IN THE CENTRAL FAMILY COURT [2022] EWFC 95 (B)

B E T W E E N:

X Applicant

- and -

Y Respondent

IMPORTANT NOTICE

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

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.

Mr Adrian Barnett-Thoung-Holland (Counsel instructed by **Hanne & Co. LLP**, Solicitors) appeared on behalf of the Applicant wife.

The Respondent husband appeared as a litigant-in-person.

Written Judgment of His Honour Judge Edward Hess

(initially in draft dated 3rd August 2022 and amended on 15th August 2022 following responses to the draft from both the parties)

1. This case concerns the financial remedies proceedings arising out of the divorce between X (to whom I shall refer as "the wife") and Y (to whom I shall refer as "the husband").

2. The case proceeded to a final hearing over three days on 7th April 2022 and 18th and 20th July 2022.

3. The wife has had the benefit of public funding throughout and has appeared before me by Counsel, Mr Adrian Barnett-Thoung-Holland (instructed by Hanne & Co., Solicitors). I am grateful to Mr Adrian Barnett-Thoung-Holland for his skilful, courteous and diligent presentation before me.

4. The husband appeared as a litigant-in-person. He is plainly a highly intelligent person; but (as I shall comment in more detail below) he has at times disengaged from these proceedings and only sometimes, and then partially, cooperated with directions orders and has at times been obstructive in answering questions. Although he was largely courteous before me, I have not been able to reach the conclusion that he has made a full and frank presentation of his financial circumstances – I shall return to this in more detail below.

5. The wife's solicitors have done their best to produce an orderly bundle for the court, but the very late and fairly random and piecemeal disclosure offered by the husband has made that a challenging task. As a result, I have been obliged to deal with a formal electronic bundle running to just over 600 pages; but have also received a significant number of other electronic documents, which I have done my best to put in some form of order. The material before me can perhaps be summarised as follows:-

    (i) A collection of applications and court orders.

    (ii) A collection of orderly material from the wife including her Form E dated 12th March 2020 and her witness statements dated 12th February 2020, 6th July 2021 and 24th March 2022.

    (iii) A collection of sometimes disorderly material from the husband including his Form E dated 15th December 2020 and his witness statements (in each case served very late and immediately before listed hearings) dated 6th April 2022 and 14th July 2022.

    (iv) A collection of medical documents relating to Z, the parties' eldest child, including an assessment dated 27th January 2022 by a doctor at a hospital trust, and to A, the parties' younger child, including an assessment dated 10th February 2022 from a mental health trust.

    (v) A chronology and ES1 and ES2 documents.

    (vi) Some property particulars.

    (vii) Selected correspondence and other disclosure material, including some third party disclosure from banks associated with the husband's businesses.

6. I have also heard oral evidence from both the husband and the wife and from ALK (a friend of the husband, called by him). The husband and ALK were cross-examined by Mr. Barnett-Thoung-Holland. The cross-examination of the wife was carried out largely by me in accordance with FPR 2010, Part 3A – the husband was content with this process and supplied me with a list of topics for me to raise, though I have used my judicial discretion to ask some questions on matters in which I was interested and not to ask some of the suggested questions if I did not consider them likely to help me.

7. I have also had the benefit of full submissions from Counsel and from the husband.

8. The history of the marriage is as follows:-

    (i) The husband is aged 50. He originates from an overseas country and the language of that country is his first language, although he also speaks good English. He has had (at least at times) a successful career as a 'tech entrepreneur' in the computer games industry and is plainly intelligent and IT proficient.

    (ii) The wife is aged 40. She originates from a different overseas country and she is plainly intelligent with a good quality university education in her home country. She has subsequently learned both the Husband's mother tongue and English language very proficiently.

    (iii) They met in November 2001 (when the wife was aged only 19) and things in the relationship moved quickly. They became engaged in February 2002, began cohabiting in April 2002 (the wife moved from her home country to the Husband's to facilitate this) and they married on 20th June 2002.

