

Wife v Husband

Neutral citation: [2023] EWFC 273 (B)

Case number SQ 09D0110

Hearing at Stafford 5th and 6th of June 2022

Before DJ Masters

Background

1. This was listed as a preliminary hearing of the wife's application for financial relief dated 6 March 2019 to determine the extent of the husband's assets. The matter has been involved in litigation for some considerable time without resolution.
2. The parties were married on 9 September 2020 There is one child of the family; M who was under age at the time of the application to the court but is now aged 20 and at university. The parties separated finally in 2018 although they are at issue as to whether or not there was any effective reconciliation after 2013 when the divorce petition itself was issued. The applicant wife presents a case that the parties effectively reconciled and that the final separation was in October 2018. The respondent husband disputes this and says that although he did not leave the former matrimonial home until October 2018 the parties were not living as man and wife.
3. On 10 October 2019 the wife made an application under section 37 of the Matrimonial Causes Act 1973 to restrain the husband from dealing with assets, specifically a Ford Mustang vehicle, a Volkswagen van a Skoda Octavia and the proceeds of sale of another property, situated next to the former matrimonial home.
4. On 15 October 2019 District Judge Isles granted the restraining order sought. The wife also sought and was granted an occupation order in relation to the former matrimonial home. Matters did not progress smoothly largely, it has to be said, as a consequence of the husband's total failure to engage properly in procedural requirements.
5. On 19 March 2020 the wife applied for the husband's committal for non-engagement. Regrettably, partly due to Covid, there were delays in the processing of that application and the matter was eventually heard before myself on 25 April 2022. The application for committal was struck out as a result of procedural deficiencies but on that occasion the husband was ordered to engage and file his Form E and respond to the applicant's Schedule of Deficiencies.
6. The matter came before me again on 7 September 2022 when I made directions listing it for a preliminary hearing on the issues relating to the assets and directed that the wife was to make a formal application under section 37 by 16 November 2022 to identify the basis of the dispute between her and the potential interveners. This was not done. On 14th of December 2022 the matter came before Deputy District Judge Domenge who granted the wife's application for relief from sanctions for failure to serve the section 37 application and made further directions. The wife was ordered again to file a section 37 application but the wording used within the order was 'if so advised'. Section 25 statements were ordered from the parties to address conduct.
7. The wife has been represented in this hearing by Miss Khalique of counsel. The husband has been represented by Mr.Ogunlende of counsel.
8. At the outset I indicated that, regardless of the lack of a formal section 37 application from the wife, I was of the view that the documents that she had filed made it clear that she was taking

issue with regard to the husband's case that he essentially had no money remaining from an inheritance which had fallen in during the course of the marriage. It had become evident that his VW van had been transferred to his new partner's father in return for payment of the loan upon it. He further argued that his Mustang car effectively belonged to his partner's sister D by virtue of her having made the balloon payment on the PCP agreement relating to it. I was of the view that neither party could afford a further hearing and that we ought to effectively treat the matter as a final hearing on proportionality grounds. That was how the matter progressed.

9. It has been common ground that the former matrimonial home, is a matrimonial asset, albeit held in the husband's sole name. The wife continues to live there with M and with her granddaughter who is currently at college but who hopes to be working shortly and the wife is therefore hopeful that the granddaughter will be able to contribute something towards the home expenditure. The value was earlier recorded as agreed at £220,000 although the husband has sought to argue that it is potentially worth more whilst the wife has argued that in fact its value may have reduced and it may be more realistically in the region of £215,000. The property is subject to a mortgage with the Halifax which remains outstanding in the sum of approximately £147,417. It is accepted that the husband has not paid the mortgage since January 2019 and the wife gave evidence to the effect that she was advised not to pay the mortgage by the Halifax because she would effectively be taking on responsibility for the husband's debt. It is the wife's case that the Halifax have been sympathetic to her predicament and that they are minded to provide her with mortgage facilities if she is able to secure a transfer of the property to her sole name. The husband seeks to assert that she cannot afford to live in the property and that the property will have to be sold although he has indicated via offers that he is prepared to cede his interest in the equity. On the figures given, dependent on whether the court accepts the Husband's value of £240 or the figure of £220,000 after mortgage there is equity of around £85,983 or, alternatively, a lesser sum of £65,983
10. During the course of the time that the parties technically remained married, the husband received a large inheritance from a woman treated as an aunt in the sum of approximately £244,847.62. The total estate was shared equally with his brother C. That the husband received this sum (244,847.62) is not in dispute - he accepted it himself. There is also no argument that £116,382 was used to purchase the property next to the former matrimonial home which the husband apparently wished to purchase to be able to control who lived next door. But the exact amount of the inheritance is disputed by the wife who has argued that a property which formed part of the aunt's estate and was sold, effectively realised the husband and his brother an extra 60 to 70,000 each.
11. It is the wife's case that she believed that the house next door to the former matrimonial home would be put in the party's joint names as the husband had assured her that this would be the case and led her to believe that he would see solicitors to achieve this. In fact, this was not however the case. The property was placed in the sole name of the husband. It was rented to the wife's daughter under a formal tenancy agreement with rental paid by the local authority. They inhabited the property for some two years until the respondent served them with notice in approximately August 2018, having decided that he was going to move away to Essex, telling them that he needed the money and the house needed to be sold.
12. According to the wife's account, the husband left the former matrimonial home in the early hours of the morning on the 4th October 2018, without telling her. When the wife awoke she discovered that the husband had left the property and had taken some of his belongings with him.
13. The property next door had sold for £137, 375, and the husband received the proceeds of sale on 3rd October 2023. The husband subsequently transferred the proceeds of sale to his partner.

