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FAMILY COURT SITTING AT
THE ROYAL COURTS OF JUSTICE



No. 1662-5518-4884-0020

[2024] EWHC 1298 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 20 March 2024

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

JENNY ALZENA HELLIWELL

Applicant

- and -

SIMON GRAHAM ENTWISTLE

Respondent

MR R HARRISON KC and MS J PALMER (instructed by Payne Hicks Beach LLP) appeared on behalf of the Applicant Wife.

MISS D BANGAY KC and MISS L NEWMAN-SAVILLE (instructed by JMW Solicitors LLP) appeared on behalf of the Respondent Husband.

J U D G M E N T

MR JUSTICE FRANCIS:

- 1 This is an incredibly sad in a case which has gone on as long as it has, with the expense that it has caused, and with the lack of success, from the husband's perspective, of his claims. Here we are today with the wife's costs of this hearing – which is principally about costs – being £26,000 odd, and the husband's costs of today being £23,000 odd. I dare say that those figures include other things like doing some corrections to the Judgment and that sort of thing, but the fact is that another £50,000 plus has been spent on this litigation.
- 2 I am going to start by just identifying the relevant rules that I find apply here. Mr Harrison has very helpfully set them out in his document, and he draws my attention to the fact that we are dealing here with a show-cause case, and, in those circumstances, Mr Harrison says that we start, as it were, with a “clean sheet” because these are not financial remedy proceedings. It is right to say that the first application in this case was the wife's application to show cause why the husband should not be held to the terms of the prenuptial agreement. But the wife has also made an application for a financial remedy order, and I think really these are financial remedy proceedings that happen to include a show-cause application. I do not think the technicality of issuing a show-cause application takes it away from that.
- 3 I find that the principles that apply are r.28.3 and that is that the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party. What has happened in terms of the costs incurred I have already dealt with in my substantive Judgment. But there are some really crucial parts of this and I am going to set them out in short order because I have heard very lengthy submissions and it is already half past four in the afternoon. But the parties do need to know why I have made the decision that I have.
- 4 I have said a lot in my Judgment already about the inappropriate stances taken by the two Dubai firms. On the one hand you have the absurd claim on behalf of the wife that she is going to seek maintenance against the husband when she has got £70 million odd worth of assets, and in any event the only way she could seek maintenance was to apply Dubai law, which plainly she did not want to do because she wanted to rely on the prenuptial agreement which provided that English Law should apply. I have said other things in my Judgment about the position that was taken by her.
- 5 The husband – via his Dubai solicitors – took up the absurd position of a claim for £10 million. Although it is possible for him to say, “It is not my fault. I was taking advice”, he signed the agreement – that I have found is very significant in this case – saying he gets nothing. To leap from nothing to £10 million is obviously absurd because by the time we get an offer – by the time JMW properly looked at this case and Miss Bangay had become involved – the offer is down to £2.5 million. Nothing can better state the absurdity of the husband's opening position than the fact that he collapsed it by 75 per cent.
- 6 But those matters, in a sense, go away. I have said that they created a very bad atmosphere. I accept that this is a case where I am not going to hold it against either party for not mediating. I know there was a clause in the prenuptial agreement about that but I have set out in my Judgment the reasons why I think it is unlikely that mediation would have been at all helpful in this case. As any mediator knows, there are some cases which are not suitable and one of those examples is where there has been – to use as neutral a phrase as I can – really bad acrimony between the parties. This case has probably got far more than that but I have avoided going into that sort of issue and I am not going to fall into that trap now.

