IN THE CROYDON FAMILY COURT

Case No: RS19D01922

Courtroom No. 12

The Law Courts
Altyre Road
Croydon
CR9 5AB

10.02am – 11.32am
Tuesday, 31st January 2023

Before:
DISTRICT JUDGE KEATING

B E T W E E N:

APPLICANT

and

RESPONDENT

MR A POTE and MS A KHANDIA (Solicitor) appeared on behalf of the Applicant
MR T TYLER appeared on behalf of the Respondent

JUDGMENT
(Approved)

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 children and members of their family 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.

DJ KEATING:

1. The applicant husband is AH. He is 42 years old. He is represented by Mr Pote.
2. The respondent wife is RW. She is also 42. She is represented by Mr Tyler.
3. For the purpose of my judgment today I am going to refer to you as "Husband" and "Wife". It is no lack of respect for either of you and I also recognise that fairly soon, they might not be the right labels anyway.
4. You have had, during the course of your marriage, two children; J who is nine and K who is seven. They live with Mrs RW, the wife, in a flat that she purchased in her sole name before the marriage.
5. The parties have incurred very considerable costs in this litigation. The wife has incurred and paid £42,000 in costs; the husband has incurred £136,000, some of which still remains to be paid so between them they have spent £178,000 in costs. The current total assets are in the order of £350,000, you can see that that is, roughly speaking, one-third of their combined wealth. It is a phenomenal proportion to spend on costs and this has not been the only litigation between the parties consequent upon their separation. The litigation process must have been ruinously expensive, but also incredibly painful for each of them to go through. I hope that today brings an end to at least that.
6. When I come to make decisions there are some basic principles that I have to apply. First of all is that if somebody asserts a fact, they have to prove, if that fact is disputed, that it is true on the evidence. In making my decisions I must act on the evidence which I find reliable on the balance of probabilities. That means that the person asserting the fact has to show on evidence that it is more likely than not to be the case. If I am required to decide whether a particular fact is true, I can only decide either that the person who seeks to establish it has shown that it is more likely than not to be true, in which case I find the fact is true or that they have not been able to show that it is more likely than not to be true, in which case I find the fact has not happened.
7. People do sometimes tell lies and I remind myself that somebody might lie for lots of different reasons and so even if I find that somebody has lied about one thing, it does not necessarily mean they have lied about anything else or everything else.
8. Section 25 of the Matrimonial Causes Act sets out the principles that the Court has to apply when it deals with an application for financial remedies consequent upon divorce and section 25A of the Act imposes a statutory imperative towards a clean break between the parties, which each agree is both achievable and desirable.
9. The Court will have regard to all of the circumstances of the case and first consideration must be given to the welfare of I and Y because they are under 18. The Court will have regard to all of the circumstances but will consider the matters set out in section 25 in particular and I will return to those factors.
10. In a case called *WC v HC* [2022] EWFC 22, Peel J set out the basic principles of law that apply to such cases.

"….i) As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution; ***Charman v Charman*** *[2007] EWCA Civ 503.*

ii) The objective of the court is to achieve an outcome which ought to be "as fair as possible in all the circumstances"; per Lord Nicholls at 983H in ***White v White*** *[2000] 2 FLR 981.*

iii) There is no place for discrimination between husband and wife and their respective roles; ***White v White*** *at 989C.*

iv) In an evaluation of fairness, the court is required to have regard to the s25 criteria, first consideration being given to any child of the family.

v) S25A is a powerful encouragement towards a clean break, as explained by Baroness Hale at [133] of ***Miller v Miller; McFarlane v McFarlane*** *[2006] 1 FLR 1186****.***

vi) The three essential principles at play are needs, compensation and sharing; ***Miller; McFarlane****.*

vii) In practice, compensation is a very rare creature indeed. Since ***Miller; McFarlane*** *it has only been applied in one first instance reported case at a final hearing of financial remedies, a decision of Moor J in* ***RC v JC*** *[2020] EWHC 466 (although there are one or two examples of its use on variation applications).*

viii) Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail; ***Charman v Charman.***

ix) In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

11. For the avoidance of doubt I interject here to say that it seems to be that this is plainly a case which is going to depend on the needs principles. Mr Tyler clearly articulated that. I think Mr Pote accepted that this was a needs case, although he was less fulsome in that line of argument.

x) Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary; ***Scatliffe v Scatliffe*** *[2017] 2 FLR 933 at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in* ***K v L*** *[2011] 2 FLR 980 at [22] there was at that time no reported case in which the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.*

xi) The evaluation by the court of the demarcation between marital and non-martial assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; ***Hart v Hart*** *[2018] 1 FLR 1283. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.*

xii) Needs are an elastic concept. They cannot be looked at in isolation. In ***Charman (supra)*** *at [70] the court said:*

"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)".

xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:

"In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e "standard of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle."

xiv) In ***Miller/McFarlane*** *Baroness Hale referred to setting needs "at a level as close as possible to the standard of living which they enjoyed during the marriage". A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example,* ***G v G [2012] 2 FLR 48*** *and* ***BD v FD [2017] 1 FLR 1420.***

xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in ***FF v KF*** *[2017] EWHC 1093 at [18];*

11. Continuing the Quote from Peel J,
"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in ***N v F*** *[2011] 2 FLR 533 at [17-19]."*

12. Those are the broad principles that I have to apply when I decide this case.
13. I heard evidence from each of the parties. The husband gave clear and concise evidence. He made concessions when he needed to and he did that freely. For example, he was asked whether he would have more time to deal with the resolution of the problems that I will come on to about EG- the buy-to-let flat that Mrs would have. He readily accepted that he would have more time than her to tend to those sorts of matters. That, I think enhanced the credibility of the answers that he gave to me.
14. The wife, I am afraid, has a number of problems with her evidence and the credibility of it. First of all, she acknowledges that she has been convicted of three matters in 1999 when she says she was only 18 years old. They were all convictions involving elements of dishonesty. Oddly, in her evidence before me she really struggled to accept that they were

in fact convictions and she describes them as there having been some police involvement in her life. Well, they were criminal convictions and there is no dressing that up or getting around it.

15. Then one comes to a Court hearing before DJ Rowland on 22 June 2022. That was DJ Rowland determining a maintenance pending suit application that had been made by Mrs RW and DJ Rowland recited this, "Upon the Court noting the allegation made by Mr AH that Mrs RW had previous convictions involving elements of dishonesty and upon Mrs RW informing the Court that she did not have any previous convictions". Well, she did, and she knew she did at the time. Bizarrely in 2019 in Children Act proceedings between the parties, Cafcass as part of its safeguarding checks, which are routine, had uncovered those convictions. They were known to the parties. In addition, in 2019 in the Children Act proceedings, Mrs RW had acknowledged the fact of those convictions in one of her statements. I simply do not understand why she then said in 2022 to DJ Rowland that she did not have convictions. She must have known that that was untrue. She chose to tell a judge something that was untrue. That has to reduce the credibility of her evidence.
16. Then there is the question of the change of her name. She initially denied that, but I have been taken to documents which show that she registered as a company director misspelling her first name. She says that she did that because people do not find her first name easy to pronounce or to spell and it is just a recognition of the way that people think of her; but it is not actually her first name, and she has subsequently corrected that at Companies House.
17. Mr AH says that she did that because she was trying to avoid, when her name was searched for by relevant authorities, the fact of those convictions until they were spent. I do not know if that is true or not and there is no evidence before me that that is true, but nonetheless, Mrs RW's denials of the fact that she changed her name when one sees clear documentary evidence that she did reduces further the weight that I can give to her evidence.
18. Then one comes to the question of the ownership of her company. She is the sole director of S Limited and she has been, I am afraid, hopelessly inconsistent about the ownership of that company. At various points in the documents that she has sworn to be true she has said that she owns 100% of it. There is a document at Companies House which seems to show that in 2015 and 2016 she owned 82% of it. There is a document currently at Companies House that says that she owns 75% or more of it, but that cannot be completely true because there is a simultaneous document saying that the other shareholder, a Mrs SA, owns more than 25% of the company. Those two things cannot both simultaneously be correct because the minimum total combined percentage is over 100, so something needs to be corrected by Mrs RW at Companies House whatever else happens today. In her oral evidence she told me that she owned half the company, more than half, 75% and, frankly, was little better than her written evidence and documents.
19. I am really not sure how a sole director comes not to understand what their shareholding in a company is. It is a basic flaw in the understanding of a director. Company directors have important obligations. They need to know who their other directors are. They need to understand who their shareholders are to whom they are paying dividends. Get it wrong and company director disqualification proceedings and criminal proceedings and false accounting proceedings can follow fairly quickly. Mrs RW needs to go and get some professional accountancy advice or legal advice quickly so that she can make sure she does not fall into any of those kinds of problems. I am afraid all of that further reduces the confidence that I had in her evidence.
20. One then comes to how the dividends in the company were distributed. In the year ending 2021 there was, I think, £9,333 of dividends paid by the company of which Mrs RW