The husband had been in a relationship with his partner for some 6 months at the time of the transfer.

14. This was **prior to** the applicant wife's application for a section 37 order which was made a year later in October 2019. She explained that she had experienced difficulties in obtaining legal aid and changing solicitors for causing the delay in making the application to the court
15. It is the husband's case that at the conclusion of the marriage he was obliged to dissipate the monies essentially remaining from the sale of the property next door to the former matrimonial home as a consequence of debts accrued during the marriage. He alleged that the parties lived a lavish lifestyle but produced no evidence of this. The wife disputed this during the course of her evidence and said that their lifestyle was relatively modest albeit that they enjoyed one foreign holiday per year and had a couple of reasonable cars.
16. It is the husband's case that he was obliged to pay off a large portion of his proceeds from the sale of the house next door to the former matrimonial home to clear loan sharks. A sum of £80,000 was paid to 2 people, one being a man called G and the other being a woman called A, who was, in fact, a relative of his partner S. He claims that the payment of these loan sharks was managed by his partner's uncle who 'knew how to deal with these people' and with the assistance of his partner S, who transferred money on his behalf to assist him. The Skoda vehicle was returned on the expiry of the lease in January 2021 and the VW van was transferred to his partner's father. The father, T was repaid in return for him having allegedly cleared the finance debt on the same vehicle. This was a sum of £16,027. The husband also claims to have repaid a credit card debt to Prime Credit of £7789 and a further sum of £7703 to MasterCard and finally a sum of £15,845 to his brother C for a £16,000 loan
17. In addition to the financial transactions I have mentioned, the husband has an army pension. It is accepted that this was earned in its entirety prior to the parties commencing their relationship. It has a relatively modest cash equivalent value of some £47,858 – not enough to generate the need for a specialist report and the husband argues that this ought to be ring fenced from the wife who has no pension.
18. Mr Ogunlende spent some time addressing the court on the possible interpretation that the husband's transactions were sham transactions. However, Miss Khalique, for the wife, was clear that this was not the basis on which she argued the wife's case. Instead, the wife's position was that there had been a clear and deliberate dissipation of assets held by the husband and he should therefore be held to account.

The Evidence

19. The court has been considering transactions going back over five years. The bundle has been nearly 1500 pages. Obviously, this is a considerable length of time and it has to be recognised that memories are not always reliable. However, in this case, the wife did have a number of telling documents to refer to, not least the bank statements showing transfers between the husband and his new partner, S, particularly those which followed immediately upon the husband leaving the former matrimonial home in October 2018 and later transactions of 2021.
20. Turning to the wife, although she was clearly nervous, I did not form a view that she was unreliable or deceitful in her accounts. I suspect that she simply did not appreciate the significance of some issues until after the event, when it was effectively too late to remedy the situation. She did not present as a sophisticated woman who was canny in her financial management and grasp of financial matters. She gave an account of the husband is being

controlling as to financial matters during the marriage and not having access to his accounts. In terms of the length of the relationship, the wife was adamant that the letter from her solicitors which the Husband's counsel read to her dated 29th March 2023 was incorrect in stating that the relationship ended in 2009. She described the husband is working in [redacted] and returning to [redacted] for the weekends. Between 2009 and 2013 she was clear he was under the same roof and they were attending marriage guidance. The husband's counsel queried the tax credits claim the wife clearly made during this period on the basis that it supported the husband's claim that the parties had separated. The wife was clear that, as she put it, she was 'not allowed 'to stop claiming these benefits because the husband had told her his business interests were' going down the Swanee'

