

Case number RS17D16946

In the Bristol Financial Remedies Court sitting at Swindon

Neutral Citation Number: [2024] EWFC 334 (B)

Before:

DISTRICT JUDGE HATVANY

Between:

KD

Applicant

And

SD

Respondent

-

Extempore JUDGMENT
18th November 2024

1. This is the final financial remedies judgement in this case. The case has been ongoing since 2017 as will be apparent from the case number and the unwieldy size of the file. Both parties are litigants in person. Neither was able to agree the trial bundle and separate bundles have been filed.

2. There has been protracted and costly litigation both in this case and in at least two sets of child arrangement proceedings. The two children BD aged 17 and KD aged 16 live with the husband and sadly have not seen their mother, the wife since November 2020 apart for a brief time in 2021.
3. I hope the parties will forgive me if for convenience I refer to the applicant KD as the wife and the respondent SD as the husband.
4. This is a relatively short marriage of just five years and four years pre-marital cohabitation, so a total relationship of nine years.
5. The wife accuses the husband of domestic abuse and of alienating the children against her. It appears the children live with the husband because of the wife's relationship with another man who was convicted of child sex offences on in June 2023, and that these two children were exposed to the risk of, and possibly actual, sexual and other harm.
6. The impact has been severe on the children both of whom were referred to CAMHS.

7. It is a particularly sad and poignant feature of this case that the children do not wish to see their mother. This may change as they get older and become more curious and begin to heal emotionally. The wife messages BS on Instagram and usually gets a short reply typical of a teenager. KD does respond to the occasional text from her mother. This is a start to rebuilding the relationship. It may be helpful in terms of the healing process if the mother were to write a letter expressing remorse for the harm caused.

8. During the hearing both parties attempted to raise conduct as an issue but in my judgement their allegations get nowhere near to the conduct threshold as recently elaborated by Peel J in the case of N V J <https://caselaw.nationalarchives.gov.uk/ewfc/2024/184>. For these reasons I disallowed arguments and questions about conduct. I have no wish to rummage through the attic of the relationship between these two parties to attribute blame.

9. The sole task of this court is to distribute the remaining assets in a fair way having regard to the factors set out in section 25 of the Matrimonial Causes Act 1973. The main assets consist of the equity in the house and the husband's pensions.

10. I set out the brief background and a chronology as follows: -
11. 2006: Cohabitation commences.
12. December 2006: FMH 1 was purchased in joint names. The deposit of £33,979 was paid by the husband.
13. January 2007: BD was born.
14. September 2008: KD was born.
15. 2010: The parties marry apparently on a TV show.
16. May 2015: The current matrimonial home was purchased. The parties only lived together in this property for 43 days.
17. July 2015: The wife leaves. Date of separation.
18. August 2017: The divorce commences.

19. November 2020: The children commence living with the husband where they remain to this day.
20. 2022. Decree absolute.
21. The main assets for distribution comprise the equity in the current matrimonial home where the husband and the two children have lived since November 2020; and the husband's pensions.
22. The husband has been contributing to his employer's pension scheme for 24 years. There is a report from a pension expert showing the pension share that would be necessary to achieve equality of income at the age of 60 for both parties by reference to contributions paid by the husband during the nine-year relationship.
23. Turning to the property, which is worth £300,000, after the discharge of the mortgage in the sum of £104,000 and sale expenses, there is equity of £182,912 for distribution between the parties. It is accepted that SD will have to

remortgage to buy out KD. This would save sale expenses of £11,000 as per the ES2 increasing the net equity to £194,000.

24. The husband is employed as a technical engineer. His P60 at page 145 of the trial bundle for the year end 2023 shows gross pay of £32,603.37 which equates to £25,786 net. The husband also receives child benefit of £1740 per annum. The husband is fiscally responsible for the children and pays the mortgage of £947.96 per month and all family expenses. He also spent about £20,000 on renovations to enhance the value of the property.

25. The wife's earnings are modest in the sum of £12,000 per annum gross. The wife has a psychology degree. She has a hairdressing and beauty business. She is also the director of a company. The wife has not had responsibility for the children for four years and it seems to me that she has not maximised her earning capacity during that time. This was partially caused by Covid and by studying for a degree in Psychology which she successfully completed In June of this year. She only has herself to support and should be able to at least double her declared income in the next few years.

26. The wife moved into rented accommodation when she left the former matrimonial home in 2015. She initially moved in with her mother. She then borrowed money from her sister as a downpayment and now rents a three-bedroom property for £850 per month. She pays minimal child maintenance of just £30.42 per month to the husband.

27. Open positions.

28. The parties' open positions today are: - The wife says she wants 40% of the equity which equates to £77,600 in return for the transfer of her interest in the property to the husband. The husband offers £23,000 which equates to 11.85% of the net equity.

