case is going to cost £185,423 to an FDR that I accept will only take place if Mr Williams engages with the court proceedings. I cannot make any orders that are greater than what is sought and I, therefore, do take the view that any order that I make should be no greater than that figure. Of course, that does not prevent a further application being made, if it proves necessary.

12 I have to consider whether £185,423 is the right figure. Of course, I could go through the schedule line by line. I could see whether I thought that so many letters had to be written or instructions had to be taken for as long as claimed, but this is not one of those straightforward cases where Mr Lister, who is the partner handling Mrs Williams' case can say that, in the run-up to the FDR, all he has to do is, for example, file a statement under s.25; instruct one expert; instruct counsel; and attend the FDR. He cannot say his costs will be limited in such a way. He is quite unable to say what further means of enforcement may be necessary, given the abject failures of the respondent. One obvious aspect is the costs of the committal application that I have to hear on 25 October 2023.

13 I have, therefore, come to the clear conclusion that I should accept the figure in its entirety. I am equally clear that, by doing so, there is no prejudice to Mr Williams given that Mrs Williams will have to give an undertaking to repay if any of the money is not spent or if it is directed at the end of the trial that there should be a repayment. I have absolute confidence that Vardags will not spend money unnecessarily in this case which would incur the wrath of a judge going forward. I, therefore, take the view that both of those items claimed should, therefore, be allowed in full.

14 The third item is foreign lawyers for a freezing injunction. I am of the view that this is a case where there should be some form of overseas litigation to support the orders that this court has made. I have already mentioned the fact that there is documentation that suggests that UBS in Monaco holds the best part of £1 billion on behalf of Mr Williams and/or his companies.

15 It is right to say that his accountant, Mr Matthew Denney, who gave evidence on oath before me earlier this morning, found that very surprising and, in one sense, he ought to know. I do not think he was trying to mislead me. He certainly gave every indication that he was telling me the truth. Of course, I have not been able to investigate. I accept, of course, that the position may, in fact, turn out to be that there is not this money available, but, obviously, there needs to be a very careful and documented explanation as to why that is not the case, given the documentation that Mrs Williams does have that suggests that this money exists. In any event, absent Mr Williams cooperating, the only evidence before me is that there is £900 million-odd in UBS in Monaco.

16 When a husband fails to cooperate, Mrs Williams is entitled to apply in the overseas jurisdiction to freeze the money. Indeed, if she was successful in freezing a significant sum of money like that, I anticipate that it would only be a very short space of time before Mr Williams had instructed lawyers to come onto the record and had appeared in front of me with leading counsel to apologise for all his sins and try to get the case back on track. I am, therefore, satisfied that the application should be made in Monaco.

17 I am also of the view that the application in relation to ABB should be made. The documentation in relation to that suggests that there may be something in the order of $230 million outstanding in the ABB accounts. Now, I appreciate it is not quite the same as UBS because it does appear to involve some sort of payment to some people called IMF. I think it is IMF. I am not quite sure who they are. Again, of course, if the husband was cooperating, he would be able to tell us, but he is not. So I am satisfied that an application to freeze that money would also be an appropriate piece of litigation to institute.

18 I am, however, much more sceptical about applying in Switzerland in relation to Julius Baer where it is thought that there is £500,028. To do so would cost £74,700. I simply do not see that as being money well spent, certainly not at this stage of the litigation and certainly not in the context of it appearing that there may well be £1 billion in UBS Monaco.

19 I have, therefore, come to the conclusion that I should reduce the amount for foreign lawyers. I am going to reduce it down to £175,000, which I am of the view will be sufficient to enable Mrs Williams to instruct lawyers in both Monaco and in relation to ABB to obtain mirror orders and disclosure. Of course, there are also lots of other orders potentially that she could seek against N26 bank and the like, but the court has to ensure that there is a focus on what is the core issue in this case. The core issue is to discover whether or not £900 million exists in UBS and $200 million in ABB.

20 I will therefore make LSPO orders in the sums of £190,420 to cover outstanding fees; £185,423 to cover the continuing litigation in this jurisdiction; and £175,000 to cover overseas litigation.

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21 I did not, in my earlier judgment, consider the costs of the disbursements, namely experts' fees. I have already decided that it is necessary to obtain a valuation of the commercial property and a business valuation report. It might have been different if the respondent had cooperated fully, but he has not. Therefore, I have already found that these expert reports should be obtained.

22 In one sense, the commercial property valuation which will cost £50,000 plus VAT seems an enormous sum of money. Having said that, the cost of the business valuation expert, which is said to be £35,000 plus VAT, could be said to be on the low side. I have no doubt that Kellie Gread, if she were instructed, would incur fees considerably more than that figure, given my experience of the costs that are incurred by accountants in these cases. Overall, though, I again take the view that I must simply accept these figures. The respondent could have come along and disputed the figures. He has decided not to do so. I, therefore, accept the figure claimed, namely £102,900 inclusive of VAT for these two expert reports.

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CERTIFICATE

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