

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31/03/2014

**Before :**

**MR. JUSTICE COLERIDGE**

**Between :**

AM

**Applicant**

- and -

SS

**Respondent**

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**Simon Calhaem** (instructed by **Vardags**) for the **Applicant**.  
**Simon Webster** (instructed by **Levison Meltzer Pigott**) for the **Respondent**.

Hearing dates: 17, 18, 19 & 20 March 2014  
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## **Judgment**

**Mr Justice Coleridge :**

### **Introduction**

1. The perennial and intractable problem of the proper weight to give to valuable resources which do not belong to one of the parties to the litigation but to e.g. a parent or family trust has dominated the debate in this case and understandably, given the diametrically opposing views of the parties, made it very hard to compromise.
2. In a nutshell the husband maintains that he has assets amounting to only a few hundred thousand pounds, including a flat in Maida Vale worth about £1m (but with equity of only about half that sum) and a reasonable salary of about £100,000 p.a. net. He says that is all there is and that is the whole story so far as the exercise of the court's powers is concerned.
3. The wife on the other hand says that the husband's assets are the merest tip of a huge family financial iceberg. She says that the husband's father has wealth in the stratosphere, measured probably in billions, and that he can reasonably be expected and predicted, given his past generosity, to make capital available to meet a reasonable claim by the wife based on the wealth at that sort of level. In short if I make an order against the husband, his father will meet it.

4. Accordingly, the wife aspired at the outset of this hearing to a lump sum of some £3m and a global income order of some £10,000 per month, plus a nanny and a maid full time. By the end of the hearing the wife, it is true, had moderated her claim to a capital payment of only £2m.
5. The husband has, on the other hand, offered to make available his flat in Maida Vale for the period whilst the child is a minor after which he says it should be sold and the wife should receive a small portion of its value absolutely with the balance being payable to the parties daughter. That is all he can afford he says. Accordingly, there is a huge divergence of approach and the court has to do the best it can to resolve it.
6. Although there has been a decree nisi pronounced on 9<sup>th</sup> July 2013, I shall continue to describe the parties as husband and wife. I shall also refer to two other participants in this litigation. They are respectively WS (the husband's sister) and importantly, the respondent's father.
7. This is the second lengthy hearing I have conducted between this husband and wife. The first took place in 2009 and culminated in a judgment on 28<sup>th</sup> July 2010. That earlier hearing was concerned with two issues, one related to the jurisdiction for the divorce itself and the other related to whether or not I should order a summary return of the parties' then 17 month old child to Egypt.
8. This hearing accordingly is to decide the wife's financial claims and it too has been dealt with in two parts. The first part of the hearing was concerned with preliminary questions relating to ownership and beneficial interests in three properties two in this country and one in Cairo. In England the two properties were the St John's Wood property which has a value of £5.36m and the Acton property which has a value of £1.25m. In Egypt the disputed property was the Cairo property which has a value of £3m.
9. On 19<sup>th</sup> March 2014 I gave judgment on the preliminary ownership issues. In the result I found, for reasons which I set out, that the husband had no interest in any of these three properties which belonged beneficially either to the husband's father or to the husband's sister. Those findings having been made, the husband's sister withdrew from the hearing. The husband's father was never made a party to these proceedings, although he gave important live evidence by video link from Turkey and during that time was represented in court here by Queen's Counsel. Obviously this judgment proceeds from the foot of the judgment in relation to the preliminary issues. The two should in effect be read as one.

#### Background and Chronology

10. The parties' respective backgrounds prior to their marriage and the full background to this short marriage is set out in my July 2010 judgment. That set out at some considerable length the parties' respective family backgrounds, how they met and how it was that the wife eventually came to live in this country and in so doing resumed, as I found, her original domicile in this country. That had always been her main home until her marriage to the husband. I do not propose to repeat that background again, that judgment too should be taken as part of this final disposal and read with this judgment.

