



Neutral Citation Number: [2024] EWHC 1442 (Fam)

Case No: 1710-3481-7262-7160

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE
AND
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2024

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

JK
- and -
LM

Applicant

Respondent

Roxane Reiser (instructed by **DMH Stallard**) for the **Applicant (mother)**
The father in person (by CVP)

Hearing dates: 23 May 2024

Approved Judgment

This is the Judge's note of the *ex tempore* judgment which was delivered on 23 May 2024.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private.
The judge has given leave for this version of the judgment to be published.

The Honourable Mr Justice Cobb :

1. The parties before the court are JK (who I shall refer to herein as “the mother”) represented by Ms Roxane Reiser, and LM (hereafter “the father”) who appears unrepresented at this hearing, having in the last few days parted company with his formerly instructed lawyers, the Family Law in Partnership (‘FLiP’), for the purposes of this aspect of the case at least.
2. Last month, Peel J directed that this hearing was to be “fully attended” which means that the parties should attend in person; yesterday, the father requested permission to attend by way of CVP “for medical reasons” following a car accident in the Czech Republic. Notwithstanding the earlier direction, and the overwhelming desirability of hearings of this kind being conducted face-to-face generally, and notwithstanding that I believe that the father is or was expected in England this upcoming weekend to see his son, this request was granted in order to ensure his participation in the hearing.
3. There are before the court today four applications issued by and on behalf of the mother:
 - i) For a legal services payment order (dated 13 March 2024) to cover the costs of the mother’s legal representation in ongoing proceedings under Schedule 1 Children Act 1989 (‘CA 1989’) and section 8 CA 1989; in the Schedule 1 proceedings she seeks financial provision for N. In the section 8 proceedings, the mother seeks a prohibited steps order and a child arrangements order; the father (by application dated 3 April 2024) seeks leave to remove his son permanently from his current home in England in the care of his mother to live with him in the Czech Republic;
 - ii) For a freezing order (in the High Court) under section 37 Senior Courts Act 1981 (the application is dated 21 May 2024) in relation to a sizeable portion (£5m) of the father’s assets in England and Wales;
 - iii) For an order that a restriction be entered against the title to a property in Richmond (SW London) in which the father has or may have an interest;
 - iv) For directions in relation to the Schedule 1 CA 1989 claim.

These Schedule 1 CA 1989 proceedings which were issued out of the Family Court in Brighton on 13 March 2024 were transferred on issue by HHJ Farquhar to be heard at High Court Judge level; this order was made on the basis that the mother’s solicitor had certified that the net assets of the parties were/are said to be in the region of £25-50m.

4. For the purposes of determining these applications, I have received evidence in witness statement form from the mother and yesterday I received a statement in reply from the father; no financial disclosure of any sort has taken place though there are useful exhibits to the statements which contain financial information. I have a helpful Practice Direction note from Ms Reiser. I have received further information and schedules during the hearing this morning; Ms Reiser and the father both made oral submissions.

