Neutral citation number: [2020] EWFC 41
Case No: ZC18D0025

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London WC2A 2LL

Before:

Mr Robert Peel QC:

Sitting as a Deputy High Court Judge

Between:

RM

Petitioner/Applicant

and

TM

Respondent

Thomas Brudenell (instructed by Levison Meltzer Pigott) for the Petitioner/Applicant
Peter Wilkinson (instructed by Fletcher Day) for the Respondent

Hearing dates: 1-6 May 2020

The hearing was conducted remotely by Zoom

HTML VERSION OF JUDGMENT APPROVED

Introduction

1. After nearly 22 years of marriage, which must have contained happy times together and during which 3 children were born to whom the Husband ("H") and Wife ("W") are devoted, this couple embarked on ruinous and recriminatory financial remedy proceedings. There have been 13 oral hearings, including 2 FDRs and an aborted 5-day trial, and 4 applications by H for permission to appeal disposed of on paper at High Court and Court of Appeal level. The combined legal costs are £594,000. The litigation, and attendant bitterness, has led to fractured relations between H and the children.

2. One might be forgiven for assuming that all this energy has been expended over great wealth. This is not so. The only liquid asset of any substance is the proceeds of sale of the FMH, some £630,000 currently held on solicitors' account. That sum is now all but offset by the parties' debts, not least the legal fees. Thus, the true net liquid wealth is virtually nil. I am left with the task of endeavouring to find a way in which each party can somehow be re-housed. That, in my judgment, is and always has been the real issue in this case.

3. An equal division of £630,000 would be £315,000 per party from which each would have to meet their indebtedness. W's open proposal at the start of trial was broadly for that outcome, but subject to the sum of £52,000 being top sliced to repay her brother who paid the mortgage for a period after separation. Thus, on her case each party would receive £289,000. H in his open proposal sought £480,000. The difference between the parties' offers is £191,000. The legal costs are 3 times that figure. It is hard to express what a calamitous waste of resources this has been.

4. To understand how this reached a final hearing at High Court level (albeit heard by a Deputy) will require explanation of the litigation twists and turns. First, I must set the scene.

The background

5. H is 53 years old, W 50. Both are in good health although I suspect neither fully appreciates the impact of this dispute on their wellbeing.

6. At the centre of this dispute are 2 companies founded by W's parents:
   (i) A Ltd., set up by them in 1971. They own the majority shareholding (52%); the balance is held by W (24%) and her brother (also 24%). It is a recruitment and training company with particular focus on placing temporary staff in the care sector. It operates from premises held personally by the 4 family members in equal proportions. Thus, W personally owns 25% of the premises.
   (ii) B Ltd, set up by them in 1987. The shareholding is identical; W's parents hold 52%, W and her brother 24% each. It is a care home with 24 rooms

available for the care of the elderly and those with dementia. It operates from premises owned by the company.

7. In 1994 W's parents gifted to her the 24% shareholdings. Since then she has been a director of A Ltd. Until the birth of the parties' first child in 1998, she worked full time at A Ltd. Thereafter she worked on occasional ad hoc projects and more recently since December 2017 has been working a 22-hour week. She has been neither director of, nor employed by, B Ltd. She has been a sleeping partner in both businesses, uninvolved at strategic and operational level.

8. In October 1996 the parties married. Their 3 children are aged 21, 19 and 14. The children's base is with their mother. H has not seen the youngest child since August 2019 and there are, depressingly, ongoing Children Act proceedings.

9. In about 2005, H, who had been working in the banking sector, switched careers and became the Managing Director of B Ltd, a role which he held until the end of the marriage.

10. The parties had a very comfortable lifestyle, with an annual spend in excess of £100,000. They lived in a 5-bedroom family home in London ("the FMH"). They had regular holidays and ate out frequently. To an extent, the lifestyle was underpinned by W's parents who, in particular, largely met the children's education costs. H told me, and I accept, that for a number of years they lived beyond their means. He was in overall charge of the finances but I formed the impression that W had at least some idea of the indebtedness. Certainly, before the marriage came to an end, they had decided to sell the FMH home and downsize so as to ease the considerable burden of mortgage and debt.

11. By the end of 2017 the marriage was in difficulties. In February 2018 they attended marriage counselling. In June 2018 they decided to separate. There is a welter of narrative documentation from each party about the circumstances of the separation which I do not need to enter into. Suffice to say that W remained at the marital home and H moved out. Of more significance is the agreed fact that during this initial separation period W considered retaining the FMH by redeeming the mortgage (c£550,000) and buying out H with payment of £350,000 (his share of the net equity). She had no capacity to fund this herself. Her brother offered to facilitate it by re-mortgaging the FMH in the sum of about £900,000.