received £5,600. That is, as a matter of fact, 60% of the dividend that was distributed by the company. When asked how that came to be calculated by Mrs RW, she was unclear. At no stage is any of her evidence that she owns 60% of the shares. She was unable really to explain that. She offered the thought that she owed money through the company to Mrs SA who is the other shareholder. Nowhere in the company accounts can that be seen. In her most recent Form E, she includes in her liabilities section, although not included within the total of her liabilities, carefully marked as not being one of her own personal liabilities but a company liability, but in the Form E she records £12,550 being owed to an MZ by the company. I cannot see that in the company accounts although it is possible it is concealed in creditors.

21. All of that, I am afraid, gave me cause to reduce the weight that I felt I could give to Mrs RW's evidence and where there were factual disputes between the parties, I have a clear and strong preference for the evidence of Mr AH over that of Mrs RW.

22. Turning to the section 25 factors,

23. (a) the income, earning capacity, property and other financial resources which each of the parties have or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which would, in the opinion of the Court, be reasonable to expect a party to the marriage to take steps to acquire. I observe at this point that although each of the parties seek to argue that one of the assets is really not marital in character, it seems to me that this is a case, which is a needs case in any event and so that becomes of little relevance. However, Mrs RW argues that the flat at CP in which she currently lives and which is held in her sole name, is not really matrimonial because she owned it before the marriage.

24. Mr AH argues that the £90,000 held in the solicitor's client account is not really matrimonial because he acquired it by challenging Mrs RW's brother's assertion that the brother had the sole beneficial ownership of the former matrimonial home in which the parties had lived at the time of separation and as part of the resolution of that dispute the brother paid £90,000. Mr AH says that is not really matrimonial. It is the proceeds generated by the matrimonial home and so I would have disagreed with Mr AH in any event about whether it is matrimonial or not. In any event, because this is, in my judgment, very clearly a needs case, I do not think anything turns on that point anyway.

25. The parties had agreed the Form ES2 for the final hearing. It does not always agree about the valuation of every asset. In fact that ES2 completely omits the £90,000 held by Mr AH's solicitors and that is a clear and obvious error in the document which Mr Pote completely acknowledges but it seems to me that, with that obvious error aside, I should nonetheless regard the document as agreed between the parties.

26. There are relatively few resources. The parties have effectively nil in their respective current accounts, certainly considerably less than a month's usual income for anybody.

27. The flat at CP which I have referred to already, the Court gave directions for the valuation of the flat, having previously given permission for a chartered surveyor to advise as to the value of the flat who advised that it was worth £250,000. Directions were given on 8 March 2022. At that point the surveyor's report had not been disclosed, at least to Mr AH, because Mrs RW had not paid her share of the surveyor's fees, so District Judge Coonan on 8 March ordered that in the first instance the husband will pay the wife's fees and the matter will be considered at the final hearing. This was ordered in order to obtain the report from the surveyor, and it says the property is worth £250,000. "Thereafter", District Judge Coonan continued "each party will nominate two estate agents who will each provide an updated valuation of the said property armed with the surveyor's report and the Court will use the mean of the updated valuations for the purposes of the final hearing".

28. Mr AH has attempted to do so; he has managed to obtain one valuation from an estate agent who has subsequently confirmed they have seen the report and did not change their valuation and that is in the sum of £300,000. He produces a number of different other communications from different estate agents. However, whilst they cluster in the £300,000-325,000 area, none of them has seen the surveyor's report or is prepared to comment having done so. At least one of them says, in a way that is entirely consistent with Mr AH's evidence to me, that they felt that they had been frustrated or confronted by Mrs RW and that they were in consequence not willing to deal or not willing to waste further of their time for which they were unlikely to be paid providing further valuations. Therefore, I have one valuation in accordance with District Judge Coonan's order and accordingly a mean average of that is £300,000.