5. This *ex tempore* judgment is delivered at the conclusion of the hearing.

Background

6. The parties are Czech nationals. They have one child who is 6 years old; I shall refer to him as 'N'. The mother and father met in 2015 and lived together until about 2019. The mother has lived in this country for most of the last four years.
7. The mother and N currently live in Hove, East Sussex, in rented accommodation. The father lives in the Czech Republic with his partner and two daughters from a previous relationship. The father is no stranger to England; he attended university in the UK and I am told that he regularly travels to the UK to see N. A supervised contact regime was put in place at the recent First Hearing Dispute Resolution Appointment on 14 May 2024 which contemplates further regular contact visits.
8. In the initial year or more following the relationship breakdown, the father financially supported the mother and N by paying the mother's rent and general expenses, and funding N's attendance at a private nursery school. The mother's case is that since July 2022, the father's financial support for her and P reduced significantly to payments of £400 p.m. (which she describes as sporadic). The father accepts that he reduced the financial support to the mother, though he asserts the payments of £400pm have been regularly made. Given the reduction in financial support, N was withdrawn from private nursery/education and now attends a local state school. It is the father's case that the mother and he had agreed that she would live in England for a period of one year only, and that when she exceeded that period (by returning to England after an extended visit in the Czech Republic) in early 2023 without his consent he felt that he was no longer obliged to continue the previous level of financial support. The father claims that the mother's actions in moving with N back to England in early 2023 constituted unlawful 'removal or retention' of N in England away from his place of habitual residence, but accepts that he took no steps to initiate proceedings under the 1980 Hague Convention.
9. Private law proceedings under the CA 1989 were commenced in the Family Court in Brighton in January 2024, following a disagreement between the parties. The father had sent the mother a WhatsApp message, threatening to remove N from this jurisdiction to the Czech Republic. In light of that message, the mother applied for and obtained a prohibited steps order, to prevent the threatened action. The father accepts now that the threat was "ill-advised", sent in "frustration" and this is something he now regretted. HHJ Farquhar made an order preventing either party from removing N from the jurisdiction without the other party's consent.
10. As I have said, the parties recently attended a FHDRA in the section 8 CA 1989 proceedings; the father abandoned an earlier asserted claim that the English court did not have jurisdiction to determine welfare issues concerning N. Two further hearings have been listed: (a) an interim contact hearing on 15 July 2024 and (b) a Dispute Resolution Appointment on 26 September 2024.

The parties' financial circumstances

11. I know relatively little about the parties' financial circumstances other than what is asserted in their statements. As I have already mentioned, there has been no financial disclosure.
12. The mother claims to be of modest means. She earns a net salary of £1,864 p.m. / £22,372 p.a. as an enrolment officer at an English language centre in Hove. She receives Universal Credit of c. £780 p.m. and child benefit of £96 p.m. Her total net income is £2,740.36 / £32,884 p.a. She deposes to having no savings or other assets.
13. With regard to the application for the legal services payment order, the mother has provided written evidence from a number of legal lenders and various banks confirming that they would not be prepared to lend to her or provide her with any personal loans to fund litigation. In a letter dated 5 March 2024, the mother's solicitors have made it clear that if they do not receive payment of outstanding fees, they will not continue to act for her, and that they are not prepared to act on a Sears Tooth agreement.
14. Accordingly the mother seeks the following global sum of £236,080 by way of legal services payment order, which is made up as follows:
 - i) Outstanding and unmet legal costs:
 - a) Children Act Proceedings: £21,592 (incl. VAT).
 - b) Schedule 1 Proceedings: £39,860.48 (incl. VAT).
 - ii) Ongoing/future legal costs provision
 - a) Children Act Proceedings: £95,472 (incl. VAT) up to and including the Dispute Resolution Hearing on the father's application for leave to remove. This includes solicitors fees of £35,472 and estimated counsel's fees (silk) of £60,000, both inclusive of VAT;
 - b) Schedule 1 Proceedings: £79,156 (incl. VAT). This includes £65,316 in solicitors' fees and £12,600 (incl. VAT) in counsel's fees up to and including the FDR.
15. It is the mother's case that the father is an extremely wealthy and shrewd businessman who has – she says – made his fortune developing an online payment platform, FP, which is a leading online payment-collecting service provider for small and medium sized businesses in the Czech Republic. The father accepts that he did indeed develop this platform. It is agreed that in 2020 the father sold a majority (53%) interest in FP to a third party. This is also accepted by the father. The mother says that the sale yielded approximately £34.5m to the father and refers to publicly available material in this regard; the father maintains that he is currently unable to divulge the details of the sale, and/or notably the price obtained, given the existence of a non-disclosure agreement. He has told me that he will ask the purchaser for permission to disclose the amount into these proceedings. He says that the monies which he did receive he has loaned “to other companies in my family's portfolio such as RTB (working in agricultural technology), GBM (a mobile data company). These are all owned by UB s.r.o.”. An s.r.o. is a limited liability company in the Czech Republic.