12. On 27 July 2018, H resigned from his role with B Ltd. and became, initially at least, unemployed. An inquiry by the company revealed, so it was alleged, a number of misdemeanours by H while Managing Director. His resignation was met with a company letter dated 31 July 2018 stating an intention to investigate "*serious concerns about your own conduct*". The dispute between the company (and thereby W's family) and H rapidly spilled over into the divorce and became a proxy war in the Family Court.

13. In October 2018 H was arrested after complaint by the company about the alleged financial misfeasance. The police inquiry may still be live, but H has not yet been charged.

The litigation history

14. It is now necessary to chart the course of this unforgiving litigation.

15. In September 2018, W issued her Petition and Form A. In November 2018, H applied for an interim order for sale of the marital home, together with maintenance pending suit and a legal fees order; those applications were dismissed in January 2019. As was demonstrated in cross examination at this trial, H in his statement in support of the application made a number of assertions about W's available resources which were exaggerated.

16. In her Form E of November 2018, W:
    (i) Ascribed nil value to her business interests;
    (ii) Accused H of misappropriating funds belonging to the children; and
    (iii) At Box 4.4 (conduct) said in terms "*[H] has committed fraud and is likely to face civil and criminal proceedings"*. There she was referring to his activities at B Ltd.

17. H did not file his Form E on time. 2 orders were made for him to do so. His Form E attributed a total value to the 2 businesses of over £10m gross such that W's share was claimed by him to be over £2m. He said that the businesses had liquid, realisable funds. He argued that they had become matrimonial assets during the marriage.

18. At the adjourned First Appointment in January 2019, H sought a Single Joint Expert report to value W's business interests. The judge refused the application because he was persuaded that W's business interests were non-marital and illiquid. Not satisfied with that ruling, H appealed. His application for permission to appeal was dismissed on paper by a High Court Judge. Undaunted, H applied again, this time in the directions phase of the FDR which took place in late March 2019, and was once again unsuccessful.

19. With the benefit of hindsight, in my view an expert report should have been directed. The parties were at least £2m apart as to the value of W's shareholding. Liquidity was an issue. Even if non-marital (which was disputed), the illiquid capital was potentially a resource to take into account. The court must consider the whole picture; it is hard to see how the case could have been fairly determined without this evidence.

20. By May 2019, the parties had agreed that the marital home should be sold.

21. In mid-July 2019, W's s25 statement was served. It contained, front and centre, allegations about H's conduct. On 29 July 2019 a Pre-Trial Review took place. The order at that hearing records: "*Upon the applicant confirming to the court and to the respondent that the conduct on which she seeks to rely is…*" and goes on to set out specific instances of alleged misappropriation of the children's money to which W had adverted in her Form E. The order required H to reply to those allegations of conduct in his s25 statement, which had not yet been filed. No mention was made of the other allegations referable to H's conduct as Managing Director of B Ltd. Therefore, and quite clearly, only matters relating to the children's money fell within the pleaded conduct case to be addressed at trial.

22. On 1 August 2019, H served his s25 statement which (i) dealt only with the conduct allegations defined in the PTR order and (ii) reiterated his belief that W's company interests were of substantial value.

23. At yet another directions hearing on 7 August 2019, the allocated trial judge decided to order a SJE report as to W's business interests. By then the trial was less than a month away, the costs had mounted and prospects of settlement had receded.

24. The final hearing ran from 2 to 6 September 2019. W and the expert gave evidence but H's evidence was not reached in the allotted 5 days. Inevitably, it had to be adjourned, and a continuation date was fixed for 1 November 2019. That was overtaken by events.

25. During the September hearing, H contended that W's business interests were wholly or partly matrimonial in nature to be reflected under the sharing principle. W counter-argued that if so, which she disputed, she was entitled to rely on H's alleged misconduct while Managing Director of B Ltd. as one of the circumstances of the case. She did not expressly rely on conduct, within the s25(2)(g) meaning, but argued that H's actions constituted a general factor to take into account on this specific point; as her counsel put it "*a shield, not a sword*". The judge appears to have accepted the argument, at least while hearing evidence, and did not exclude references to conduct which went beyond the children's money. On the last day of the September hearing he made orders for further inquiry into H's alleged financial misconduct. Thus, he went beyond that which had been set out with crystal clarity in the PTR order.

26. H appealed against the judge's approach to the conduct issues and, having failed to persuade the judge to recuse himself, appealed against the non-recusal as well.

27. Shortly after the trial, the FMH was sold. Both parties are currently renting.

28. Mostyn J granted permission to appeal and fixed the full appeal on 24 January 2020. The final hearing could not resume on 1 November and was held in abeyance.