    (iv) The marriage produced two children: Z (19) and A (15) Very sadly, both children have in recent years had health problems with Chronic Fatigue Syndrome (M.E.), which (it seems likely) the stresses surrounding the divorce have either caused or made worse. Z suffers, I accept on the evidence, very severely with M.E. and is housebound for much of the time, requiring a huge amount of care from the wife and with little imminent hope of recovery or even improvement. A also suffers from what appears to be M.E. – although their problems are less serious at the moment than those of Z, some of what I heard caused me to be concerned for their future as well, and they does not appear to be attending any school currently, which in itself is a big source of concern. The contact between the children and the husband is limited and it is appropriate for my purposes to regard the wife as very much the children's primary carer for the foreseeable future, and at a level which (even though they are not young children) will make the taking of employment very challenging or indeed impossible for the wife.

    (v) The parties lived together in the Husband's home country from April 2002 to January 2015. The family always lived in rented accommodation, but the evidence suggests that they lived life at a reasonably high level in financial terms and spent a lot of money on daily living. The husband was, or appeared to be, successful in business and receiving a high income. The family enjoyed a good life style.

    (vi) In January 2015 the family moved to London. I shall be referring below to the circumstances surrounding this move, which have been examined in some detail during the final hearing. On the face of it anyway, when they

moved to London they continued to live a good life style involving expensive rental accommodation (£10,250 per month from 1st January 2017 at a property in Wimbledon Village), good holidays and private education for both children.

(vii) In March 2018 the marriage fell apart. The husband left the rented family home, and the wife and children also had to leave in June 2018 as the husband stopped paying the rent and arrears were fast accruing. The wife had to rent alternative and cheaper rented accommodation. The husband stopped paying the children's school fees and, in May 2019, they were both excluded from their private school, apparently to their great distress. These episodes seem to have had a significant effect on the children's stability, health and wellbeing.

(viii) Divorce proceedings were commenced by the wife on 6th December 2018. Decree Nisi was ordered on 7th February 2020. Decree Absolute awaits the outcome of the financial order proceedings and is not, in itself, controversial.

9. The financial remedies proceedings chronology is as follows:-

(i) On 19th December 2019 the wife issued Form A.

(ii) The First Appointment kept on being adjourned in the light of the husband's failure to file a Form E (from 22nd April 2020 to 19th June 2020 to 3rd September 2020 and to 17th December 2020). When he did (finally) file his Form E, he did it just two days before the fourth First Appointment date and the hearing was fairly ineffective in terms of disclosure.

(iii) The case was then listed for an FDR on 31st March 2021, but this was ineffective as a result of the husband's defective engagement and was adjourned to 7th July 2021. On this date, again because of the husband's failure to comply with orders, it was adjourned to 27th October 2021, but when this date arrived the husband failed to attend at all, indicating that he was in South America and without an adequate internet connection; but he had also failed to comply with earlier disclosure orders and made no efforts to be represented in his absence overseas. Recorder Alexis Campbell QC understandably decided that enough was enough and dispensed with the FDR, listing a two day final hearing on 7th and 8th April 2022 and making fresh timetabling orders.

(iv) Once again the husband ignored the directions order, save that he produced two statements and gave some disclosure (by no means all that he had been required to do) on the day before the hearing. On 7th April 2022 I decided to hear some of the husband's evidence (ALK). It was readily clear that some third party disclosure from some banks associated with the husband's businesses was necessary to do fairness to the case, so I adjourned the case part heard to 18th and 20th July 2022 to allow that process to take place. The husband repeated his practice of filing a statement just before the hearing (in breach of my order) and he produced

a statement dated 14th July 2022.

(v) A final hearing has therefore taken place before me on 7th April 2022 and 18th and 20th July 2022. The evidence and submissions were completed by the end of 20th July 2022 and I indicated that I would produce a written judgment as soon as possible, which I now do.

10. In dealing with the applications overall I must, of course, consider the factors set out in Matrimonial Causes Act 1973, sections 25 and 25A, together with any relevant case law.