16. The mother's case is that the father now effectively runs UB s.r.o. in the Czech Republic. The mother further maintains that the father was until recently also in significant control of UB Capital Limited a UK holding company with 50% of the shares in UB s.r.o.; she points to the fact that the father has recently removed himself from this role and has appointed the B Trust in his place. The mother points to the fact that UB s.r.o. held capital reserves of £8,247,098 in 2023 and recorded a profit of £6,954,785 for the year.
17. The father paints a vastly different financial picture. He describes himself as "an employee of UB Services s.r.o." who merely works for them as the Strategy Manager; he says that his current income for his work for 2024 is about £24,100 gross per year. He also says that he has been receiving interest from loans for 2024 (but this will now come to an end) equating to approximately £46,000. He accepts that he is the "the Director and sole shareholder" of UB Capital Limited., but this "never made or owed any money and is currently being liquidated as we do not have any business activities in the UK". The father's case is that the mother "is motivated by money and living a luxurious lifestyle", and is wrong about his disposable wealth.
18. I pause here to observe that a screenshot of the UB s.r.o. website proclaims that it is a "technology business incubator and investment group" with a €10m turnover, 23 projects and 140 employees. The same UB s.r.o. website makes clear that the company has built and/or operates brands including RTB and GBM, small companies to which the father has said that he has "loaned" money (see §15 above).
19. The father claims to have six bank accounts with negligible balances. He says that he has no investments. He says that he owes his father the sum of £70,000 and currently owes his solicitors (FLiP) £20,000 in respect of these proceedings and an outstanding invoice of nearly £15,000 in respect of the child arrangement proceedings.
20. The father deposes to the fact that the family has for several years been planning for the creation of a trust fund. He told me about this at length in his oral submissions this morning. The culmination of years of planning – he says – is that in March 2024 the 'B Trust' was created. Of this trust, he says in his statement that:

"The primary purpose of the Trust is to support my children. It is to pay for their education, pay for health care, and provide accommodation when they become adults. I am currently the only Trustee, but my father is the owner/founder. I care for all the family assets, but I have no right to manage the wealth of the Trust without the permission of the family board which includes all of the beneficiaries of the Trust. I cannot change the list of the beneficiaries and I cannot be a beneficiary myself."
21. He told me that all of the family are placing all of their assets in this trust. It is not, he emphasises, a device to frustrate the mother's claims for N.
22. It appears that the father's father (N's paternal grandfather) owns a leasehold property in Richmond (SW London). In April 2024, Withers LLP applied for a priority search in respect of this property, which suggested an imminent sale or transfer.

Interestingly, it appears that the father paid Withers LLP a sum of money at or about the same time, which suggests that he settled their invoice for this work.

23. Looked at in the round, it is the mother's case that the father supported by the paternal grandfather have taken active steps to put the father's interest in the Richmond Property and his shareholding in UB Capital Limited out of this court's reach. The mother relies on the following specific events in support of her application for a freezing order:
- i) It is no coincidence that on 20 March 2024, seven days after her application for legal funding, the B Trust was created;
 - ii) On 4 April 2024, the day on which the father was served with the mother's Schedule 1 application, the father was removed as an individual person with significant control from UB Capital Limited and the B Trust was appointed in his place;
 - iii) On 3 May 2024, Withers LLP made the application for a priority search in respect of the Richmond Property to which I have just referred. As I have also said, the father's disclosure reveals that he paid Withers LLP the sum of c. £1200 at or about this time (which Ms Reiser invites me to conclude is linked to this activity);
 - iv) On 14 May 2024, the father applied to strike off UB Capital Limited from Companies House;
 - v) On Saturday 18 May 2024, the paternal grandfather emailed the mother an offer of settlement stating 'for the past two years I have been working on setting up a trust fund which I have recently completed. Our whole family is gradually putting all property into the fund, including [the father], for our current and future grandchildren'. The 'offer' was time-limited for 24 hours, during a weekend when the mother had no access to legal advice. The offer included the following condition.