29. At the full hearing of the appeal, Moor J allowed the appeal against the judge's handling of the conduct issue but refused the recusal appeal. He directed a re-trial before a different judge. His reasons were that (i) there is no place for conduct to feature merely as one of the general circumstances and (ii) if conduct is to be pursued, it must be specifically pleaded under s25(2)(g) with each party having the opportunity to deal with the allegations in narrative evidence. Otherwise parties will be encouraged to introduce acts or omissions through the back door which they are not permitted to introduce through the front door. Moor J directed that if W sought to rely on conduct arising out of H's role as Managing Director, she must set it out specifically in a statement and H must be allowed to reply.

30. H appealed, dissatisfied with (i) Moor J's direction that W should be permitted to advance grounds of conduct wider than those set out at the PTR and (ii) his dismissal of the recusal appeal. Quite what he sought to gain by the recusal appeal is unclear since Moor J had directed that a different judge should conduct the rehearing. In the event, the permission to appeal applications were dismissed on paper by the Court of Appeal.

31. On application by W, Moor J on 26 February 2020 made an order releasing to W the sum of £17,884 from the net proceeds of sale of the FMH. H also received £17,884 (there is some dispute about precisely how this came about, but it is not in dispute that each party received the same amount). H appealed, again to what end is unclear. The Court of Appeal refused permission to appeal.

32. The re-trial was fixed for 7 days. Before then, a further FDR took place before Cohen J (at Moor J's direction). Although overall settlement was not reached, a measure of issue resolution was reached:

    (i) H agreed not to pursue a claim that the business interests (including the premises where the businesses operate) are matrimonial such that they fall within the sharing principle, but asserted that they are "*resources of the applicant*"; and
    (ii) W agreed not to rely upon conduct in respect of either H's role as Managing Director or the alleged misappropriation of the children's money.

33. Thus, the matter came before me for the re-fixed 5-day final hearing.

The parties' evidence

34. Both parties, and the SJE, gave evidence remotely, this being a case conducted entirely by Zoom. The forensic examination of their evidence was not in any way compromised.

35. W was in general measured and straightforward, save in respect of her wider family. She was a little evasive about what assistance her family might provide her, and told me (I thought improbably) that she has not discussed such matters with them even though they have offered substantial assistance in the past and she is facing homelessness absent some solution being found. She was also surprisingly vague about re-housing. She told me that "*I have not paid much attention to property particulars",* in my view because she anticipates some form of assistance from her family when the proceedings are over.

36. H was more outspoken and vociferous than W. He feels a deep sense of anger towards W's brother, who he believes is controlling W's approach to the litigation and seeking to destroy him. His antipathy was almost palpable, and in my judgment tended to blind him to clear and obvious facts. He sought to exaggerate the extent of resources available to W, even when faced with irrefutable evidence to the contrary. He did not fully appreciate the difficulties faced by W when he left the home, did not pay any child maintenance for over a year and left W with a number of debts. I accept that he was unemployed until December 2018 but thereafter he was in a position to meet some financial responsibility for his children in particular. As for demonstrable deficiencies in his own disclosure, his attitude was defensive and testy.

37. All that said, I do not underestimate the impact upon H of the separation. His employment ended, he left the FMH, his relationship with the children broke down, he had limited funds and faced an uncertain future. I am satisfied that, although prone to inflate W's resources, he was not dishonest, and his evidence about his own resources is essentially accurate.

Computation: the resources

38. Perhaps inevitably, there is little agreement between the parties on the asset schedule, even on small figures. I propose to separate the assets into liquid and non-liquid categories.

Liquid assets/liabilities

39. The only asset of significance is the proceeds of the FMH, of which £630,000 remains.

40. W has £16,972 in a Metro bank account, the balance of the £17,844 from the proceeds of sale, which is earmarked for her interim accommodation needs. H received a similar sum which he has spent on rent and other items. W's bank balance should therefore be ignored.

41. H seeks to persuade me that £204,000 should be added back on W's side. That figure is advanced in the composite asset schedule although his counsel's skeleton argument claims a re-attribution of £96,000. H could not explain in his evidence why he

advanced 2 such different figures. Nor, in reality, could he explain the justification for either figure. The evidence is clear. W, her parents and brother have 2 NatWest accounts in their joint names. W is entitled to 25% of the rental income from the personally held business premises, about £6,250pa gross (£3,750 net), which is paid into one or other of the accounts. W's parents and brother pay their rental share into the accounts as well. The accounts are not operated by W, but by her family. From the account, monies have been drawn by W's parents over many years to meet the children's educational costs, both at school and university. W's rental share has fallen far short of what is needed to meet those costs. Her parents have made up the substantial shortfall from their own resources. This arrangement is long-standing. W's share has been extinguished and any remaining monies belong to her parents and brother.