11. Matrimonial Causes Act 1973, section 25, reads as follows:-

> (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
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> (2) As regards the exercise of the powers of the court under section 23(1)(*a*), (*b*) or (*c*), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
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> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
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> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
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> (d) the age of each party to the marriage and the duration of the marriage;
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> (e) any physical or mental disability of either of the parties to the marriage;
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> (f) 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;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

12. Matrimonial Causes Act 1973, section 25A, reads as follows:-

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(*a*), (*b*) or (*c*), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

13. Accordingly, I bear in mind that I must give **first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen**. In this case A comes directly into that category; but Z's needs (although they are over 18) also are a relevant circumstance, in particular in the context of my assessment of the wife's reasonable obligations to house them and care for them as well as the restrictions those obligations place on the wife's earning capacity.

14. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**" and in relation to "**the income, earning capacity…which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**" I want, unusually perhaps, to start by making an assessment of the respective reliability and credibility of the parties.

15. My assessment of the wife is that she has told the truth (I cannot identify any example of her not doing this) and has been overwhelmingly clear and reliable in her

presentation and disclosure. In so far as it remains the husband's case that she has misled the court (for example over whether she is currently in remunerative employment) then I reject his assertions (for example, I am entirely satisfied that she is currently not in remunerative employment and lives largely on state benefits and has done since 2018).

16. I am afraid I must reach a very different conclusion about the husband and have the following particular points to make:-

    (i) A pivotal moment in the story of this family came in 2014. By that time the husband was running (in the roles of General Manager and Chief Technical Officer), and (although the precise ownership structure never fully emerged from the chaos of the husband's disclosure, on a balance of probabilities) was the substantial owner of a company. In the husband's own contemporaneous internet presentation he described his role as "*pivotal in helping the company become the leading mobile games development studios in the Java mobile era*". Even allowing for an element of 'presentational puffing', I am inclined to accept (indeed both parties agree with the proposition) that at this stage the husband was enjoying considerable success in his chosen world of work. The wife told me that, certainly at the time, she regarded him as a "*genius tech entrepreneur*" and a 2018 digital post records: *"The founder is a software engineer and has the proficiency in creating high-end digital games. Over the years, he has been employed as a Senior Software Engineer, CEO and Executive Director in the telecom, mobile, and the gaming sectors. He has over 35 years of experience in business development and strategic planning."*

    (ii) As at 2014, the family had become established in the husband's home country, but the husband wished to move to London, England. The wife preferred to remain in the husband's home country. In order to persuade the wife to go along with his plans the husband informed the wife that, if he was permitted to move the family to London and base himself in London for work purposes, then they would be financially successful. The wife was not convinced and required some proof of benefit. The husband indicated that Company X wished to buy his company for £80,000,000. He produced a document which appeared to be a legitimate draft sale contract at that price. He also produced, and showed to the wife, a bank statement which appeared to record that somebody (presumably, it was thought, Company X.) had indeed, on 16th June 2014 or immediately before, made a down payment of £8,000,000 on this contract and that the money was in the husband's (or strictly the company's) possession. The presented paper bank statement, which (I accept) was retained by the wife from 2014 to the present, appears on its face to be genuine and it certainly convinced the wife at the time that the husband's plan was a serious and substantial one with some real benefits for her. The wife duly gave up her opposition, resigned her employment in husband's home country, and the family duly uprooted itself from there and moved to London in January 2015.

(iii) In giving evidence on 7th April 2022, and again on 18th July 2022, the husband maintained that the bank statement and the sale contract he had presented to the wife in 2014, were certainly genuine; but (as a result of direct disclosure from the bank) I have seen a genuine bank statement for the same account for the same period and a number of transactions, including the £8,000,000 payment in, simply do not appear. The husband has sought to suggest that the monies were later returned to Company X., and thus they would legitimately cease to appear on the bank statements, but I reject that explanation – they would still show on the statements. On a balance of probabilities I am satisfied that the husband dishonestly and falsely manufactured the presented 2014 bank statement to mislead the wife into moving to London. I find that there never was a payment of £8,000,000. Because I have reached this conclusion I regard with suspicion the £80,000,000 Company X sale contract. In view of the late disclosure of the genuine bank statements there has been insufficient time to pursue the issue of whether the Company X sale contract was itself a falsely produced document and I can make no definite finding on this.