- 7 In April 2023, the parties attended a private FDR before a very experienced KC in this field. What advice he gave I must of course never know and I do not know. But what I do know is that after the private FDR, the wife made an offer to settle the case for £500,000. In my judgement that offer was spot on. It was spot on because it was the right number with a bit added, and if I was advising a rich person – and I do not say that in any pejorative way – how to sort a case out, I would say, “Be generous at this point”, and I often say to people when I am doing FDRs, “You can afford the luxury to buy off the problem”. I have made an award of £400,000 so my judgement is that £500,000 really was a spot-on offer and the husband should have taken it.
- 8 Everything that has been spent since that offer was made is a consequence of his refusal to accept that offer. It gets worse because he took until August 2023 to make his own offer, and that offer was £2.5 million. The principal difference between the positions taken is whether the husband gets a house outright or not. You can put any number of different factors into it when you go into the detail, but the husband thought he was entitled outright to a property in Dubai. I found that the husband was entitled to a rental property for a short period of time.
- 9 Even if there had not been a prenuptial agreement, he would not have got anything like that money at a final hearing before me. Again, the significant costs in this case have been incurred in consequence of that high, inappropriate and incorrect offer that the husband made in August 2023.
- 10 The wife improved on her offer and increased it to £800,000. It was time limited and having had that time limit explained to me by Mr Harrison, I accept a lot of that explanation because he says that the £500,000 was always open to acceptance in the background anyway. I can well see that the wife might have said, “Well, I am just going to up my offer by a really big amount” – frankly that was an offer of an increase of more than 50 per cent – just again to see if she could, as I have called it, “buy off the problem”. It did not work.
- 11 In a perfect world, if I had been writing that offer – which of course I was not – I probably would have said that the £800,000 offer is open but every single penny we spend on costs after three weeks from now – or whatever period is chosen – we are going to take off that £800,000 offer. In effect saying if the husband makes the wife incur any more in costs, the husband will be paying from now on. Again, the husband did nothing. He rejected the £800,000 offer before it expired. He carried on and he brought this case with a mixture of, in my judgement, his lack of frankness, some findings – I am afraid on my part – of his dishonesty, and with a complete lack of realism of what his case was worth. The parties went through this painful litigation and the husband is actually worse off now than he would have been if he never brought a claim in the first place, which is tragic for everybody.
- 12 I cannot simply say I am not going to make a costs order in the light of that, because if I do that I am saying, “Please carry on and litigate away in the Family Division and the rich person will always underwrite your costs”. Since the demise of *Calderbank* (and it is very controversial whether *Calderbank* was a good, bad or indifferent thing, but the fact is it is not there) it is “cards on the table” and people have to negotiate sensibly.
- 13 Rule 28.3, FPR 10 also requires me to have regard to the financial effect on a party of any costs order. Miss Bangay makes the very good point which is that what is being sought is 37 per cent of the husband’s needs award. There are many ways you can describe percentages but I agree that the amount that is sought is both arbitrary and it is significant. I do not think it is fair for me to complain that it is arbitrary because if Mr Harrison was after all of the wife’s costs, it would have been plainly too much. He is entitled to ask for

something and so somewhere, somehow, one has to come up with a number and the number he has come up with is £150,000.

- 14 The husband already has to deal with, as a consequence of my Judgment, his own outstanding costs which were, at the time of my Judgment, £233,000. That has now gone up now by about another £20,000 odd. He is obviously going to have to deal with his own costs. Having said that, when I assessed his needs, I treated his outstanding costs obligation as part of the need, i.e. as a debt he had to pay. In other words, effectively I was underwriting his outstanding costs by adding them into his needs, and the consequence of that was that although he had to pay his own costs, he had to pay an amount that, when I assessed his needs, I included that number in the costs that he had to pay.
- 15 Having said that Mr Harrison has gone in with an arbitrary number and then saying I can see why he has done it, what do I, as the judge, do in terms of arriving at a number? In my judgement I have to make the point that people cannot litigate freely and without consequences of what it is they are doing. On the other hand, I have to bear in mind cl.(f) of r.28.3(7) which says, “The financial effect on the parties of any costs order”. Anything that I order the husband to pay of the wife’s costs is taking it away from the needs assessment that I made.
- 16 However, as I said in the main Judgment, and it will be repeated this afternoon, actually my needs assessment was a generous one. For example, I accepted without question the amount of rent that the husband needed to pay – in other words, the type of property he needed. I went for the figure he put forward. Of course, the difference was that he wanted it outright and I gave him rental for a short period of time. The figure was the husband’s 5 per cent and his capital value of the property.
- 17 As I have said in other cases, there is nothing inconsistent with the judge assessing needs at one number and then saying, “You have to pay costs from that”. Unless you are dealing with an assessment of needs at basic subsistence level, the fact is that need is a flexible concept, as has been said time and again, and you have just got less money to spend on your needs. Whatever you needed to spend, whether on food, cars or rent, you have to spend less now because you have less money. You can obtain a cheaper property, a cheaper car, have cheaper holidays, or whatever it is.
- 18 Where do I arrive at the figure which expresses the court's firm view that one cannot walk away with no consequences? Respecting the husband’s need and the effect on the wife of receiving a costs order being frankly irrelevant, and I do not say that with any disregard to her. But if you have £50/60/70 million, the sorts of numbers we are talking about in costs here are, in all real terms, irrelevant, whereas to the husband it is real money.
- 19 Doing the best that I can, I am going to order the husband to pay £75,000 towards the wife’s costs. It is my assessment of a figure which will hurt him, not in a punishment sense, but in the sense that I agree with what Mr Harrison says: again and again, the judges in this Division have to send out clear messages to those that are advising people in this field of work that you cannot just litigate on a blank cheque, or on the basis that someone else is going to underwrite your fees. £75,000 is an enormous amount of money to almost all people in this country and almost all people who come into this court. It is a lot of money to this husband, but it is not going to undermine the order that I made. It is not going to undermine the figures in my Judgment. I find that, applying the wide discretion afforded to me in relation to costs orders, it is fair as a representation of the way that the judges of this Division have to approach the issue of costs.

20 I am going to say that that amount will be netted off the amount that the wife is to pay the husband pursuant to the order that follows my Judgment on the substantive issue.

CERTIFICATE

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This transcript has been approved by the Judge.