42. W drives a Mercedes which was bought by her parents before separation and is clearly owned by her mother as the log book confirms, a fact which H was reluctant to accept. It is not her asset although she has use of it.

43. H attributes a value of £35,000 to a cherished number plate in W's possession, another example of forensic exaggeration by H who produces no evidence for that figure, which contradicts his own Form E estimate of £12,500. W has provided an indicative website valuation of £14,000. In any event, W says that the number plate has always belonged to her mother (the prefix accords with her mother's maiden name) and is not a resource available to her without her mother's agreement. I accept her evidence and exclude it from the asset schedule.

44. I do not propose to include chattels or jewellery in the asset schedule. Chattels have been divided in specie by the parties. W's jewellery is non-matrimonial, having been gifted to her by her family. It has an insurance value of £100,000 but this is not a true market value, as H must surely acknowledge given that his Form E values it at about £43,000. The main item is an engagement ring which was given to W by her grandmother, was lost and then replaced by another ring with the insurance proceeds. It has been valued between £22,000-£27,000. I regard W's jewellery as non-marital in nature, primarily of sentimental value, which she wishes to pass on to the children, and not to be treated as a saleable asset.

45. As against the assets, there is a dismaying level of legal costs indebtedness:
    (i) W's litigation loan and unpaid legal fees total (-£214,830);
    (ii) H's litigation loan and unpaid legal fees total (-£251,051).

46. W invites me to take into account a number of debts owed to her father and brother:
    (i) £33,000 in respect of capital reduction on the FMH mortgage paid by her brother after separation, between July 2018 and September 2019.
    (ii) £122,000 owed to her brother for a mixture of legal costs and clearing debts during the post separation period.

(iii) £50,000 owed to her father for one of the children's Bar mitzvah in 2013, albeit she does not press this too strongly on me.

47. I accept that the monies were paid and that W regards them as loans. They are, in my judgment, as a matter of law personal to her and not jointly owed with H. However, I have to be realistic. There is no suggestion that the monies are being demanded, or will be demanded in the near future. There are no loan agreements. They will not be sued upon. I formed the clear impression that W expects matters between herself and her family to work themselves out. W's family have shown considerable willingness to assist W financially, both during the marriage and since separation. Notably, they were willing to assist in the proposed retention of the marital home for W by buying out H. In my view, these fall to be treated as soft loans. W understandably feels a moral obligation to repay them, but I consider that her family will reconcile the sums due at a later date and as part of a family arrangement. They are not debts which should appear on the schedule save only that the capital part of the mortgage redeemed by W's brother from June 2018 to September 2019 should be deducted and repaid to him. Otherwise, the parties would be benefiting by an increase in the value of their jointly owned property, a windfall to them which would be unfair to W's brother. I do not accept H's submission that W's decision to withdraw from the property sale in 2018 offsets this mortgage redemption; the decision to sell was before separation, whereas W's retreat from that decision took place after separation, as a very different landscape unfolded before her. Accordingly, £33,000 will be deducted as a debt.

48. H has credit card liabilities in his own name of (-£122,000) which I accept largely accrued during the marriage. W may not have been precisely aware of the level of debt but in general she was aware that the family were living beyond their means, hence the decision before separation to trade down their house. They are very much hard debts. Until they are cleared, H will not be able to take out a mortgage.

49. H told me that he owes his sister about £26,000 for monies provided during the course of the litigation (mainly for legal fees) and £20,000 to his brother in law for an abortive property deposit in 2019. These sums did not appear on the composite asset schedule. They were first referred to as loans during cross examination. In re-examination, H said that they should be taken into account and W should be responsible for 50% thereof which struck me as patently opportunistic given that he had made no mention of this before. There is no evidence that they will be demanded. I treat them as soft loans.

50. At one point it was suggested that H drew cash of about £17,000 from the business in late 2017/early 2018 which he "parked" with his sister. From that, W's counsel drew a wider submission that H has access to undisclosed monies extracted from B Ltd. This, in my view, trespassed directly on the conduct allegations which do not fall to be considered. In any event, on the evidence I have heard, I am quite satisfied that there are no concealed monies available to H.

Illiquid assets

51. H has pensions worth just over £500,000. In October 2021, when he turns 55, he will be able to access £125,000 as a tax-free lump sum.