(iv) Although this represents my headline finding, this was by no means the only unsatisfactory element of the husband's evidence. My general impression of him was that he was both evasive and obstructive in his presentation. His written disclosure was both very late and very incomplete and he demonstrated very little respect for the numerous directions orders made. When asked a direct question in oral evidence he very frequently did what he could to avoid answering and he was prone to going off on irrelevant tangents. His written statements tend to deal with largely irrelevant points (often making unhelpful attacks on the wife which, even if they were true and I am satisfied they were mostly untrue) and largely ignore what, for me are the relevant areas in the case – for example they fail to give any detailed explanation, properly evidenced for example by company financial statements, as to what became of the businesses. Further, when presented with evidence obtained by the wife from the internet (for example pictures of the husband on his Instagram or Facebook account recently enjoying apparently expensive activities) the husband told me that he had deliberately photo-shopped the images and that they were fake, suggesting that he thought everybody did this sort of thing on the internet.

(v) It is in this context, and against this background, that I must address the issue of what happened after the events of 2014 and what is his current financial position. My overall view is that I regard the husband as dishonest and unreliable and should treat everything he told me with a great deal of caution.

17. Assessing the wife's financial position is accordingly very straightforward, although, unfortunately, her position is a very poor one:-

(i) She has virtually no assets (a few hundred pounds in bank accounts and pension entitlements worth less than £30,000 and her earlier businesses

have no value at all), but she has substantial debts – I have no reason to depart from her assessment in the ES2 of largely commercial debts of just over £300,000, much of which arises from monies borrowed by the wife to lend to the husband or at a time when the wife thought the family position allowed her to borrow money in the (perhaps unwise) belief that it could be repaid. After hearing the evidence I am uncertain as to whether an additional loan of some substance (possibly £80,000) said to have been taken out by the wife from the husband's mother was (as the wife believes) repaid by the husband long ago or (as the husband has asserted) is still payable and may be pursued by the husband's mother. For all practical purposes the wife is insolvent with little prospect of being able to escape from that position.

(ii) She relies almost entirely on UK state benefits to fund her living, currently receiving Universal Credit of £2,717 per month (including a rent element), carer's allowance of £270 per month and child benefit of £140 per month. Some of this support will no doubt drop away as A gets older.

(iii) Given her obligations to her children, including her ongoing obligations to a very ill Z, it is quite difficult to see how the wife is going to improve her position in the foreseeable future absent some support from the husband.

18. Assessing the husband's financial position is a much more difficult task which he has done little to assist:-

(i) The husband's presentation to me is that he currently has no income at all, that he has genuinely sought employment in recent times but been wholly unsuccessful, that he has no assets at all, but has debts in the region of £2,000,000 (approximately half of which are tax debts owed to his native government), that he has been formally declared bankrupt in his home country (although he did not produce any documentation to prove this and he told me "*bankruptcy doesn't clear debts in my home country*") and that he has no home and either has to stay at his mother's home abroad or live on the streets and he relies on loans from his mother or his friend ALK just to live. His mother, a 78 year old retired lady of modest means, has (he says) transferred substantial amounts of money to him by way of loans (approximately £40,000 between January 2021 and April 2022), apparently placing her home in jeopardy, but it wasn't possible to call her as a witness to explain her position. Can it really be true that this was money borrowed by her against her home or has some of the husband's money been 'parked' with her to be retrieved at his command?

(ii) His explanation as to what happened to the company after the events of 2014 referred to above was as follows. He told me that the Company X deal, though genuine at the time, fell apart when Company X carried out their due diligence and the down payment of £8,000,000 had to be returned to them. He said after Company X pulled out the company "*just depreciated…it had value to Company X but to nobody else…the assets became worth nothing…it was due to be sold for £80,000,000 but in the end everything just collapsed*". I ask myself whether this can really be

true. If not, what has happened to company and the value in the company? Or perhaps there never was any value in company and the Company X sale contract was another false document? Why then did the husband post on the internet in that his achievement with the company between 2016 and 2019 was that he "*prosperously lead the company through an acquisition*"?

