

ENGLAND AND WALES / JUDGMENT

A v B

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Neutral Citation Number: [2018] EWFC 4 IN THE FAMILY COURT Case No: FD92D00643 IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 1973 Royal Courts of Justice Strand, London, WC2A 2LL Date: 26/01/2018 Before : THE HONOURABLE MR JUSTICE BAKER

- ----- Between : A
- and - B
- -----
- ----- Applicant Respondent Rebecca Bailey-Harris (instructed by Thomson Snell and Passmore) for the Applicant Sally Harrison QC (instructed by BPS Family Law LLP) for the Respondent Hearing dates: 20 December 2016
- ----- Judgment Approved MR JUSTICE BAKER: 1. This is an application by a former wife to strike out a claim for financial remedies under the Matrimonial Causes Act 1973 made by her former husband from whom she was divorced twenty-five years ago.

Background

2. 3. As the parties have been divorced for over twenty-five years, it seems wholly inappropriate to refer to them as “the husband” and “the wife”. I shall therefore refer to them as “A” and “B”. A is now fifty-nine years old and B is sixty-one. They were married on 6 April 1983 and have two children – a son now aged thirty, and a daughter now aged twenty-eight. It seems to be agreed that B, who had a successful career, was the main breadwinner. The role of the parents in caring for the children during the marriage may be a matter of dispute. It is A’s case that he was the primary carer during the marriage. The parties separated in May 1991, and shortly afterwards A petitioned for divorce, although apparently no copy of the petition can now be found. The petition was undefended and decree nisi was pronounced on 3 April 1992 and made absolute on 22 June of that year. It is common ground that A did not issue any separate application for financial provision at the time of the divorce petition or at any point thereafter until February 2016. A has contended that such an application was included within the divorce petition. Until shortly before first hearing before me, however, there was no 4. 5. 6. 7. 8. independent evidence that the divorce petition had indeed included an application for financial relief. At the time of the breakdown of the marriage in 1991, the parties’ financial resources were limited. The matrimonial home was owned by the parties but with little if any equity. B’s case is that she and A owned

four endowment policies, two of which, valued at £48,000, were retained by A, and the other two, valued at £38,000, by B. B also states that she paid £10,000 to A from a redundancy payment. It is her case, therefore, that, at the time of the divorce, A received £58,000 of the matrimonial pot and she retained the balance of £38,000. A challenges her evidence, stating that he does not think it is correct that he retained two policies of the value alleged and that it was not until some time later that B paid in the sum of £10,000. Following the breakdown of the marriage, B moved into rented accommodation with her new partner (whom I shall refer to as "C"), while A remained in the former matrimonial home with the children. It seems that relations between the adults remained cordial and, indeed, supportive. B provided financial support in the form of the mortgage repayments and all of the household outgoings. In 1992, however, B found that she was unable to meet those costs. It is her case that it was then agreed between the parties that A and the children would move out, and B and C move into the property. Again, A challenges B's recollection. His evidence is that he felt he had no choice but to move out. It is his case that he had insufficient funds to purchase a property (and cites this in support of his recollection that he did not in fact receive the endowment policies as alleged by B) and was therefore obliged to move into rented accommodation. The children continued to live mainly with A throughout their minority. B continued to pay maintenance for them until 2009, at a point when their son was aged twenty- three and their daughter rising twenty. It is A's case that the level of maintenance was determined by B and in a way that was meant to be non-negotiable. Both parties married again. In 1999 B married her partner . C. In 2013, A married a woman with whom he had been in a long-term relationship and whom I shall refer to as "D". It is alleged by B that, at the time of her marriage to C, they too had limited resources. In 2001, however, C was involved in a management buy-out of the company for which he worked. Shortly afterwards, B retired and spent part of the time caring for the children. It is B's case that, thereafter, the funds utilised by B to pay maintenance for the children were provided by C. In 2006, B and C agreed to provide the sum of £400,000 to enable a house (hereafter referred to as "the property") to be purchased for A and the children to occupy. There is a disagreement between the parties as to the basis upon which A occupied the property. It is B's case that she and C bought the property as an investment but, because of concerns about A's health, agreed that he and the children could reside there rent free. In her statement, B says that there was a very clear agreement from the outset that the property was an investment purchase and that she and C would regain possession once the children were older. A disagrees that the property was bought as an investment by B and C. It is his case that the purchase was prompted by concerns which B and C had about his health. In his statement, A says: "In March 2006 I had chest pains and was admitted to hospital ... severe stress was diagnosed. That month I met with B... at her invitation, taking along my financial details. I told her that it was financially hard for me to run the house and that I had accumulated credit card debts. B told me that she would speak to C about my finances and housing situation and come back to me. A couple of days later she phoned me and said that they would clear my credit card liabilities and also that they were going to buy a house for me and the children, for which I had a budget of £400,000. During further discussions, B