52. W has pension provision of just over £229,000.

53. W's interest in the personally owned business premises has an agreed value of just over £150,000. To my mind, it plainly falls in the illiquid category. She has a minority, 25%, holding. It is and always has been the premises of A Ltd. There is no suggestion by all 4 owners that the building is to be sold in the foreseeable future. W cannot realistically sell her 25% share on the open market, nor should she be expected to without the full agreement of her family as to which there is no evidence that such agreement would be forthcoming.

54. W's business interests are also, in my judgment, clearly illiquid. She has minority holdings. There is no plan to sell the businesses. There is no meaningful liquidity within the businesses, as the SJE has carefully explained. To attempt to sell without the agreement of her family (as to which, again, there is no evidence that such agreement would be forthcoming) is fanciful.

55. They do, however, have a value and therefore represent a resource in W's hands to be taken into account, albeit unlocking such value should be viewed on a long-term basis.

56. A Ltd. has encountered recent financial difficulties. Revenue has dropped from £9.5m in y/end March 2017 to £8.1m in y/end March 2019, contributed to by a mix of factors; fee pressure, a change of relationship with one particular customer, and challenges in the market. 2 branch offices have closed, and staff made redundant. The SJE assesses the risk to continued levels of profitability as "medium to high". Pre-tax profits (after interest and depreciation) have dropped from £132,000 in 2017 to £109,000 in 2019. The SJE has taken maintainable post tax profits (after applying conventional adjustments) of £117,000 and applied a multiplier of 8.18 to give a gross value for the company of £1 million.

57. Usually, surplus cash would be added. In this case, the figure is £350,000, which is calculated as cash reserves of £520,000 less working capital requirements. On its face, therefore, the gross value of the business might increase to £1.35m. Against that, in common with numerous businesses across the land, the Supreme Court judgment in Royal Mencap Society v Tomlinson-Blake is awaited. If the Supreme Court reverse the Court of Appeal, care workers who "sleep in" are entitled to the minimum wage for time spent not actually performing specific duties. There could be a back-pay claim against A Ltd. which would reduce the value of the company and cash reserves; the company has not put aside a contingency fund for this eventuality, although W speculates that there might be a £500,000 cost to the company. I propose

to take the company's value at the midpoint between £1m and £1.35m i.e £1.175m. I acknowledge that if the appeal is dismissed, the valuation would probably be higher and if the appeal is allowed the valuation would probably be lower. Valuation is an art, not a science and bearing in mind that (i) W's interest in A Ltd. is illiquid and (ii) her interest is non-marital in character, in my judgment this is a fair figure to take.

58. B Ltd. is loss making. H acknowledges that it has been in financial difficulties. Its care home is currently in special measures and does not hold a care quality commission rating. It consequently has difficulty attracting residents and full-time staff. It is currently loss making. The building it owns is tired and needs refurbishment expenditure of c£150,000. In 2018 it received a cash injection of £225,000 from A Ltd. to keep it afloat. Given the lack of maintainable profits, the SJE has, correctly in my view, valued the company on the Net Asset basis. Its freehold property has been valued. Adjusting the balance sheet for the updated property value, the company valuation is £344,000 gross.

59. Where I part from the SJE is his value of W's pro rata share of each business. She owns 24% which computes at £282,000 gross (A Ltd.) and £82,560 gross (B Ltd.). The SJE has applied a 50% discount to those figures to reflect the minority shareholding. I do not agree. These are family businesses. The family is likely to act in concert on major decisions, such as sale; W has not involved herself and has always been content simply to fall in with the other shareholders. There is no suggestion that W would contemplate a sale of her shares alone. Their personal relationships are strong, with no evidence of major internal disputes or quarrels. They have rallied around W during the proceedings. This, in my judgment, bears all the hallmarks of a quasi-partnership and I will therefore not attribute a valuation discount (see Coleridge J in **G v G [2002] EWHC 1339**). In fairness, the SJE acknowledged that quasi-partnership was a matter for the court rather than him, he had not been instructed to comment on it, he had not considered it and it was outside his expertise.

60. It follows that, ignoring the 50% discount, W's business interests, after cgt, are:

(i)	A Ltd.	£253,800 (entrepreneur's relief is available).
(ii)	B Ltd.	£66,048 (entrepreneur's relief is not available).

61. W is owed £11,000 by B Ltd. I include that as part of the illiquid assets as it does not seem to me that the business is currently in a position to pay the monies to her.

Summary of the assets

62. Taking all of the above into account, the total assets are, as per the attached schedule:

Liquid	Illiquid
£10,791	£1,220,904

Income

63. H obtained employment at Sainsbury's at the end of 2018. He has recently left Sainsbury's to work at a plumbing and heating company earning £32,000pa gross.