"I ask you to consider my offer. If you do not let me know tomorrow i.e. Sunday 19.5.2024, I will take it that you will not accept the offer. The offer is only valid this weekend on the condition that you and N immediately cease all legal proceedings, meaning you immediately cease all legal and court activities. Please do not email me with any counter offers or modifications to the offer. The offer stands as is without any modifications".

The law: Legal Services Payment Order

24. The court's power to make a legal costs funding order in respect of the costs of both the Schedule 1 CA 1989 claim and the Section 8 CA 1989 claim is undisputed: see *Currey v Currey No.2* [2006] EWCA Civ 1336; [2007] 1 FLR 946, and *CF v KM (Financial Provision for Child: Costs of Legal Proceedings)* [2011] 1 FLR 208. The common law jurisdiction operates in synthesis with the statutory scheme which is available in matrimonial disputes: see sections 22ZA and 22ZB of the Matrimonial

Causes Act 1973 ('MCA 1973'). Section 22ZB of the MCA 1973 sets out the wide range of matters to which the court is to have regard when making or varying a legal services payment order under statute.

25. I discussed this jurisdiction extensively in my judgment in *BC v DE (Proceedings under Children Act 1989: Legal Costs Funding)* [2016] EWHC 1806 (Fam); [2017] 1 FLR 1521 ('*BC v DE*'). As I said in that case, and repeat for present purposes, I am satisfied that the 'equality of arms' argument is just as applicable in section 8 CA 1989 proceedings as it has been found to warrant a provision for costs in Schedule 1 CA 1989 proceedings as indeed under statute in matrimonial proceedings.
26. A compendium of fourteen principles relevant to the exercise of judicial discretion in this field, whether under statute or otherwise, is to be found in *Rubin v Rubin* [2014] EWHC 611 (Fam) (i.e. paragraphs [13(i) to (xiv)] inclusive). Mostyn J at [15] in *Rubin* made clear that: "the principles set out in para 13 ought to apply, with the necessary modifications, where an order is sought for costs funding in proceedings under Schedule 1 of the Children Act 1989". Among the matters referred to are the following (I have not reproduced the full list):
 - i) When considering the overall merits of the application for a LSPO the court is required to have regard to all the matters mentioned in s22ZB(1) – (3) (to which I have referred above);
 - ii) Where the affidavit or Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee;
 - iii) The court cannot make an order unless it is satisfied that without the payment the applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future. It is important that the jurisdiction is not used to outflank or supplant the powers and principles governing an award of costs in CPR Part 44;
 - iv) A LSPO should only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings;
 - v) Evidence of refusals by two commercial lenders of repute will normally dispose of any issue under s22ZA(4)(a) whether a litigation loan is or is not available;
 - vi) The order should normally contain an undertaking by the applicant that she will repay to the respondent such part of the amount ordered if, and to the extent that, the court is of the opinion, when considering costs at the conclusion of the proceedings, that she ought to do so.
 - vii) Generally speaking, the court should not fund the applicant beyond the FDR, but the court should readily grant a hearing date for further funding to be fixed shortly after the FDR.