11. In order, however, to provide the necessary minimum to make sense of this judgment standing alone, I shall mention a few crucial dates and figures.
12. The wife is 28, the husband is 45, they met in Cairo in May 2007 and married religiously in October of that year. The wedding by all accounts was a lavish affair. Their one daughter, was born on 20<sup>th</sup> December 2008, so she is now five and a quarter years old. The parties made their home at that time in the Cairo property. That is an ample and well appointed property in an expensive part of that city.
13. The husband began divorce proceedings in Egypt in October 2009 and a month later the wife returned permanently to the United Kingdom bringing her daughter with her. She moved into the St John's Wood property for a short period before leaving to live with her sister who also lives in this country. Divorce proceedings in this country were first begun by her petition dated 1<sup>st</sup> December 2009.
14. It is easy to see therefore that the marriage was over in effect within about two years. By any standards, that makes this a very short marriage.
15. Not a great deal has changed on the ground since the start of the divorce proceedings in 2009, save that these proceedings have taken a very long time and cost a very great deal of money. I have already mentioned the three day hearing which concerned jurisdiction and the parties' daughter's immediate residence.
16. The wife presently lives with their daughter in a rented flat in Holland Park. The rent is some £3,000 per month. The husband makes his main homes either in the Cairo property, or in the St John's Wood property in London. He comes to this country particularly to enable him to have good contact with his daughter.
17. It is a strikingly optimistic feature of this case that throughout the wife and the husband have been able to parent their daughter in a sensible, cooperative and child centred way making decisions in her best interests. She has a good relationship with both the parents and spends time with her father by arrangement between themselves.
18. The husband currently pays interim provision by way of maintenance pending suit at the rate of £5,500 per month, pursuant to an order of 5<sup>th</sup> August 2011. The husband says that this is in fact more than he can afford, but at the end of the day he has always paid it in full and on time, either direct to the wife's bank or in cash. The wife makes no complaint in this regard at all.

#### The evidence

19. There are no less than eight files of documents although only the first three have been referred to in any detail. I have also heard oral evidence from the parties and from the husband's sister for the purposes of the preliminary hearing which culminated in the judgment I have already referred to. I also heard oral evidence, as I have indicated, from the husband's father by video from Turkey.
20. Apart from the preliminary issue surrounding the ownership of the three properties, the other central issue in this hearing relates to the part which the husband's father's wealth should play in an analysis of the husband's resources broadly considered. It is accepted that the husband's father is a very wealthy businessman with international

commercial interests. Various figures have been suggested as to the scale of his wealth. A billion has been proposed by the wife, gleaned largely from a perusal of the website of the husband's father's group of companies which is called the H Group.

21. In any event, it is conceded that the husband's father is very wealthy indeed and it is also conceded that he is, and has been in the past, generous to his children and grandchildren. However, it is strenuously contested that he can be expected to make extra provision to meet the wife's claim, or that he can be relied on to help out in any way at all financially. Absent the wealth of the husband's father, the assets in this case for distribution are very limited indeed and scarcely merit the attention of the High Court for seven days which was the time estimate of this case at its outset, although it has been concluded in about half that time.
22. As I say, it is this central conundrum relating to the significance of the underlying family wealth which has dominated the disposal of the issues in this case.
23. The principles by which this application should be determined are of course the familiar ones enshrined in section 25 of the Matrimonial Causes Act 1973 (As Amended) ["the 1973 Act"]. Of glaring, if not magnetic importance however, in this particular case, given the very short length of the marriage, are the interests of the one child. On any view, her needs must be met and by logical extension, therefore, the needs of her main carer the wife and mother. Turning therefore to consider specifically some of the sub-sections of the 1973 Act, I start with looking at the resources of the parties, as they now stand and are visible.

#### The Asset Schedule

24. Once the three disputed properties have been excised, is very short indeed. On one very pessimistic view, and taking into account all the liabilities and soft and hard loans, the available assets amount to little more than £33,000. However that is perhaps a too superficial presentation. The only immediately available resource is the husband's flat in Maida Vale. It has a value of £1.1m but it stands charged in two respects; £416,000 to the Bank of Scotland and £150,000 by way of a charge secured in favour of the wife's current solicitors as a result of an order made in the wife's favour to enable her to meet her costs. That second charge of £150,000 is not enforceable until the conclusion of this further hearing. The available equity in that Maida Vale property therefore is some £512,000 when a provision is made for sale costs.
25. Other than that, the wife owns a property in Morocco. It is a 17.5% interest in a family property and has a value apparently of some £120,000. That asset I think can only sensibly be considered as wholly illiquid. Apart from those two assets, the wife has some jewellery valued at £20,000, but there is nothing else.
26. Everything else on the parties' balance sheet consists of debts and the lion's share of those debts is made up of legal fees. On the wife's side she has debts of £182,000 and on the husband's side he has debts of £436,000. Of the wife's debts, she owes her current solicitors (in addition to the charge on Maida Vale) £95,000. She owes her former solicitors £9,000, she has a loan from Barclays of £8,000 (again I think for legal fees) and there are various other debts to individuals which are for the payment

of her legal fees. In the same way the husband, apart from a credit card debt and a store card debt, owes the balance to those who have financed this litigation, his father being the primary creditor in the sum of £261,000.