(iii) Perhaps worse still, according to the husband, because Company X had offered (as part of the deal) to pay an earnout clause to the husband worth £40,000,000 (or a portion of that sum), the husband's native Tax authorities were able to raise an advance tax bill against this possible future income in a sum approaching £1,000,000, apparently a prospective liability in advance of any money having been received. The husband told me that this liability subsisted even though the earnout clause was subsequently cancelled by Company X (a fact which I regard as highly implausible, but the husband told me "*was the law in my home country*") and that such sum remains payable to this day. The husband has produced documentation purporting to come from his native tax authorities in which they apparently assert this debt. In view of the conclusions reached above about the bank statement, I have real doubts about whether this asserted tax liability can be genuine and those doubts are enhanced by the fact that in an earlier document, I think annexed to his Form E, this tax debt was said by the husband to relate to "*unpaid discretionary capital gains tax for tax years 2005 to 2009*". In his oral evidence he told me he had in error "*written the incorrect year*".

(iv) In the same vein the other business in which the husband has apparently been involved in recent years, another company specialising in digital products for the visually impaired, the husband produced virtually no documentation, but orally told me that the business has produced virtually no earnings for him and is worthless, indeed that he had had to lend money to it. This is in marked contrast to an internet post by the husband in 2020 in which he asserted that, as Chairman and Chief Technical Officer of the company, one of his achievements was that he "*grew the company's turnover to £2m annually*" and another post in January 2021 that "*we reached $2.78 m in turnover*". The husband's contradictory explanations for these posts – alternatively that people generally lie on the internet or that the turnover figures were correct but related to a different version of the second company – only succeeded in adding to the impression of unreliability and confusion. Were these assertions of wealth just boastful fiction or is this business activity overseas, perhaps in South American or in Europe (in both of which the husband seems to have some links), as yet undisclosed but providing a good income for the husband?

(v) Despite the asserted parlousness of the husband's financial situation, the bank statements that have been obtained do show significant transactions and transfers of money – for example to his girlfriend and for example to fund spending in South America where the husband accepts he has spent a good deal of time. The internet posts do show the husband apparently engaged in expensive activities – an office in South America, a bar in the

Ritz, flying in a private plane, a night out in Paris with his girlfriend, a trip to the Monaco Grand Prix. The husband told me that many of these images were not genuine, but were photo-shopped to create a false image of wealth and that I should not read much into them. The wife is unsurprisingly sceptical; but none of these pieces of information very convincingly establishes great capital wealth.

(vi) The husband told me that he had been trying to find work as a Chief Technical Officer earning c £90,000 per annum, but had not so far been successful. Yet a recent internet post by the husband presented him as "*full time Principal/Chief Technology Officer*" for another company since April 2022. Yet the husband told me that this had never really started and that the arrangement had been terminated on 7th July 2022 when he declared his foreign tax liabilities to his employers. Evidence presented by the wife suggested that a Chief Technical Officer might reasonably expect to be paid a salary more like £300,000 per annum, not £90,000 per annum.

(vii) But to where does all this really take us? I have to confess it is very difficult to assess. On the one hand there is evidence of financial success. On the other hand there is specific evidence of the husband having dishonestly and deliberately over-stated his financial position – might it be the case that his wealth always was something of a deceptive fiction or might he be doing the same now in the opposite direction?

(viii) Mr Barnett-Thoung-Holland started the hearing on 7th April 2022 by inviting me to conclude that the husband had sufficient assets to fund a lump sum to the wife of £6,881,000 (to meet the wife's housing and other capital needs and capitalised maintenance). The information that has emerged in the course of the hearing, in particular the information contained in the real bank statements, has caused a change in the wife's position. Mr Barnett-Thoung-Holland, on behalf of the wife, has specifically not invited me to adjourn the case on a part heard basis to seek further disclosure; but now accepts that the investigation has thus far failed to identify any assets held in the husband's name from which a lump sum could be paid (amongst other things he now accepts that the cabin thought to belong to the husband in fact is held in the legal name of his mother) or sufficient information for the court now properly to draw adverse inferences. His case now is that in view of the "*complete failure of the husband to be transparent and clear in these proceedings, the wife would ask that the court adjourn her capital claims*" on the basis that "*it may well be that she will have to restore the matter to court in future*".