clarified that the property would be part of the children's inheritance but would be a home for me for life or as long as I wanted to live there. There was no agreement that the applicant and her husband would regain possession once the children were older. If that was the case, then I would anticipate they would have suggested an age such as eighteen or twenty-one, but they did not. There was never any discussion of any limited timescale at all for my living there. In all our discussions it was absolutely clear that this was a home for me for life and one which the children could come back to in the event of their own future relationships ending. This lifted huge pressure from me and gave me the security for my future which I had never been able to give myself." 9. 10. In due course, the property was found and A moved there in November 2006. Shortly afterwards, the parties' son was involved in a serious car accident and left with significant injuries. It is A's case that he gave up work to care for the son.. He says that this crisis brought the adults together and reinforced their relationship to the extent that B and C took him and the children on holiday to the Maldives. After the property was purchased, B and C funded a significant extension of the property, spending, according to B, over £200,000, and increasing the size of the property from four to six bedrooms. There is a disagreement between the parties as to the reason for this extension. B contends that the reason was simply to increase the value of the property. A argues that the property was extended to make it sufficiently big to accommodate not only him and his children but also D and her children. In response to this argument, B asserts that D did not in fact move into the property until 2009, and that when she did so she was not accompanied by her children, who were by that stage all adults. It is B's case that, although some of D's children lived at the property from time to time, this was not the reason for the extension of the property. B asserts that, after the extension was completed, A rented out rooms at the property to D's children and also lodgers. He retained all the rental income himself without accounting for it to B or C. 11. It is A's case that, in June 2012, he and D spent about £3,500 putting a workshop in the garden at the property. In his statement, A says that he "does not believe that B and C would have been so callous as to encourage D and me to spend money on a workshop at the property from which to operate our small business as we did in June 2012 if they knew they were going to ask us to leave within a couple of years". 12. On 27 September 2013, after his marriage to D, A sent an email to C in the following terms: "Having got married, D and I decided to sort out our wills situation. Obviously, D needed to amend hers and I have never had a will. Some friends of ours recommended a lady who does their wills. She came round and during the discussion the subject of the property came up. I explained the situation and told her the story. She said that as things stood, legally, God forbid should something happen to you and B together (i.e. die in an accident) I potentially have no security to stay in the property. She said that what I needed for security is a 'right to occupy'. I have attached a copy of a draft one she has sent to me for your perusal. The last section ... mentions the children, this is only because I said that at the time the house was purchased I recall it being said that the house was going to be part of the children's inheritance however I could live there. I obviously don't know your plans for any of the children I only mentioned this to [the woman who had given him advice]. We also understand that it is a strange situation for D to be in and that if something happened to me