27. That therefore is the stark reality of the visible financial picture in this case so far as the capital position is concerned. Apart from the capital position, the husband has a regular salary, received from his father's group of companies ultimately, but via an offshore arrangement in some \$15,000US per month, a little less than £10,000 sterling per month.
28. Given the paucity of the visible resources on the Asset Schedule it is unsurprising that so much focus has been on the wealth of the husband's father. .
29. The husband's father in evidence to me was adamant that he would provide nothing to the husband to meet his claims which he said were his own responsibility and had to be sorted out without reference to him. He was of course, as is always the way in these types of cases, extremely irritated to have been involved at all in this debate and to find himself being asked questions about his own wealth and his own intentions with regard to that wealth. He feels that he has been put to huge expense to defend his property interests both here and in Cairo, either directly or on behalf of his daughter. The husband's case is that it would be completely improper and indeed ineffective to make an order which relied upon little more than the hope and guess that the husband's father would pay up to help his son. Although the husband conceded that his father was wealthy, he described him as a "tough cookie". I do not think that was an exaggeration having seen him give evidence myself.
30. The husband also concedes that he has continued to receive the considerable benefit of living in two very nice properties (the St John's Wood and Cairo properties) free of charge and on an indefinite basis. He also concedes that he has always had secure employment or a secure income stream. But so far as the future is concerned that is all which can be reliably or safely regarded as predictable.
31. Mr Webster on his behalf has emphasised that this is not a discretionary trust case where the husband already has some right, albeit discretionary and unspecific, but a case where the external resources belong wholly to a parent who has no legal obligation towards his adult son, or any discernable inclination to provide further sums.
32. The wife on the other hand invites the court to look at the financial reality both more generally and more closely. Mr Calhaem on her behalf emphasises that the husband's father is both fabulously wealthy and traditionally quite generous. He supports his children and his grandchildren to a greater or lesser extent, including providing them with properties and paying in relation to his daughters, at least, generous monthly allowances (£60,000 per annum) together with school fees which includes, of course, the parties' daughter. Mr Calhaem emphasises that this husband and eldest son plays a pivotal role in the family business empire. And so I can safely conclude that, on a balance of probabilities, he will support and pay any reasonable order. He produced in his skeleton a Schedule which shows payments to the husband from his father and other members of his family over 4 years amounting to just short of £1m sterling. However, when the salary payments are stripped out, the only real extra proved to be the legal fees which the husband's father had undoubtedly paid and

which have amounted to £250,000. The other sums on the Schedule are accounted for by loans from his siblings and friends to meet his income obligations.

33. In the end, the wife's counsel urges the court to be robust and not take the father's remarks about his own willingness to contribute at their face value. He invites me to conclude that when the husband's father says he will not "pay voluntarily", as he did in evidence, that should be interpreted as a tacit acceptance that he would indeed pay, if push came to shove, and a court order was made against his son.
34. Finally, under the heading of the parties resources, I find that the wife currently has no measurable earnings, although given her age and her educational background I would expect and the court will expect that in time to come she should generate some earned income on her own behalf.

#### Needs, standard of living, length of marriage

35. These three factors are interconnected against a marriage of this length. The wife's needs are bound to be curtailed but I accept the point made by her counsel that it is important in a consideration of this aspect of the case to try and achieve a result which does not, in their daughter's mind, create a dramatic contrast in the standard of living between that of her mother and that of her father.
36. The obvious main need is for a reasonable home for the parties' daughter and her mother. Currently, as I have indicated, she is renting a flat at £3,000 per month which is itself a terrible waste of resources, particularly if it is suggested that it should take place over a very long period. The husband has now offered his Maida Vale flat which is in the same block as a flat belonging to one of his other sisters. On the face of it, that seems a reasonable suggestion for accommodation but I appreciate the wife's sensibility that she would prefer not to be in quite such close proximity to the sister of her former husband. Apart from housing, the wife and their daughter need a reasonable level of income support.