19. In view of Mr Barnett-Thoung-Holland's current position on capital I need to address an important legal question and analyse some of the authorities on the subject:-

(i) It is the normal practice in a financial remedies case for the court to make a decision at a final hearing on a balance of probabilities as to the computation of assets (even if there are uncertainties and this involves the drawing of adverse inferences) and then make a once and for all division

of capital, whatever that might be on the merits of the case. This practice reflects the established policy of the courts as, for example, articulated by the House of Lords by Lord Scarman in *Minton v Minton* [1979] AC 593 when he said: *"An object of the modern law is to encourage [the parties] to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down*."

(ii) Mr Barnett-Thoung-Holland's suggestion of an adjournment of capital claims runs counter to this general policy; but he argues that the facts of this case make it an exception to the normal practice. He has helpfully drawn my attention to a number of authorities which, in his submission, justify this departure.

(iii) The earlier cases suggest that an adjournment of capital claims should only be granted where there was a real possibility of capital from a specific source becoming available in the near future (see the very detailed analysis of Bracewell J in *MT v MT* [1992] 1 FLR 362).

(iv) Some more recent authorities (see, for example, Roberts J in *AW v AH* [2020] EWFC 22, Mostyn J in *Quan v Bray & Others* [2018] EWHC 3558 and Sir Peter Singer in *Joy v Joy-Marancho and Others (No 3)* [2015] EWHC 2507) are in my view of assistance in illustrating the justification of a departure from normal practice in slightly wider circumstances which do not necessarily include a real possibility of capital from a specific source becoming available in the near future. The justification is based on the proposition that while, generally, capital claims should not be left indeterminately unresolved, there were hard cases where fairness and justice must prevail over the normal desirability of the finality of litigation. Mostyn J's decision in *Quan v Bray & Others* [2018] EWHC 3558 (Fam), for example, was much more based on the injustice which might result in making a decision after a hearing at which the husband's disclosure had been very unsatisfactory, indeed Mostyn J categorised it as "*brazen nondisclosure, coupled with an arrogant and contemptuous attitude*".

(v) The emerging principle from these cases might be summarised as follows: If a litigant engages in conduct, which may include full or partial non-disclosure, which causes the court to conclude that a once-off division of capital now is likely to cause unfairness and injustice to the other party then the court, in exception to the normal practice, has a discretion to decide that the normal desirability of finality in litigation should be overridden to preserve the possibility of a fair outcome for the parties.

20. So does the present case meet this test? My view is that it does – if I dismissed the wife's claims now because she has been unable to establish the existence of assets which, if the husband had given proper disclosure might very well have been established, and which leaves the wife in considerable debt and in a country to which she was tricked by the husband into moving, then I might well be doing the wife a considerable injustice. In reaching this conclusion I bear in mind the "**financial needs, obligations and responsibilities which each of the parties to the marriage**

has or is likely to have in the foreseeable future", in particular the wife's need to house and look after herself and the two children for the time being, and Z possibly in the longer term as well, also to have a way of meeting her own substantial debts. If the husband's presentation turns out to be accurate, and he is in fact hopelessly insolvent, then leaving the capital claims open does not, in my view, do any great injustice to him as the claims may never again be re-launched.

21. Should there be a limit on the length of the adjournment? Roberts J in *AW v AH* adjourned capital claims for seven years (when the husband was to reach the age of 70). Mostyn J in *Quan v Bray* adjourned the capital claims indefinitely. In my view the facts of the present case justify my adjourning the case for a ten year period – my view is that this period holds the balance between my wishing to give the wife an opportunity to have a fair chance at receiving some capital provision and the interest in the finality of litigation. I propose therefore to adjourn the wife's capital claims generally with liberty to restore, provided that any application to restore must be issued before 3rd August 2032, failing which they will stand dismissed. I propose alongside this to adjourn the question of the costs of these proceedings on the same terms. I have deliberately chosen a ten year period from the date of my initial judgment (rather than, for example, the start of payments of periodical payments) because that is a reasonable period in forensic terms for the wife to observe or investigate facts which are so far unavailable to her by way of balance with the principle of finality in litigation.