she would not expect to be given the right to stay in the house albeit we are married now. We would like to think that should the situation arise she could have a grieving period whereby she can make plans and alternative housing arrangements. If you could let me know your thoughts on the above I would be really grateful.” 13. Three days later, C replied in the following terms, setting out his and B’s case as to the basis on which the property had been purchased: “We agreed to purchase a house for you and the two children to live in, when they were both still at home. At the time, one of the many options we considered was to leave the house to the children, but we decided against this, as we knew they would need a helping hand when the time came to buy their own homes. In the financial crash of 2008, we lost a lot of money, my business went into administration in March 2009 and a number of our investments became worthless overnight as you know, I’m retiring next year In these circumstances, we will have no choice but to sell the property. We’ve tried to allow you and D to stay as long as possible, but in 2014 or 2015 we won’t be able to afford to keep it any longer. We’re already housing your and B’s son and [his wife and child] and it won’t be long before his sister moves out We intended to discuss it with you in due course, but your email has accelerated matters. I understand this isn’t what you were looking for, but I can assure you that B and I will try to be flexible and as far as possible fitting with yours and D’s future plans.” 14. In his statement in these proceedings, A says that C’s reply came as a complete shock and a bolt out of the blue, but that, once again, he felt that he had no choice. He adds that, at that point, he did not have the funds to afford legal advice. It seems that there was a discussion between the parties at that point, although the terms of that discussion are unclear. No further discussion about the matter took place for some time. According to B, in 2014 C was made redundant and lost shares in his business. In March 2015, C sent an email to A asking what his and D’s plans were. On 24 March 2015, A replied as follows: “We do have a plan. I am sure you are aware that a move from the property for us is not just a house move, it is also a business move. This means that the criteria for a new property are quite specific with regards to indoor and outdoor space. We have found a property which we feel will accommodate the business and also give us living space. This property however requires quite a lot of work to be done prior to moving. This work will have to be done in stages over a period of time due to the cost and getting the finances together as we only have a limited budget. Taking this into account, our best guess on a timescale to vacate the property is late 2016 / 2017.” 15. C replied stating that, when they had talked eighteen months earlier, they had mentioned a timescale of eighteen months and that, although he and B did want to put A and D under undue pressure, another eighteen months to two years was too long. He asked for more details of their plans. A replied setting out more details of the property under consideration, and reminding C that he had said he and B would be as flexible as possible. To this, C replied: “I think we’ve been very flexible. I have no income anymore, so I have to sell assets. That being said, the last thing we want to do is to fall out with you, so I’m prepared to honour your backstop date of early 2017, let’s say end Feb, as long as you’ll help us market the property whilst you’re still in residence.” A replied (27 March 2015): “That’s great, we really appreciate your understanding and likewise would not want to fall out with you either. We will of course help with marketing the

property prior to us vacating.” A says that at this point he was still unable to afford legal advice. He adds that he was at that point was under the impression that B and C were in great financial difficulty, although he maintains that it is now clear that their financial position was, and continues to be, significantly better than his own. He says that he feels that they misled him and bullied him into agreeing to move out of his home and place of work. Subsequently, A took legal advice and says that he was told that he could pursue financial claims under the Matrimonial Causes Act if they had been made in the original divorce petition. He hoped that he and B could resolve things amicably and therefore suggested they attend mediation. B says that she was shocked when A got in touch with her in January 2016 suggesting that they attend mediation regarding financial issues from the divorce. On 3 March 2016, she issued a section 21 notice for A to vacate the property before 7 May 2016. In fact, on 8 February 2016, A had issued a Form A seeking all forms of financial relief. On 9 May 2016, B filed an application to strike out his claim on the grounds of lack of court jurisdiction in accordance with s.28(3) of the Matrimonial Causes Act 1973 and FPR 4.4(1)(a) and 4.4(1)(b). The FDA was heard on 18 May 2016 by DDJ Hudd. At that stage, directions were made for the filing of statements and the hearing of the application to strike out was listed before a judge of the Family Division. The application came before this court initially on 7 October 2016. At that point there was insufficient time to hear it and the matter was adjourned. On the evening before that hearing, however, A disclosed a statement from his former solicitor at the time of the divorce proceedings, supporting his contention that he had made an application for financial relief within his divorce petition. She said that it was her personal practice to tick all the boxes in the petition, including the prayer for what was then called ancillary relief, and that she would have definitely done so on that occasion. In the light of that last-minute evidence, B through her solicitors abandoned her claim under rule 4.4(1)(a) but indicated that she wished to pursue her alternative claim for a strike 16. 17. 18. out under rule 4.4(1)(b). That application was relisted for a further hearing, at the conclusion of which judgment was reserved. The law 19. S.28(3) of the Matrimonial Causes Act 1973 provides: “If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries whether at any time before or after the commencement of this Act or forms a civil partnership, that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.” 20. Rule 4.4(1) of the Family Procedure Rules 2010 provides, inter alia: 21. 22. 23. “... the court may strike out a statement of case if it appears to the court (a) (b) that the statement of case discloses no reasonable grounds for bringing or defending the application; that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings ...” FPR Practice Direction 4A, as amended, provides, inter alia, under paragraph 2.2 that “an application may fall within rule 4.4 (1)(b) where it cannot be justified, for example because it is frivolous, scurrilous or obviously ill founded”. Paragraph 2.5 provides that the examples set out above are intended only as illustrations. The leading case on interpretation of the court’s powers under rule 4.4 is the decision of the Supreme Court in Wyatt v Vince [2015] UKSC 14, [2015] 1 FLR 972. As is well known, that case concerned a couple who had married

in 1981, lived together for two years but then separated spending long periods apart, both living as new age travellers, before divorcing in 1992. Thereafter, the two children of the family were looked after by the wife with no financial support from the husband.