#### The Law

37. Apart from the statute, I have been referred to a number of cases the where the facts involve external sources of capital upon which, it is said, to a greater or lesser extent, one of the parties can be expected to rely.
38. The law has not significantly altered since the clear decision of Waite LJ in *Thomas v Thomas* [1995] 2 FLR. I quote from page 670 of that Report:

#### *"The law*

The discretionary powers conferred on the court by the amended ss 23-25A of the Matrimonial Causes Act 1973 to redistribute the assets of spouses are almost limitless. That represents an acknowledgement by Parliament that if justice is to be achieved between spouses at divorce the court must be equipped, in a society where the forms of wealth-holding are diverse and often sophisticated, to penetrate outer forms and get to the heart of ownership. For their part, the judges who

administer this jurisdiction have traditionally accepted the Shakespearean principle that 'it is excellent to have a giant's strength but tyrannous to use it like a giant'. The precise boundaries of that judicial self-restraint have never been rigidly defined — nor could they be, if the jurisdiction is to retain its flexibility. But certain principles emerge from the authorities. One is that the court is not obliged to limit its orders exclusively to resources of capital or income which are shown actually to exist. The availability of unidentified resources may, for example, be inferred from a spouse's expenditure or style of living, or from his inability or unwillingness to allow the complexity of his affairs to be penetrated with the precision necessary to ascertain his actual wealth or the degree of liquidity of his assets. Another is that where a spouse enjoys access to wealth but no absolute entitlement to it (as in the case, for example, of a beneficiary under a discretionary trust or someone who is dependent on the generosity of a relative), the court will not act in direct invasion of the rights of, or usurp the discretion exercisable by, a third party. Nor will it put upon a third party undue pressure to act in a way which will enhance the means of the maintaining spouse. This does not, however, mean that the court acts in total disregard of the potential availability of wealth from sources owned or administered by others. There will be occasions when it becomes permissible for a judge deliberately to frame his orders in a form which affords judicious encouragement to third parties to provide the maintaining spouse with the means to comply with the court's view of the justice of the case. There are bound to be instances where the boundary between improper pressure and judicious encouragement proves to be a fine one, and it will require attention to the particular circumstances of each case to see whether it has been crossed. ”

39. I have been referred to other cases, but they do not it seems to me take the principles any further but merely represent by illustration the outworking of those principles. However, I do collect, from the authorities to which I was referred, that the general practice or philosophy in this situation is that even if the court is prepared to proceed on the basis that a relative or trust is likely or can be reasonably expected to “backfill” to compensate for a share of the visible assets removed by the court order, it is very unusual indeed to make an order that the outside person or entity produce fresh money directly to meet an award to a former spouse claimant. In other words, the availability of these external resources may enable the court to be more generous with the visible resources if it has sufficient confidence that the hole thereby created in the payer's resources will be made up or “backfilled”.
40. I am unapologetic when I say that I have found this a peculiarly difficult assessment to make and problem to resolve in this particular case. However, having considered all the evidence and arguments fully and carefully these are my conclusions.

## Findings and Conclusions

- i) The husband's father, is hugely wealthy, probably worth in excess of £1bn. However, it would be highly dangerous for the court to proceed in this, or any other similar case, on the basis of crossing its fingers and hoping that such a rich parent would pay up more or less at any level. Mr Calhaem on behalf of the wife conceded in argument that if I proceeded on the basis that the husband's father would foot the bill, it would, so far as the amount was concerned, be little more than guess work as to how much. I agree with that and as such it does not seem to me to be a proper or safe basis on which to make lavish orders.
- ii) The husband's father has indeed helped his son in the past over and above ensuring his salary is paid by way of making considerable provision for his legal fees to the tune of £250,000. The husband's father has also demonstrated his generosity and concern for his children and grandchildren by providing homes for them and paying generous allowances and school fees. Furthermore, his son, the husband, lives entirely free of charge in both London and Cairo and shows every sign of continuing to do so indefinitely. Accordingly, the husband has no housing need at the present time at all.
- iii) In the end, can the court conclude that the husband's father will come to the aid of his son and, if so, is this a "backfill case" or one where exceptionally, as the wife's counsel urges me, the court can go further and order "new money" to be provided which necessarily and somehow would have to come from the husband's father?
- iv) Taking into account all the evidence of past payments and the oral evidence which I have heard, I am satisfied that the husband's father will help out but only to the minimum necessary to relieve his son from visible financial hardship. He will not fund sums unrelated entirely to his son's current level wealth. I think to that limited extent the the husband's father wealth and generosity can be said to amount to a resource in this case which the court needs to have in the back of its mind when deciding upon an appropriate order. However, at the very most, this is a backfill case and I shall work as closely as I can within the parameters of the assets on the table and in view.
- v) What is the proper level of housing for the wife? As a starting point bearing in mind the standard of living of this family, I consider she needs a home for herself and their daughter being a property in Central London worth in the region of £1m. That is to say the value of the husband's current property in Maida Vale. It is after all no more than the value of the property which the husband says is reasonable and which he has offered to make available for her. I agree with his assessment. But I also understand and agree with the wife that it may be not ideal for her to be expected to live in the flat below the husband's sister in a block ultimately owned by the husband's father. The husband, again quite reasonably, accepts that that is an understandable position and he is prepared to use his best endeavours to enable the wife to move to another property of similar value using the equity in this property together with a mortgage at about the same level of £566,148.79.