29. S.25 factors.

30. The court's task is to distribute the matrimonial assets fairly having regard to the factors set out in section 25 of the Matrimonial Causes Act 1973.

31. The first consideration of the court is the welfare of the two children who have since November 2020 been the sole responsibility of the husband. This position is unlikely to change in the short to medium term.
32. The children have been exposed to abuse largely at the hands of the wife's former partner DB. These proceedings have been protracted as have at least two sets of former child arrangement proceedings. It is highly desirable that these two children remain in their home and enjoy a period of stability.
33. The next relevant factor is the income and earning capacity of the parties. The husband is the higher earner, but I would expect the wife to at least double her current modest income shortly now that she has a psychology degree and no-one else to provide for. The husband bears sole fiscal responsibility for the children. He receives minimal child maintenance from the wife.
34. The next relevant factor is the financial needs and obligations of the parties. The husband is solely responsible for meeting the financial and other needs of the children and for continuing to pay the mortgage on the house and all other family outgoings. The wife must merely meet her own needs.

35. The wife took the family car when she left, and the husband has had to borrow a car from his father to meet the family's needs.
36. The parties previously enjoyed a modest standard of living prior to the breakdown of the marriage.
37. The husband is three years older than the wife. His job can be physically demanding, and he suffers from back pain. He has been placed on restricted duties at work. Despite this, his job seems reasonably secure for the foreseeable future.
38. The wife suffers from cluster migraines. She says she has been diagnosed with PTSD because of domestic abuse but there is no evidence of this in the trial bundle she prepared.
39. Importantly, the marriage was relatively short at just five years with four years premarital cohabitation. A total relationship of nine years.

40. In terms of contributions, the husband utilised his savings, the proceeds of sale of a flat and an award from a personal injury claim towards paying the deposit of £33,979 on the former property. The husband has also taken steps to reduce the mortgage on the current property.
41. The wife has been unable to live in the property since July 2015 and has had to borrow money from family members to fund her rent.
42. Neither party has any savings. Both are in debt having borrowed monies from family members to fund protracted Children Act proceedings.
43. Historically the husband has always paid the mortgage on both properties while the wife contributed to household expenses such as bills etc.
44. As stated earlier in this judgement I find that the high threshold required to argue conduct has not been reached in this case.
45. Having regard to the section 25 factors as set out above I am of the view that there needs to be a radical departure from equality in favour of the husband. This is because the husband has since November 2020 been the sole carer for the

children. He is and will continue to be responsible for meeting their day-to-day needs. The marriage is relatively short, and the husband has been the main contributor financially. I bear in mind however that the starting point is that the matrimonial home is an asset to be shared.

46. It is an unfortunate feature of this case that there are insufficient assets to enable the wife to rehouse in a property of her own. She has no mortgage raising capacity of her own. The former matrimonial home is meeting the housing needs of the husband and the children. The wife will have to continue to rent. She accepts she does not need to rent a three-bed property as she is currently doing. She says her landlord intends to sell in any event.

47. The husband's mortgage raising capacity is limited to £126,627 at best. The wife has no mortgage raising capacity at present.

48. The figure in the ES2 shows the current mortgage to be £104,000 and this is an agreed figure. The husband has reduced the outstanding balance on the mortgage slightly since then. The husband will have to remortgage to buy out the wife. On these figures he could raise an additional £22,627. I expect the remortgage to be

completed within three months and the wife to sign the TR1 transferring her interest to the husband at the same time the remortgage completes.

49. This represents 12% of the equity, and is all the husband can currently pay, assuming he is able to remortgage. In addition, I order the husband to pay the additional sum of £20,000 within 6 months of the the youngest child's 18th birthday in September 2026. This amounts to a total 22% asset share for the wife. I consider this to be fair. I have factored in half the cost of the pension report the husband still owes the wife. A substantial departure from equality is justified for the reasons already set out.

50. The husband will struggle to raise an additional £20,000 within 6 months of KS turning 18. For this reason, I do not propose to index link the payment. If the husband fails, the property will have to be sold to enable the wife to realise her share.

51. The £20,000 should be secured by way of a charge in favour of the wife ranking after the remortgage.

52. The wife has minimal pension provision and I therefore propose to order a pension share to reflect contributions made during the party's nine-year cohabitation to produce equality of income at the age of 60 as set out in the pension report.

53. I will leave the parties to jointly instruct a family lawyer to draw up an order, a legal charge and a pension share that reflects this judgement. The costs to be shared between the parties. An agreed order, legal charge and pension share should be sent to this court, and I will list the matter for a remote mention hearing before me on the first available date after 28 days allowing 10 minutes to be vacated on the e-filing of an order charge and pension share for my approval.

54. There is liberty to either party to apply as to the implementation of this order only.