29. Mrs RW chose not to comply with District Judge Coonan's order. She decided to get a further report from the surveyor which maintains the value at £250,000. However, it seems to me that the Court had given clear directions for the valuation of the property, and I therefore propose to adopt the value as District Judge Coonan had ordered; it would be calculated which is £300,000. It may be that very little actually turns on that in terms of the distribution of resources between the parties and both advocates recognise that in the presentation of the case to me.

30. As to the value of EG the buy to let flat-, that is agreed in Form ES2. The sale value is agreed between the parties at £265,000. The mortgage value is agreed. It is agreed that there will be costs of sale and also capital gains tax to be paid. Having allowed for all of that, the net equity of the property is going to be £80,200.

31. There is an irony in this case in that each party feels that the other should have the benefit of this particular asset. That is, in my view, because it is illiquid but more illiquid than many residential properties are because it is rented out and it is rented out to a rent-to-rent limited company. Neither party to these proceedings can now locate the contract with the rent-to-rent tenant which makes termination of that contract potentially tricky. The parties do not actually know who actually occupies the property because they will be the sub-tenants or licensees or whatever of the rent-to-rent company and so not knowing who the occupiers are, the parties also do not know on what terms those occupiers actually occupy the property; whether they have paid deposits and whether they have been given the appropriate safety certificates and all other statutory information that tenants are entitled to and therefore they do not know quite whether they are going to be able to recover possession and in what timeframe, which would be likely to be necessary to secure a sale of the property unless it were to be sold at auction with the benefit of a sitting tenant.

32. Each therefore perceives that taking on the buy-to-let property at EG would involve:

    (a) A lot of work and time; and
    (b) An uncertain expense; and
    (c) Uncertain final proceeds of sale: and
    (d) Delay before they actually realise those proceeds of sale.

33. Each therefore prefers to receive cash now even if, and perhaps there is an irony in this, their offer including this property would actually be better in capital terms on face value for the other party than the offer they would like for themselves.

34. There is also some money held in a bank account at a bank called ICICI, but I cannot see a legible current statement. The parties disagree as to how much money is in that account; Mr AH says £4,500, Mrs RW says £4,000. However, because I cannot see an up-to-date balance on one of the documents before me, because Mrs RW has proved herself as spectacularly unreliable in the calculation of some of the details of her company, I prefer

the evidence of Mr AH on that point, so I find that there is £4,500 in the ICICI account. Again that is probably a little illusory, because I will simply allocate the whole of those funds to one of the parties and so it will not change the outcome as to whether it is £4,500 or £4,000 but whichever party gets the benefit of that asset might find they are a little bit less on the percentage terms than they would have liked.

35. There is also £90,000 held in Mr AH's solicitor's account. That is held subject to an undertaking not to dispose of it until the outcome of these proceedings.
36. There are pensions. Mr AH has pension assets worth about £49,000; Mrs RW has pension assets worth about £11,000.
37. At the moment Mr AH has no income. He has been unable to work for the last couple of years. Mrs RW describes that as a sabbatical.
38. Mrs RW has maintained her business. She works hard at it and she manages to generate £1,440 per months from all sources.
39. Mr AH hopes in the next month or so to start work on school transport services for a company called HATS and expects to be working, at least initially, for 25 hours per week generating £800 per month.
40. Mrs RW would like, as soon as she is able to do so, to claim Universal Credit. That will boost her income. If it were to be at the cost of selling EG, she currently receives something of the surplus of mortgage plus service charges that are generated by the rent. She has received £1,340, I think, last year in grand total, less of course some sums that she has had to pay for service charge. It may be that that will generate some small income each month until the property is sold if she were to retain that property. She hopes that she would generate, once she has sold that property, a sum in Universal Credit and would then become entitled to the childcare element of Universal Credit which would enable her in turn to increase her working hours and therefore her income.
41. I am not convinced by the calculations that she has produced on the face of them. Certainly the calculation that she has produced once childcare credits can be claimed misstates the income that she expects then to be receiving and so that calculation is unreliable. However, it seems to me that Mrs RW, certainly once EG is sold or transferred to Mr AH, is going to be able to boost her income. It is going to take some time for the company income to generate an increase but I am clear that over time that would increase. The amount of time will depend on whether she gets EG or not.
42. Whilst Mr AH is initially going to work for 25 hours per week bringing in a net of about £800 per month he hopes, there is obviously scope for that to increase as time goes by as well as he moves towards either more lucrative work or full-time work. Once of course he has been working for a short period of time that becomes rather easier to achieve.
43. As to the financial needs, obligations and responsibilities of each of the parties which they have or are likely to have in the foreseeable future, the parties agree that Mrs RW's housing need for herself and for the children is currently met if she were to retain the flat at CP. Mr AH's housing need is going to be met by him remaining living with his mother and that would not ordinarily be an outcome that would be regarded as acceptable long-term outcome in these sorts of proceedings. Both parties agree that the resources do not really allow for any other outcome at this stage. Neither party has any realistic mortgage capacity; at least there is no evidence that either of them do at the moment.
44. In terms of liabilities, Mr AH says he owes £169,000 or thereabouts, of which roughly £130,000 is owed to his mother and there is also a significant sum owed to his solicitors. Stripping out costs and loans or debts to his mother, which I regard as soft loans, he is left with a hard debt of £11,764 which is owed on a credit card.
45. Mrs RW says that she has got debts of £84,965 ignoring the liability that the company has