64. W's basic income from A Ltd. is £36,500pa plus medical insurance worth £4,877pa. Her total remuneration in the past 5 years has been:
    (i) £209,000 gross in 2014/15 (including dividend);
    (ii) £140,000 gross in 2015/16 (including bonus);
    (iii) £121,000 gross in 2016/17 (including bonus);
    (iv) £61,399 in 2017/18 (including bonus);
    (v) Basic pay only thereafter.

    I reject the suggestion that her income has been deliberately suppressed since 2016/17. In the y/end 2017/18 (when income dropped significantly), the parties had not yet separated and there can be no question of skulduggery. Moreover, as the SJE's examination of the figures show, the company's turnover and profit have deteriorated in recent years. Total directors' remuneration has similarly declined, from £717,000 in 2015 to £233,000 in 2019. It may be that profitability is restored in due course. In my judgment, W has greater prospects than H of receiving measurably higher income, but not in the immediate future.

Other resources: wider families

65. Should a court inquire into the willingness of the wider family to assist one or both spouses?

66. To my mind there are 2 main categories of cases:
    (i) Where a spouse has an interest in an asset together with other family members, and the court frames its order so as to "*judiciously encourage*" the other family members to assist in extraction by the spouse of value referable to his or her interest. The court should not cross the boundary of improper pressure in so doing. This is the so-called **Thomas v Thomas** doctrine (**Thomas v Thomas [1995] 2 FLR 668**). Importantly, it applies when the spouse has an actual interest in an asset shared with third parties (e.g. family) but is confronted by liquidity difficulties.

    (ii) Where family members, who are gratuitous donors, are willing to make funds available by gift or loan to the relevant spouse. In this instance, the spouse has no legal or beneficial interest; it is a pure act of generosity for a person under no obligation to do so.

67. Taking the first category, I am unpersuaded by H's submission that I should "*judiciously encourage"* W's parents and brother to enable W to extract funds from

the illiquid assets in her name (the businesses and the business property). There is no evidence that the family wish to do so. There is no meaningful liquidity in either business. The present arrangements have been in place for over 25 years without alteration. I have no evidence as to how the proposed extraction of value can take place, whether it can be done in a tax efficient way and whether it can sensibly be achieved in the current difficult trading circumstances. They have indeed provided assistance in the past but not through the business arrangements; such assistance has been from their personal resources and therefore fits more neatly into the second category. I decline to make a **Thomas v Thomas** type order.

68. To my mind, the second category is a more persuasive argument for H to pursue on the facts of this case. I apply the following principles:

(i) The starting point is that there is absolutely no obligation on a third-party family member to provide funds from his or her personal resources. As Holman J vividly said in **Luckwell v Limata [2014] EWHC 502** at para 6: "*I wish to stress with the utmost clarity that neither the wife's father nor her mother are under the slightest legal obligation whatsoever to pay a single penny to, or for, their daughter, nor their grandchildren, nor, still less, their son-in-law."* This statement is wholly consistent with law and fairness. The court's function is to distribute the parties' resources, not the resources of wider families; see paras 66 and 67 of **Alireza v Radwan [2017] EWCA 1545.**

(ii) That said, on occasions wider family members may show themselves prepared to assist, willingly and under no pressure from the court to do so. Two distinct scenarios spring to mind;

(a) Whether a spouse's family will be likely, if requested, to come to his or her aid in meeting specific needs personal to the spouse in question and;
(b) Whether a spouse's family will be likely, if requested, to come to his or her aid in making a payment to the other spouse to assist in bringing financial remedy proceedings to a conclusion.

(iii) The first scenario is not uncommon. If means are available, the wider family, although under no legal obligation to do so, may willingly help with buying a house or meeting income needs if the alternative is homelessness and penury. But the evidence of willingness to do so must be clear. Mere speculation, or optimistic assumption, is insufficient.

(iv) The second scenario is rarer, for obvious reasons, although it can unlock cases and bring about settlement. For example, the family of a spouse may offer to pay the receiving spouse a lump sum to avoid sale of the marital home. Again,

in my judgment, there must be clear evidence to justify such a finding. Speculation and optimistic assumption will not suffice.

(v) The court should not place pressure on the third party who is perfectly entitled to decline to provide support. As Deputy High Court Judge Nicholas Mostyn QC (as he was then) said in **TL v ML [2005] EWHC 2860** at para 101:

> *"The correct view must be this. If the court is satisfied on the balance of probabilities that an outsider will provide money to meet an award that a party cannot meet from his absolute property then the court can, if it is fair to do so, make an award on that footing. But if it is clear that the outsider, being a person who has only historically supplied bounty, will not, reasonably or unreasonably, come to the aid of the payer then there is precious little the court can do about it."*

The judge was there addressing the second of my suggested two scenarios, but in my view his remarks apply with equal force to the first scenario.