22. In relation to maintenance Mr Barnett-Thoung-Holland now invites me to make an order of spousal periodical payments in the sum of £7,000 per month for an extendable term of 10 years from now. My understanding is that his intention is that this sum would subsume any separate claim for child periodical payments, although the court does have the power to make child periodical payments orders because the husband is not resident in this jurisdiction.

23. The wife has justified the figure of £7,000 per month in terms of need - £3,500 per month for housing, i.e. rent, and £3,500 per month for living costs and debt servicing. I do not have very much difficulty in concluding that these figures are reasonable in the context of the **standard of living** that the parties jointly enjoyed during the marriage, but my final figure must, I think, reflect that the financial situation is less good than it was during the marriage.

24. The more difficult question for me is that it has not been established before me that the husband currently has the income to meet such payments; but I am not just concerned about current income here – also relevant is the "**the earning capacity… which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**". I formed the clear impression that the husband was down-playing his ability to earn income and I think that it is a reasonable proposition for me to say that, given a nine month period to get back to

remunerative employment, the husband could be reasonably expected to earn enough to make of contribution of £5,000 per month to the wife and children. I have fixed this at nine months (rather than, for example, six months) because it may take that sort of time for him to re-establish himself in the sort of Chief Technical Officer-type role which would enable him to earn a salary more like £300,000 per annum. Of course if there was clear and compelling evidence of a salary at a much lower level then a variation application might have to follow, but the husband’s record suggests that this is his earning capacity. Whilst I could make some sort of apportionment between the wife and children, my preference is to make an order for spousal periodical payments. If a CMS application was ever made (and at the moment it could not be because the husband is not living in this jurisdiction) then I would expect any CMS figure to be subsumed into the total figure of £5,000 per month; but (to be clear) this is in part intended in practice to be to enable the wife to house and care for the children. If they did in due course become independent then there might have to be a re-assessment. Taking into account the provisions of Matrimonial Causes Act 1973, section 25A, I take the view that the proper order is to make is this an extendable term order. The first payment will be due on 1st May 2023 and the final payment will be due on 1st August 2032 (unless it has been varied or discharged in the meantime). I have linked the ten year period to the one referred to above in relation to the re-opening of capital claims as it feasible that an extension and capitalisation claim might occur simultaneously. This order will be subject to CPI upgrading on 1st May 2024 and each anniversary thereafter.

25. In reaching these conclusions I have had in my mind the **standard of living** that the parties jointly enjoyed during the marriage, the **ages of the parties**, the **duration of the marriage,** the respective **contributions** of the parties, the **conduct** of the parties as well as the factors I have already specifically discussed.

26. In reaching these conclusions I have had in my mind the **standard of living** that the parties jointly enjoyed during the marriage, the **ages of the parties**, the **duration of the marriage,** the respective **contributions** of the parties, the **conduct** of the parties as well as the factors I have already specifically discussed.

27. I want to thank Mr Barnett-Thoung-Holland for producing a draft order based on this judgment which I have approved. I propose to publish a redacted and anonymised form of this judgment on TNA/BAILII.

POST-SCRIPT

28. One reason for my wishing to have this judgment published is that I wish to draw wider attention to the ability of dishonest parties to manufacture bank statements (and other documents) which, for all practical purposes, look genuine, but which are in reality not in that category. This has occurred in the present case and the wife has significantly suffered as a result of it and it is important for litigants, practitioners and judges to be aware of the issue. May I draw the reader’s attention to an article in the Financial Remedies Journal: *Dodgy Digital Documents: Where are we now? Where*

are we going? by Helen Brander [2022] 2 FRJ 139 which gives a full description of the existence of this issue.

HHJ Edward Hess
Central Family Court
15th August 2022