to MZ but of that, £5,816 is a student loan and therefore recovered from income in a secure way over a long time. £10,000 is loans to family or friends; I assume family or friends but certainly named individuals which, she says, she used to help buy EG and I therefore presume is very soft and, if to be repaid, might be repaid once Eastgate has been sold. £41,900 is owed either to her mother or to family friends. The hard debt element of Mrs RW's liabilities is £27,249.

46. As to the standard of living enjoyed by the family before the breakdown of the marriage, this was a comfortable family living. They had an agreeable family house, both children were in private schools, they had three rental properties one of which has since been sold and they had a comfortable lifestyle.

47. As to the age of each party to the marriage and the duration of the marriage, they are both 42 years old. This was a marriage that lasted for a little bit more or a little bit less than eight years depending on whose date of separation is correct. There was a dispute between the parties as to the date of separation. Both agree it was in 2017 at some point. In my view nothing turns on that difference although, for the reasons I have given earlier, I would prefer the evidence of Mr AH on it if I felt there was a distinction to be made that was significant.

48. As to the physical or mental disability of either of the parties to the marriage, none so far as I am aware for Mrs RW. Mr AH had a Non-Hodgkin lymphoma some years ago for which he received radiotherapy. He had Covid in 2022 and, following that, went to see his doctor complaining of shortness of breath which was persisting at the end of his Covid infection. Sometimes that is called long-Covid, sometimes it needs a bit more investigation. He has had some further investigations. He had an x-ray at the end of November 2022 and a CT scan at the end of December 2022 and he is going to be referred for further investigations. The note that I have received following the CT scan is unclear as to whether Mr AH has simply the consequences of his previous radiotherapy or whether there is something that might be a lung cancer that needs to be further investigated. He is going to go through that further investigation. Of course, we all hope that that will be a consequence of previous infection and/or Covid, but I recognise how difficult it must be for him at the moment with the uncertainty and fear that goes with those sorts of words and those sorts of potential diagnoses. Of course, if he has got a significant health condition that is going to require treatment that is going to impact on his future earning capacity, that is a factor that would need to be considered.

49. As to the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution by looking after the home or caring for the family, whilst the parties were together they were a partnership and I see no reason to distinguish their contributions now. Mrs RW makes clear she is the person juggling her career and care of the children. At the moment there is no relationship between Mr AH and the children and I can see that that is obviously painful for each of the parties.

50. Insofar as maintenance contributions are concerned, unless people have huge salaries and you do not, either of you, have anything close to the sorts of salary levels that would trouble me, then the Child Maintenance Service will deal with child maintenance if you cannot agree it between yourselves. I will not be making any order about child maintenance between the two of you.

51. As to the conduct of each of the parties, if that conduct is such that it would be, in the opinion of the Court, inequitable to disregard it, I have already touched on the highly acrimonious proceedings that there have been between the parties on a number of fronts. In these proceedings that meant that there was no effective financial dispute resolution appointment and the parties lost, therefore, that relatively cost-effective way of resolving these proceedings.

52. As I have said, Mrs RW feels that she has been left to deal with juggling childcare and career whilst Mr AH takes a sabbatical. Mr AH feels that the wife has made these proceedings significantly more complex than they could have been or should have been. This is because of the way that she had been unable to properly articulate what is going on for her business or as to the former matrimonial home or the monies relating to it.
53. In the case of proceedings for divorce, the value to each of the parties to the marriage of any benefit which by reason of dissolution or annulment of the marriage that party will lose the chance of acquiring; well, there is none of any significance in this case.