27. In the case of *MG & JG v JF (Child Maintenance: Costs Allowance)* [2016] 1 FLR 424 Mostyn J returned to the principles earlier laid out, distilling those which were relevant on the facts of the case, but not expanding their reach or applicability.
28. I invited Ms Reiser to consider the line of authorities in which awards under this head have been made in the past, to which deductions for notional detailed assessment have been made. As I referenced above, Mostyn J said in *Rubin* at 13 (iv) that the LSPO jurisdiction should not be used to “outflank or supplant” the costs’ jurisdiction in CPR Part 44, however there is varied practice in the Family Division on this point. I made a deduction of 15% in *BC v DE*; a deduction of 30% in *Re Z (Schedule 1: Legal Costs Funding Order; Interim Financial Provision)* [2021] 2 FLR 727 and in *Re Z (No 2) (Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision)* [2021] EWFC 72) (ditto). Peel J adopted the same approach in the financial remedy case of *MG v GM* [2022] EWFC 8, [2023] 1 FLR 253 and likewise in *Xanthopoulos v Rakshina* [2023] EWFC 158, making a deduction of 25%. However in *HAT v LAT* [2023] EWFC 162 Peel J took a different view stating that applying a notional reduction would be wrong as an LSPO is not an *inter partes* costs order, but a solicitor/client sum sought by the applicant to enable her to litigate. Francis J in *DR v ES* [2022] EWFC 62 made no deduction from the award, but in adopting that approach did not appear to consider directly the contrary case law. I return to this point later.

The Law: Freezing Order

29. Section 37 of the Senior Courts Act 1981 provides that:
- “(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.”
30. The relevant law in this area was summarised by Mostyn J in *UL v BK* [2013] EWHC 1735 (Fam) at [51]. His judgment includes the following points (I have not set out in full his observations, some of which are not relevant on these facts):
- “i) The court has a general power to preserve specific tangible assets in specie where they are the subject matter of the claim. Such an order does not necessarily require application of all the freezing order principles and safeguards, although it is open to the court to impose them.
- ii) For a freezing order in a sum of money which is capable of embracing all of the respondent's assets up to the specified figure it is essential that all the principles and safeguards are scrupulously applied.
- iii) Whether the application is made under the 1981 Act or the 1973 Act the applicant must show, by reference to clear

evidence, an unjustified dealing with assets (which would include threats) by the respondent giving rise to the conclusion that there is a solid risk of dissipation of assets to the applicant's prejudice. Such an unjustified dealing will normally give rise to the inference that it is done with the intention to defeat the applicant's claim (and such an intention is presumed in the case of an application under the 1973 Act).

iv) The evidence in support of the application must depose to clear facts. The sources of information and belief must be clearly set out". (Emphasis by underlining added).

31. The mother seeks further 'in rem' protection in respect of the Richmond property, by seeking an order that a restriction be entered against the title to the property pursuant to section 46(1) of the Land Registration Act 2002 ('LRA 2002'); this states:

"If it appears to the court that it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to a registered estate or charge, the court may make an order that requires the registrar to enter a restriction in the register."

32. Under section 46(3)/(4) of the LRA 2002, the following further important powers are set out:

"(3) The court may include in an order under this section a direction that an entry made in pursuance of the order is to have overriding priority.

(4) If an order under this section includes a direction under subsection (3), the registrar must make such entry in the register as rules may provide."

Discussion and Decision

Legal Services Payment order

33. For some months now, both parties have engaged reputable specialist family solicitors in relation to their dispute; both parties have been represented at recent hearings before the Family Court. The solicitors for each party have in turn instructed expert junior counsel. In the last 48 hours, and for the purposes of this application, the father's solicitors (FLiP) have filed a notice of change in acting. So far as I am aware they remain on the record as acting in the section 8 CA 1989 proceedings. I therefore proceed on the basis that both parents will wish to have the benefit of representation from specialist lawyers in this family litigation where the issues currently appear to be hard-fought. The fact that the father has been unrepresented before me today does not create a reverse 'equality of arms', and does not affect my approach generally.
34. In the circumstances my concern is to ensure that the mother and father have equality of arms, and equal access to justice in this case.