21. In terms of lifestyle, the wife was also clear that although the couple enjoyed a foreign holiday most years and did have some nice cars, on the whole they were, as she put it, Average Joes. She was adamant she knew nothing of debts alleged by the husband as existing from 2015. No one had come to the door demanding money. There was no extravagant lifestyle as he alleged to explain where money was being spent.
22. The wife's account of financial dealings with the husband painted a picture of a man who shared only what he wanted to share in terms of information. In relation to the allegation that he had indicated that she would share 50-50 in the proceeds of sale of the house next door to the former matrimonial home. She naïvely accepted his indication that he would go to see solicitors, taking this promise at face value. The 50:50 split was referred to in her witness statement of 7th November 2019. It is not a recent invention.
23. The husband disputed the length of the relationship, clearly appreciating that this impacts upon the position regarding his inheritance and whether the court will regard it as having fallen in during the lifetime of the marriage. He sought to present a scenario whereby he had slept in the box room for 10 years although he accepted he did not finally leave the former matrimonial home until October 2018. He could not explain the Happy Anniversary card the wife exhibited sent on their alleged 16th anniversary, arguing essentially it was not his writing and was therefore a fake. It was clear that after receipt of his inheritance, there had been a mingling of monies in that he purchased a Land Rover vehicle the wife was allowed to use and also paid for a couple of nice holidays, including a trip to Canada.
24. The husband's evidence, as a whole, was shifty and unreliable. It was clear he was seeking to backfill history and trying to explain deficiencies in his evidence. He did not present as a straightforward, honest man. Taking account of his behaviour throughout –

- a moonlight flit with the proceeds of the house next door to the former matrimonial home in October 2018,
- immediate transfers totalling some £135,000 to his partner, S of only six months,
- failure to engage in the litigation as a whole, compelling the wife to issue a committal application
- the total absence of evidence on his key claim to have spent £80,000 keeping loan sharks at bay,
- a spend of £5,000+ on Lego at a time when the Wife's application was ongoing and he had failed to discharge the matrimonial home mortgage since January 2019. This was a spend he omitted to mention in his own documentation but which is confirmed by T's witness statement and T's oral evidence.
- I also note that from October 2018 when he left until January 2022 the Husband paid nothing for M and as at January 2022 there were arrears of Child maintenance of some £4583.66.

This is not a man who presents an impression of honest, open transparent dealings.

25. I am inclined to accept the wife's version of the relationship and also her account of the proposed sharing of the monies from the house next door to the former matrimonial home. If that claim were not true, why was there a need for the husband to quit [redacted] in the early hours of 4th October 2018, without telling either the wife or M and then immediately transferring monies to his new partner the following day? The bank statements are quite clear. The monies from the sale of house next door to the former matrimonial home went into his Halifax account numbered XXX on 3rd October 2018 in the sum of £137,375. Thereafter we see at B270 in bundle that On 3rd October 2018 2 payments each of 325,000 were made to S.
26. On the 4th October 2018 a payment of £50,000 and a further sum of £25,000 left and
27. On the 8th October 2018, a final figure of £10,000 was transferred to her making a total within 5 days of £135,000.
28. I am therefore of the view that the husband's inheritance, the exact sum of which is disputed, fell into to the marriage and should therefore be regarded as part of the matrimonial pot. The exact amount was unclear but on his own admission the husband received a sum of £244,847.62, as set out at page 268 of the Main Bundle. The wife sought to assert that the true figure was in fact much higher due to sale of the aunt's property but it was apparent we did not have full estate accounts. A telling piece of evidence from the husband himself in his oral evidence was that his own brother was concerned that he might 'do a runner' with the money.