Discussion and decision.

54. First of all it is agreed that Mrs RW will keep CP and the husband will transfer to her all of his beneficial interest in that property.
55. Secondly, as to the pensions. The Pensions Advisory Group agree that pensions should be treated as a separate asset class from other assets. They are not really an asset in the same way as almost anything else. What they really are is a future income stream when you reach retirement age which will be, for each of you, more than 25 years from now. Therefore, bearing in mind that pensions cost quite a lot to share between the parties, it would not be proportionate and given the relatively modest values to implement pension-sharing to the parties, each will keep their existing pensions. Both recognise that that is the appropriate outcome insofar as pensions. What that does mean is that Mr AH will have a pension roughly four times bigger than Mrs RW at those points in terms of its capital value. That, in my view, goes some way to offset what will, on either party's case, be a significant capital imbalance in Mrs RW's favour in any event.
56. Both parties agree that one of them should get the buy-to-let property at EG plus the ICICI funds and the other will get either all or the lion's share of the £90,000 held on the solicitor's account. The question is which?
57. The first factor in my view is the extent to which Mrs RW has taken the lead in the operation of the buy-to-let property. There was some difference between the parties as to the extent to which each of them had led about that. For the reasons that I have given above I have decided that I prefer the husband's evidence to that of the wife and therefore find that the wife has taken more of the lead in the management and operation of the buy-to-let property so far.
58. Secondly, Husband's evidence which actually was not controverted by the wife, is that on two occasions she has resisted or frustrated the sale of the buy-to-let property at Eastgate.
59. The next factor is that the husband has managed to secure the £90,000 as representing share of the former matrimonial home at CV Road in this litigation, because the brother of Mrs RW intervened in the proceedings to allege that he owned all of that property and Mrs RW, the wife, supported him in that assertion. That asset therefore simply would not exist but for the husband's determination and cost.
60. The next factor to weigh in the balance is that the transfer of property at CV Road, which the Court had ordered must take place from Mrs RW to her brother, has not yet taken place. Whilst Mrs RW told me that she had signed the necessary forms for that to happen, I was not given any convincing or clear reason at least to my mind as to why it has not.
61. Pausing there, it also seems to me that to the extent Mrs RW's evidence is that she cannot claim Universal Credit whilst she also owns another property besides the one that she lives in. She is still the registered proprietor of CV Road and so I suspect that until she has resolved that, whatever happens for Eastgate, she is going to have some difficulty making a Universal Credit claim.
62. Going back to the list of factors, there is the morass of company dealings and the lack of clarity which gives me little optimism for the resolution of that property at EG in any kind

of shared way or transparent way. It seems to me that it would be better for one party rather than the other to take the full responsibility of EG. It also seems to me that this particular factor would tend to put EG on Mrs RW's side of the equation so that she can take the consequences of whatever shortcomings there might be in her understanding or ability to deal with the documents.

63. The next factor is that the husband's significant indebtedness, even discounting for costs, mean that he will effectively end up with little cash anyway whichever way I deal with it.

64. Conversely there is the factor, as Mrs RW says, she has done her research; she has found out that if the husband were to get EG and I interject here, I suspect also she would complete or arrange for the completion of CV Road transfer to her brother, she might then be able to claim Universal Credit and childcare allowance, which would enable her to increase her working hours and therefore her income. However, her figures are wrong on the face of them and she still owns CV Road and the impact will be temporary in any event, because she could sell EG even if it were transferred to her.

65. I have also considered the question of liquidity because what I have is cash in the solicitor's account, which is incredibly liquid and very usable as against the prospect of cash in the future in EG which is relatively illiquid. Ordinarily, what I would do would be to share those two resources or those two classes of resource between the parties in some way, shape or form so that they share the liquidity and indeed the Courts have in other cases said that is exactly the approach that should follow. In this particular case, whilst the sums are important to each of the parties, they are in the great scheme of things, not huge. More particularly, because of my fear that sharing the responsibility for doing anything with EG is going to be a recipe for conflict, further emotional stress and strain on both parties, litigation and further cost and I think the risk of each of those things is very high on the facts of this particular case, it would not be appropriate for me to order that the responsibility for Eastgate be shared. It needs to be transferred to one party or the other.