35. I am satisfied from what I have read that the mother is a woman of limited means. I do not accept that she lives, or is likely to live, a luxurious lifestyle as the father sought to persuade me in his oral submissions this morning. She faces a significant challenge to the established caring arrangements for N and a proposed relocation to the Czech Republic, and is entitled to proper representation in that regard. She is equally entitled to specialist representation in relation to her schedule 1 CA 1989 claim on behalf of N.
36. I am satisfied that the father has, or appears to have had, access to very significant wealth arising from his sale of FP; he has not disclosed to me the extent of the proceeds of sale but I take into account the publicly available information which places the sale proceeds at over £30m. I further take into account the public assertions available on the website about UB s.r.o. to which I have referred already, and the existence of significant capital reserves of over £8m last year and its not insignificant profits. The father has also made reference to the 7-bed property in which he has an interest in the Czech Republic without, notably, sharing key details about its value.
37. The father was at pains to point out this morning how close and collaborative his family are in relation to their finances. In this regard, it is notable that the paternal grandfather found it possible to offer recently to make available the sum of £600k to fund a property for the mother and N until N attains the age of eighteen.
38. I have been left in little doubt that the father has been selective in his narrative description of his wealth and has been unforthcoming in his financial disclosure so far. For a man who has on his own admission developed a sophisticated payment platform, he is surprisingly vague about the whereabouts of the assets and disposal of the proceeds of the sale of FP. I am entitled (adopting the approach advocated by Mostyn J in *Rubin*) to make robust assumptions about the father's ability to pay. I am not confined to "the mere say-so" of the father as to the extent of his income or resources. In such a situation I am enjoined to err in favour of the payee, in this case the mother.
39. As to past costs I am satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings. I accept the contents of her solicitors' letter. I accept that the mother is entitled to representation at the level proposed in the section 8 and Schedule 1 CA 1989 proceedings, and consider that the claim is broadly reasonable. In this regard, I accept her case.
40. That said, I propose to make a deduction of 15% across the board of the legal services payment order to reflect a modest notional detailed assessment; this was the discount which I applied in *BC v DE* and is at the lowest end of the reported discount rates. As to the principle of this deduction I recognise the variety of views expressed by the judges of the Family Division to which I have earlier referred; I take the view in this case, as in others, that the mother's solicitors should not be entitled at this stage to benefit from what would essentially be an indemnity against all their costs incurred which would be an unusual outcome.

Freezing order and order in relation to the Richmond property

41. Turning to the application for the freezing order, I am satisfied that there is evidence of the father dealing with his assets in such a way as to give rise to the conclusion that there is a real risk of dissipation of those assets; any dissipation would be likely to be to the mother's disadvantage in these Schedule 1 proceedings. I accept the validity of the points made by Ms Reiser at §23 above (which I do not intend to repeat) which indicate that the father supported by the paternal grandfather has taken active steps in recent times to put his interests in the Richmond Property and his shareholding in UB Capital Limited out of this court's reach.
42. It is in the circumstances "just and convenient" to make the order sought to preserve the father's assets in England and Wales, in particular the father's interest (if any) in the Richmond Property and his shareholding in UB Capital Limited. This is plainly a case where security for any Schedule 1 award is justified. The father lives outside of the jurisdiction. Judging by the paternal grandfather's offer to the mother last weekend, the majority of the father's wealth is likely to be held in offshore structures and/or by third parties. The mother and N require security for any housing and income provision made for their benefit in the mother's schedule 1 claim.
43. I propose to make the specific order in respect of the Richmond property under section 46(2) LRA 2002, and add to that order that whilst the application for the restriction is being processed the terms of the restriction must take priority over any official search with priority that is pending (section 46(3) LRA 2002). The mother has permission to serve this freezing order and the order for a restriction on Withers LLP and the Land Registry.

Directions on the Schedule 1 claim

44. I will give directions to progress the Schedule 1 claim as proposed by Ms Reiser which were discussed during the course of the morning.
45. A final word. This is a case in which I consider that mediation or other forms of non-court dispute resolution should earnestly be attempted in an effort to resolve either or both of their disputes before further extensive costs (both emotional and financial) are incurred.
46. That is my judgment.