The other witnesses

29. The husband had three other witnesses, T, his partner's father,
D, the sister of his partner
and his partner herself, S.
30. All three made witness statements and attended to give evidence to the court. It has to be said that none were impressive witnesses. Each gave the court the distinct impression of attempting to cover the husband's tracks. The father gave evidence of having paid £20,000 to buy the husband 'breathing space' and explained his ability to access the sort of money is arising because he is a car dealer by occupation and has access to cash. He apparently did this for a man he had known at that stage for only a very short period of time and whose financial affairs were not known in detail to him. The payment was allegedly made after a visit from a couple of loan sharks who arrived in early about October 2018. The father of the husband's new partner did not involve the police, as most of us would have done, but instead chose to turn to his brother for assistance – a man who would apparently know how to deal with it because it emerged upon the questioning I myself put to the husband, that the brother was himself a loan shark.
31. The father's explanation for payment of the balloon payment of £16,027.02 on the Volkswagen van used by the husband was again a very convenient explanation. S paid it off using his money on the understanding that he would get it back. The payment was made to enable husband to continue to work – he needed a van. The husband and indeed T asked the court to believe the story. We know a sum of £16,027.02 was paid on 17 October 2018 as it features on the bank statements to S's account in the bundle 372. The husband and T asked the court to believe that

this was T's money and not the husbands. Set against the history of this matter this is a difficult account to accept.

32. I turned to D, the sister of S, who allegedly now owns the disputed Ford Mustang. There is clear evidence that D paid a sum of blank in respect of the balloon payment on the Mustang. This was done on 17th January 2020 and there is an email to confirm the payment. The husband however, retains the use of the car pays for the tax and insurance he still drives the vehicle. The V5C document also remains in his name his explanation being that a transfer to D would apparently devalue the vehicle. D maintained the payment was made from her account from her savings I have checked the legal status of the V5C document and understand from the government website that it is not proof of legal ownership. The wording used is that it merely indicates who is 'responsible for registering and taxing the vehicle' This person is not necessarily the owner.
33. The wife's counsel asks the court to regard this arrangement as a trust arrangement whereby the husband retains the beneficial ownership and when the case is over, the Mustang will revert to him.
34. Again, as with the Volkswagen, the husband retained the use of the vehicle, a pattern which the wife's counsel pointed to as a recurring feature in terms of the husband's conduct
35. I turn to S, the partner of the husband. She confirmed that the parties met in approximately April 2018. In October 2018, she was involved in the transfer of money from the husband to her account which she described in her evidence as 'just helping him out'. This is a man she has known for barely 6 months and in the space of two days he has transferred to her a total sum of £135,000 and she has not sought to obtain a full explanation for this. This account is quite incredible – not to mention unbelievable. It is clear that these transactions were made immediately after the husband had fled the former matrimonial home in [redacted] with the sole aim of defeating financial claims made by the wife. S could not give any corroborative detail in relation to the debts allegedly being cleared on the husbands behalf. She claimed no knowledge of G but apparently transferred a sum of £50,000 to him without question because her uncle (the loan shark) asked her to.
36. S also paid for Volkswagen finance £16,027.20 to clear the finance on the van. It is difficult to avoid a conclusion that this was a further transfer made on behalf of the husband to enable him to put money out of reach of the wife.
37. S opened a bank account with TSB under number 000 apparently on 13th October 2021. This account was opened specifically in her name for the benefit of the husband. She explained the rationale as being because all his accounts were frozen.
38. Further, in describing the couple's current arrangements, S described the husband as making payments to the aforementioned account for 'day-to-day expenses'. She was unable to explain a payment by him of £10,000 made on 18 October 2021 in the midst of this case and a further sum of £7600, transfers immediately moved to a Platinum account the same day but it can hardly be said that these are day-to-day sums and the court therefore concludes that over a prolonged period this woman was seeking to assist the husband in hiding his money with the specific intention of defeating the wife's claims. Her lame excuse that she could not remember what these two payments for simply underlines the dishonest intent behind the transactions.
39. The husband's own evidence gave absolutely no satisfactory account of the monies allegedly owned owed to loan sharks. His account of being 'in financial bother', transferring money to S in October 2018 because she had offered to help him sort it out was not credible. The communication from M, the party's son, in questioning the husband, 'Why did you take all the money?' is telling- the husband knew full well that the wife was expecting a ½ share. He had intermingled the money from the inheritance by spending on both cars and holidays, issues he himself did not dispute. To reiterate, I am entirely satisfied it is proper to regard the inheritance

as part of the matrimonial assets set against this background. Further, I am satisfied that when he left in October 2018, the husband planned his move with the specific intent to defeat claims made by the wife. Honest, well meaning people do not leave in the early hours without discussion of their plans.