66. When I weigh all those factors in the balance, I am very clear that it should be Mrs RW who will get EG. I am going to direct that it be transferred to her, provided that she can secure the husband's release from mortgage within three months and if she cannot then it should be sold. The parties must co-operate with the sale process with each other and as an aside, and in fact I would like it to be recorded in my order, if there were to be a future application about the implementation of sale for the Court to sign some document on behalf of one of the parties, it is very likely that the Court would order indemnity costs as against the party who had failed to cooperate with the sale of that property. It seems to me that when the property is sold and if it comes to be sold that the whole of the proceeds will fall to Mrs RW. Each party will bear their own capital gains tax liability, if any.

67. It seems to me also there should be no pension-sharing order and that it should be a clean break. CP will be transferred to Mrs RW

68. Mr AH will get the £90,000 in the solicitor's current account plus any interest that it has earned whilst in that client account. The husband's solicitors will be released from their undertaking to the Court contained in paragraph 17 of the order of 2 March 2021.

69. The ICICI account will be transferred in whole to Mrs RW and Mr AH's evidence, which I accept was that he cannot actually release those monies without Mrs P's agreement in any event. I am not sure quite how it came to be that Mr AH apparently, on Mrs RW's case, was able to transfer some funds previously out of that account but be that as it may, the ICICI account is transferred to Mrs RW in its entirety. Mr AH will be responsible for closing the other account and to transfer any balance left in it to Mrs RW.

70. Stepping back from that, thinking about what that does in terms of capital, in terms of CP the net equity in that on the figures that I have used and drawn out from the Form ES2 is

£155,338 and for EG £80,200 and for the ICICI account £4,500. That is a total of £240,038 on Mrs RW's side of the assets less hard debt of £27,249, leaves a total of £212,789.

71. On the husband's side, assuming interest at 1% per annum on the client account for nine months, that is £675 interest has been earned on that £90,000; take away the hard debt of £11,764 and that will leave him with £78,911.

72. Therefore, total capital resources excluding pensions £291,700, of which the wife will have secured 72.95%. If one puts the pension values in as well at £11,812 for the wife and £49,270 for the husband, that takes total capital to £352,782 of which Mrs RW would have secured 63.67%. That is a departure from equality in favour of Mrs RW, but it is plainly and clearly justified because she has the responsibility of caring for the children and she also brought greater assets into the marriage.

73. That leaves each party with significant soft debts and in the case of Mr AH with some solicitors' costs still to pay. It also leaves Mr AH with his ill-health, currently zero income although he is trying to return to work soon and leaves Mrs RW with a career that she can build, especially once she has managed to dispose of or resolve the question of what to do with EG and that will also provide for a clean break to the parties for income and capital.

74. The *decree nisi* divorce was pronounced on 30 May 2019. Permission to the petitioner to apply for *decree absolute*, out of time.

75. Looking at costs, I saw provision for the costs of the surveyor's report and it seems to me that Mrs RW should account to Mr AH for that if she has not already done so.

76. This is an application then at the end of financial remedy proceedings for costs. The husband seeks £23,777.47 towards costs that he has incurred in these proceedings. He says that he should have his costs from 13 October 2022 from when the respondent rejected an open offer that is either the same as or effectively the same as the order that I have made today.

77. In explaining why I should award those costs, Mr Pote first of all takes me to the events of 8 March 2022 when there was a hearing before District Judge Coonan and that was on the hearing of an application for maintenance pending suit according to the recital when costs were reserved. During the course of that hearing, the judge decided to dispense with an FDR appointment and list this matter straight to final hearing. One of the factors identified was that Mrs RW had not paid her share of the surveyor's costs. I am told that in fact that share has now been recovered by Mr AH in any event.

78. Rule 28.3 of the Financial Procedure Rules provides that the Rule applies for financial remedy proceedings meaning proceedings for a financial order except for maintenance pending suit. Therefore, the costs of 8 March are potentially up for grabs and the costs were, as I say, reserved by District Judge Coonan for maintenance pending suit application and it came to be determined by DJ Rowland on 22 June. He also reserved the question of costs.