(vi) In either scenario, where the evidence shows, to the requisite standard of proof, that third party family members will likely provide financial support to one or other of the spouses, that, in my judgment, constitutes a resource that a court is entitled to take into account. To do otherwise would be artificial. As to the sort of evidence which the court will evaluate when deciding upon the likelihood of future assistance:

(a) Usually the court will look to see whether bounty has been provided in the past, in what quantity and over what amounts of time, as evidence of a pattern.
(b) Additionally, the court can look at specific offers of long-term future financial support made to a spouse before or after marital breakdown.
(c) Offers of interim provision to tide the spouse over with assistance towards legal fees and income needs during the period of litigation will be of very limited evidential relevance to the question of whether long-term future support will be forthcoming. Usually such payments are transitory in nature, designed to assist the recipient spouse with the demands of the litigation.
(d) Absent clear evidence establishing (i) a track record of historic payment and/or (ii) reliable representations of future subvention, the court will be hard pressed to be satisfied of this class of resource.

69. Applying these principles to the facts of this case, the liquid assets are so modest that there is a real possibility that one or both parties may be unable to re-house. To what extent, if at all, might the wider families come to the rescue?

70. To my mind there is clear evidence that W's family will assist her financially rather than see her (and the children) unable to rehouse appropriately. Her parents have been generous to W in the past, in particular with financial support for the children. At the time of the breakdown of the marriage, her brother stepped in with a proposal to buy out H and enable W to continue to live at the FMH. To do that would have required him to effect a remortgage of £900,000 (£550,000 for the existing mortgage and £350,000 to H); W described this as her and her brother co-owning the property. In an open proposal made in June 2019 an offer was made by W on the basis of her brother paying H a lump sum of £125,000 (I assume on the same plan of a remortgage to redeem the existing £550,000 mortgage).

71. W's open proposal for this hearing leaves her (as she acknowledged in evidence) wholly unable to buy a property. I do not consider that she would have made that proposal if she truly thought there would be no assistance forthcoming from her family who are clearly of reasonably substantial means. I am quite sure that her wider family will not see her homeless. In closing submissions, her counsel accepted that "*W will need some family assistance"* which seemed to me to be realistic. That will most likely be securing a mortgage, probably on similar terms to those discussed in 2018.

72. On H's side, I have already mentioned some assistance provided by H's sister and brother in law. His family seemed to me to be of modest means. H was categorical that he can expect nothing more from them and in my judgment, there is insufficient evidence to conclude that he can rely on any financial assistance, however modest.

Needs

73. Both parties accept that their respective incomes will have to be enough to meet their budgets. There is no scope for periodical payments either way and they will have to operate within their means. Both agree that a clean break is appropriate and desirable; I agree.

74. The most pressing need of the parties is housing. For their security, and consistent with their status as home-owners during their lives together, purchased accommodation should surely be striven for. They, and their minor daughter who is the court's first consideration, need no less if it can be achieved.

75. In **M v B (Ancillary proceedings: lump sum*)* [1998] 1 FLR 53**, Thorpe LJ said at page 60 E – G:

"In all these cases it is one of the paramount considerations, in applying the section 25 criteria, to endeavour to stretch what is available to cover the need of each for a home, particularly where there are young children involved. Obviously the primary carer needs whatever is available to make the main home for the children, but it is of importance, albeit it is of lesser importance, that the other parent should have a home

of his own where the children can enjoy their contact time with him. Of course there are cases where there is not enough to provide a home for either. Of course there are cases where there is only enough to provide one. But in any case where there is, by stretch and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome."

76. In **Piglowska v. Piglowski [1999] UKHL 27** Lord Hoffmann, commenting on **M v B,** said:

"This is a useful guideline to judges dealing with cases of a similar kind. But to cite the case as if it laid down some rule that both spouses invariably have a right to purchased accommodation is a misuse of authority."

Although not an iron rule, to my mind the dicta in **M v B** apply self-evidently in the majority of cases, and certainly in this one.

77. The range of property particulars for W lie between £350,000 and £450,000; those for H are between £135,000 and £325,000. In W's case, her need is greater, at least in the medium term, because of her primary responsibility for the youngest child and the need to provide a base for the university age children. In H's case, a 2-bedroom property would allow for members of his family to come and stay if and when better relations are restored. One property in particular, valued at £215,000 was accepted by H to be adequate but not in a particularly good area.

78. The parties' property needs are essentially driven by the limited resources. I have concluded that H's property need is about £250,000 and W's about £375,000, in each case including costs of purchase.