- vi) Accordingly, I shall order that the Maida Vale property be transferred to the wife and my aim is that it should be mortgage free either now or as soon as possible in the future.
- vii) The next question is how should the equity and value in the Maida Vale property be split as between the wife and their daughter? Bearing in mind the huge wealth of the husband's family, should I simply, as the wife suggests, transfer the whole equity whatever it may be to her absolutely? She is making a full contribution by her ongoing care of their daughter. At this stage I have to bear in mind, it seems to me, the length of this very short marriage. But I do accept that, in due course, the husband is likely to be a very wealthy man. Taking all the factors one way and another, I think fairness is reflected in a result which provides two-thirds of the equity to the wife absolutely and the balance of one-third for the wife's use for her life, and then ultimately to their daughter. In other words, a life interest in one-third and two-thirds outright.
- viii) At present, the Maida Vale property is encumbered by two charges; one for £416,000 in favour of the Bank of Scotland and the other for £150,000 to secure the payment of the wife's legal fees. The legal fees, at that level, seem inevitable and have to be met.
- ix) So I shall order that the husband be responsible for redeeming both of those charges by way of a lump sum or sums. That lump sum provision will be received, I conclude, either from the father or other members of the respondent's family. Failing that it can be discharged, absent receipt from those sources, by continuing to pay off the current mortgage or new borrowing up to the same amount on the same or a different property.
- x) I think it is a reasonable estimate that when the dust has settled and the court orders are known, the husband's father will be prepared at the very least to lend his son the necessary sum to redeem those charges up to £566,148.79, even if he requires his son to pay him interest at a reasonable rate. I think it is more than a fanciful possibility that he will in fact give him the money but I have not assumed that or proceeded solely on that basis. It is a basis which of course is much the most desirable from the point of view of both the husband and the wife.
- xi) The transfer of the Maida Vale flat will take place within 3 months and the interim provision now payable will continue for that period. At the end of that period the wife will be in a position either to move into the Maida Vale flat or to buy a property afresh, and thereafter I shall include no figure for rent within any periodical payments for her.
- xii) At the moment the wife is dependant upon the £5,500 per month maintenance pending suit order. Net of her £3,000 per month rental payments, she is living on £2,500 per month. I shall make a fresh order after the end of 3 months in the total sum of £4,000 per month and as she will not require rental payments to be made from that sum she will be better off once she has moved. Similarly, the husband will be better off as well.

- xiii) If the wife, at the end of the 3 months, moves into the Maida Vale flat and the mortgages has not by then been redeemed, as I hope by the husband's father, the husband will have to continue to meet the monthly mortgage repayments by way of additional periodical payments. If in due course the wife decides to sell, there will, as I hope I have explained, be a lump sum payable to her of the amount of the outstanding mortgages, but which again the husband can discharge by way of meeting new mortgages up to that amount.
- xiv) The total amount of the main periodical payments orders (£4,000 per month) will be split 50/50 between the wife and their daughter.. Their daughter's periodical payments will continue to the end of her tertiary education.
- xv) There are no easy or obvious answers or solutions to this case. The wife's aspirations, on the one hand have been exaggerated and dependent wholly on the largess of Mr S senior. However, it is only recently that the husband has made concrete suggestions about the wife and [daughter's] future housing and that too has not assisted in keeping the parameters of this litigation within sensible bounds.
- xvi) I urge the wife now to consider her position carefully. Moving in to the Maida Vale flat is not, I accept, ideal but it is perfectly reasonable accommodation and, financially, it is the most obvious and sensible solution, certainly in the medium term.
- xvii) I invite the parties' counsel in the first place to formulate an order to meet the various possible permutations in this case. I recognise that, in itself is a far from a straightforward exercise.