79. The outcome of the maintenance pending suit application was that it was dismissed. However, it was dismissed upon the basis the parties had reached an agreement about the way that the buy-for-let property at EG would have its rental income distributed so that the rental income, having paid the sums actually due under the mortgage should have been paid to Mrs RW. I am not sure that that has necessarily happened, although there is nothing to indicate that is Mr AH's fault in any way, shape or form. It sounds to me more as though there are ongoing communication difficulties with the tenant company who may or may not follow their instructions terribly closely.

80. However, when one looks at that, although it is a dismissal of the application, it is a dismissal of the application on the basis that there was an agreement that generated extra funds for Mrs RW and on that basis, without having been the judge who actually heard the

proceedings and therefore might have formed a different view about it, I really do not see that I can take a view today that that justifies an award of costs in the maintenance pending suit proceedings; not that there is in fact an application for that before me, not that there is a schedule of costs relating to either of those hearings or both them or those proceedings. Mr Pote says, "Well actually that is part of the context of the proceedings" and he really hangs his application on Rule 28.3 which does say at sub-section five that "Subject to paragraph six the general rule in financial remedy proceedings is that the Court will not make an order requiring one party to pay the costs of the other party". Is it justified? First of all Mr Pote says, "Look, the final award is basically the same or exactly the same as the open offer of the husband". Secondly he says, when I look at sub-paragraph six, it does say that, "The Court may make an order requiring one party to pay the costs of another party at any stage in the proceedings where it considers it appropriate to do so, because of the conduct of a party in relation to the proceedings whether before or during them." Then sub-paragraph seven makes clear that in deciding what order, if any, to make the Court must have regard to:

> (a) Any failure by a party to comply with these Rules or any order of the Court or any Practice Direction which the Court consider are relevant.
> (b) Any open offer to settle made by a party; and
> (f) The financial effect on the parties of any costs order."

Bear in mind that I have made an award based on the needs of the parties and of course one can see that the financial effect on the parties of any costs order is going to be a significant factor in that list.

81. In terms of failure by a party to comply with the Rules order of Court, Mr Pote relies on the late making of an open offer to resolve these proceedings. He says that was not made until too late, Rule 9.27A of the Family Procedure Rules says that, "Where no FDR appointment takes place each party must file with the Court and serve on each other party an open proposal for settlement by such date as the Court directs or when a direction is given under sub-paragraph (a), not less than 42 days before the date fixed for the final hearing".

82. The Court order giving directions did not fix a date, therefore the offer should have been made 42 days before the date fixed for the final hearing and its common ground from the parties that the date fixed for final hearing was 1 November. Forty two days before that would therefore be a date in mid-September. Mrs RW did not make an offer until mid-to-late October. That was therefore later than directed and that is a breach of the Rules. In fact her offer, as I explained in my judgment a short while ago, would ironically have been, in capital terms, more financially advantageous to Mr AH but obviously not so good in liquidity terms; liquidity has a price and in any event there have been offers and the final hearing in the event was adjourned by the Court until 30 January. If one were to count back from 30 January, the offers would have been made in time, but I think Mr Pote is right to say that the offers should have been made before 42 days before the date actually fixed on 1 November.

83. Therefore there was a breach of the Rules in that respect and therefore the Court can consider making an order for costs. First of all, although the offers were made late by Mrs RW, offers were in fact made and they were, when they came, in the right ball-park. As I say Mrs RW's final offer was actually in bald numbers terms more advantageous than the offer made by Mr P and the award that was secured by him. It also seems to me that when I think about the impact on the parties of making a costs award it would fall very hard on Mrs RW and on Mr AH if I were to make or not to make an order. The higher Courts have made

very clear that the Rules are there to be complied with and the message needs to go out loud and clear to the litigants, if they do not comply with the Rules or orders of the Court, there may very well be a costs sanction.

84. That is an important message and also weighs in the balance. However, in my view, when I weight the impact on the parties of making a costs award, I am not persuaded this is a case that actually justifies one. I have heard all that Mr Tyler says about the way the litigation has been conducted, that the bundle exceeds 350 pages. It does; that is a breach of the Rules not significant in my view and certainly to the extent that, even if both parties are in breach of the Rules it does not excuse either of them. That particular factor had no weight in my view in the balance as to whether to award costs or not. I was not particularly taken with the suggestion that Mr AH had had the entertainment of dealing with the proceedings today and yesterday either but in my view there should be no award for costs and the standard position I should simply say that.

85. Therefore, my order will be no order for costs.

End of Judgment.

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This transcript has been approved by the judge.