Division of liquid assets

79. I propose to order that from the net proceeds of sale, after deducting £33,000 to W's brother, H shall receive £377,000 and W the balance of £220,500.

80. The net effect on H is, in accordance with the attached schedule, that after payment of debts he will have liquid assets of £5,423. He has a mortgage capacity of £128,000 and in October 2021 will be able to realise £125,000 by way of tax-free lump sum from his pension. He will at that point therefore be able to buy a property at £250,000. Until then he will have to rent.

81. The net effect on W is that she will have £5,368. She has her own mortgage capacity of £132,000 which is insufficient to buy a property without family assistance. I am satisfied that her family will ensure that the shortfall will be made up to buy suitable accommodation; the necessary sum is far below that which her brother was prepared

to raise by remortgage in 2018. Lest there be any doubt, my confidence is based on a finding to that effect; it is not based on speculation or assumption, nor am I engaging in judicious encouragement.

82. On this division each party will exit with broadly equal liquid assets (virtually nil, as it happens). W will retain the greater share of illiquid assets. Additionally, she has better income prospects than H and the undoubted willing support of her parents and brother.

Outcome

83. The net effect of my proposed award is:

Wife	
Liquid capital	£5,368
Illiquid capital	£711,480
	£716,848
Husband	
Liquid capital	£5,423
Illiquid capital	£509,424
	£514,847

84. A clean break must take place. It is consistent with the statutory objective and necessary to end this litigation once and for all.

85. I have not mechanistically recited all of the s25 criteria. They have been at the forefront of my mind and are dealt with individually and jointly in this judgment. At all times, my first consideration has been the minor of the family.

Other matters

86. H shall transfer shares he holds in B Ltd. to W or such person(s) as she may nominate on her behalf. I have not inquired into the contentious reasons why H holds such shares because they form part of the conduct allegations.

87. H shall cooperate in unlocking the computers of their daughter and W's father.

88. Insofar as not already done, H shall return to W the paperwork relating to a number plate.

89. Computers belonging to H (rather than the business) are to be returned to him.

90. Child maintenance shall continue to be dealt with by the CMS. H has stopped paying the assessment of £255pm. He should immediately restore the payments. Should he not do so, enforcement is within the jurisdiction of the CMS, not this court.

91. Each party shall be solely responsible for debts to members of their respective families, and shall indemnify the other.

92. The payment to H from the proceeds of sale shall not be made until the grant of a Get. Such a course is agreed by the parties and consistent with **Moher v Moher [2019] EWCA 1482**. The parties shall each pay 50% of the cost of the Get (estimated at £600 in total).

Costs

93. The starting point is no order as to costs: FPR 28.2. By rule 28.3(6) the court is entitled to depart from the starting point "*where it considers appropriate to do so because of the conduct of a party in relation to the proceedings…"* and rule 28.3(7) sets matters to which the court must have regard when considering whether to make a costs order. To my mind, of particular significance in this case is 28.3(7)(f) which requires me to consider "*the financial effect upon the parties of any costs order"*.

94. Neither party is entirely free from blame in the conduct of the litigation. On W's side, her approach to the conduct allegations led to the trial in September last year being aborted and undoubtedly raised the stakes and the litigation temperature.

95. H is more blameworthy. He launched numerous applications and appeals, some of which were clearly misconceived. He has throughout exaggerated W's resources. His Form E1 and subsequent Form E were deficient in certain respects as demonstrated in cross examination. Moreover, there is some force in the submission that W has engaged more constructively than H in the open offers and has been much closer to the mark than H.

96. At the appeal hearing on 24 January 2020, W was ordered to pay 50% of H's costs. I am told that the sum payable by W is likely to be about £15,000 on assessment. The effect, of course, would be to add £15,000 to H's side of the balance sheet, and remove £15,000 from W's side. H would be left with about £20,000 of net liquid assets (£5,423+ £15,000 costs) and W would be left with about -£10,000 of net indebtedness (£5,368-£15,000 costs), a result which would be plainly unfair and contrary to my intention.

97. I am satisfied that there is ample justification for me to make a modest costs order against H. I order him to pay £15,000, to be set off against the January costs order against W, and not to be paid until W's costs liability becomes due. That will leave the net effect outcome of my decision undisturbed. A practical course for the parties would be to agree that neither party will pursue these costs orders.

Conclusion

98. This self-defeating litigation is now over. It is scarcely credible that at the end of it all, they emerge with about £5,000 each of liquid assets, having incurred nearly £600,000 of costs, but such is the reality. There may be worse examples of disproportionate and ill-judged litigation, but none spring readily to mind.