The awards

40. I prefix my judgement with regard to the details of the awards by indicating that I have, of course, taken into account the factors listed at section 25 of the **Matrimonial Causes Act 1973** which gives the court to specific guidance as to the issues for consideration. This case is essentially a 'needs' case. The wife who is 55 has various health issues. She suffers from Fibromyalgia, Inflammatory Arthritis, PTSD, anxiety and social phobia. She gave evidence to the court that adaptations had been made to the former matrimonial home to accommodate her needs. She is in receipt of benefits comprising ESA and PIP and will probably not work again. Her income from all sources is in the region of £18,000pa. She has had care of M, the couple's son, since the husband and left in October 2018 albeit that he is no longer of a minority age but he is still in education. She needs a roof over her head. She is currently still in receipt of back payment of arrears relating to the husband's no payment of child maintenance. The stress of this case contributed to the death of her older son by suicide in 2019.
41. The husband who is 49 works as a TV aerial subcontractor and clearly has the ability to do some work cash in hand. He disclosed income of approximately £24,000 up to 5/4/23 and gave evidence to the effect that he is not cohabiting with S although they apparently live under the same roof and the property on which he resides is owned by her father who clearly does not ask for a defined rent but allows the husband to have the use of the property on the basis that the husband helps to renovate it in his spare time. The husband has no immediate need for accommodation and is not under any pressure to relocate. He has produced no property particulars despite the usual orders providing for this.
42. The husband does not seek to oppose the wife being awarded the former matrimonial home on the basis that he seeks to be released from the mortgage covenants. If wife cannot secure his release, he argues that, in the alternative, the property should then be sold.
43. I consider this to be an appropriate way to treat the property. The wife gave evidence to the effect that the Halifax will look sympathetically upon her in the event of a transfer and hopefully, with a contribution from the granddaughter by way of rental, this will assist her to stay. If in the final analysis she is unable to secure a mortgage, the property should be sold and she should retain 100% of the net equity after payment of the estate agents and solicitors costs. She can then seek to rehouse in a potentially more modest property. The husband obviously wishes to secure his release from the existing mortgage, thus freeing him for a future purchase.
44. I order that the former matrimonial home should be transferred to the wife on the basis that she uses her best endeavours to obtain the husband's release from the mortgage. If this has not been achieved within a 3month period from the date of the order, then in the alternative, the property should be sold and she should retain the entirety of the net equity to rehouse. That would have the effect of freeing the husband from his mortgage covenants.
45. As far as the other assets go, the issue here is that they have, quite literally, gone. I am satisfied from the evidence that I have read and heard that the husband has deliberately sought to evade the matrimonial claims made by the wife for the reasons I have already given. This must influence my awards.

46. This means that the only concrete asset remaining is the army pension with the cash equivalent value of approximately £47,858. It is unarguably a premarital asset and not therefore an asset to which the court would normally look to in making awards for the wife. However, in these circumstances, I have little option but to look to this resource and I am mindful that HH J Hess in **W v H (divorce financial remedies) [2020] EWFC B10** endorsed this approach. I therefore intend to award the wife of 50% share of that pension on the basis that the implementation costs are shared equally. I do not entertain a transfer of the entirety on the basis that I do not feel that it is fair to deprive the husband of the entirety after a lengthy relationship.
47. Finally, in terms of the award I turned to the wife's application for a lump sum. From the activities disclosed by the husband's accounts and transfers between himself and S, I am satisfied that this husband does have the resource to cash sums and I therefore award to the wife a sum equating to the value of the Ford Mustang of £23,275.
48. In this regard I am mindful of the court's ability to draw inferences about the husband's means as suggested by **Moher v Moher [2019]EWCA Civ 1482** in which Moylan J confirmed the view of Butler-Sloss LJ in **Baker v Baker** rejecting the submission that assets had to shown to be positively available and accepted there was ample evidence upon which the judge was entitled to draw inferences adverse to the husband and to make findings that there were assets available to meet the order he made.
49. I am satisfied that this husband will be able to discharge the lump sum order.
50. Thereafter, as between the parties, there should be a Clean Break.
51. For the avoidance of doubt, in terms of the original section 37 order of October 2019, I order that it be discharged.

Costs

52. I am minded to make an award of costs against the husband in favour of the wife, who will be subject to the Legal Aid Agency's Statutory Charge but I am also mindful that a paying party should have the opportunity to make representations as to the sums claimed and so I propose to consider this item specifically at the further hearing.

DJ Masters

6th June 2023