Subsequently, however, the husband established a very successful green energy business which by 2011 had achieved a valuation of over £50 million. In that year, the wife, now in poor health and dependent on state benefits, filed an application for financial relief. The husband's application under rule 4.4 striking out the claim was refused at first instance. His appeal to the Court of Appeal was allowed but the wife's subsequent appeal to the Supreme Court succeeded. In giving the judgment of the Supreme Court, Lord Wilson drew attention to parallels between FPR rule 4.4 and the equivalent provisions of the Civil Procedure Rules

1998. He pointed out, however, that the CPR also contained, in rule 24.2, a further power, namely to give summary judgment, which was not included in the FPR. The focus of the CPR power to give summary judgment was on proceedings where the statement of case discloses no reasonable grounds for bringing the claim. In the Court of Appeal in *Vince v Wyatt*, Jackson LJ had suggested that it was unfortunate that the FPR contained no equivalent rule, that the effect of the omission could not be that an application for a financial order which had no real prospect of success had to proceed to trial, and that the solution lay in interpreting rule 4.4(1)(b) so as to include applications without any real prospect of success as an example of an abuse of the court's process. Lord Wilson, however, rejected this interpretation. At paragraph 27 of his judgment, he said: "As a result of the fuller argument with which this court has been presented, it is clear to me that, with respect, Jackson LJ was wrong to insinuate into the concept of abuse of process in FPR 2010, r.4.4(1)(b) an application for a financial order which has no real prospect of success. The learned Lord Justice did not (and could not) suggest that the omission from the FPR of any rule analogous to CPR 1998 r.24.2 was accidental. It was deliberate; and so it was bold for him to say that nevertheless the effect of that rule was to be discerned elsewhere in the FPR. Although the power to strike out under r.4.4(1) extends beyond applications for financial remedies, for example to petitions for divorce, no doubt it is to such applications that the rule is most relevant. The objection to a grant of summary judgment upon an application by an ex-spouse for a financial order in favour of herself is not just that its determination is discretionary but that, by virtue of s.25(1) of the 1973 Act, it is the duty of the court in determining it to have regard to all the circumstances and, in particular, to the eight matters set out in subsection (2). The determination of an application by a court which has failed to have regard to them is unlawful: *Livesey (formerly Jenkins) v Jenkins* [1985] AC 424, [1985] FLR 813, at 437 and 822 respectively, Lord Brandon of Oakbrook. The meticulous duty cast upon family courts by s.25(2) is inconsistent with any summary power to determine either that an ex-wife has no real prospect of successfully prosecuting her claim or that an ex-husband has no real prospect of successfully defending it. Indeed, were the latter conclusion to be appropriate, how should the court proceed to quantify the ex-wife's claim? For in applications for financial orders there is no such separation as exists in civil proceedings between issues of liability and those of quantum. Procedures for the court's

determination of applications for financial orders, which both respect its duty under s.25(2) of the 1973 Act and yet cater for such applications as may be fit for an abbreviated hearing, are now well in place I suggest that FPR 2010 r.4.4(1) has to be construed without reference to real prospect of success.”

24. Whilst finding that the wife’s appeal in *Wyatt v Vince* against the strike out should succeed and her application for financial remedies should proceed accordingly, Lord Wilson added that it was essential to conduct a provisional evaluation of the issues so that the court could comply with the overriding objective of actively managing cases, properly identifying issues and isolating those which need full investigation, and tailoring future procedure accordingly. He justified such an approach in that case on the grounds that the wife’s application for financial remedies faced what he described as “formidable difficulties”, namely that the marital cohabitation had subsisted for scarcely more than two years, the relationship had broken down over thirty years ago, the standard of living enjoyed by the parties prior to the breakdown “could not have been lower”, the husband had not begun to create his current wealth until many years after the breakdown, and that the wife had made no contribution to its creation. Most importantly, the wife’s delay in bringing the application appeared to Lord Wilson to be inordinate. He added these observations (at paragraph 32): “Consistently with the potentially lifelong obligations which attend a marriage, there is no time limit for seeking orders for financial provision or property adjustment for the benefit of a spouse following divorce. Sections 23(1) and 24(1) of the 1973 Act provides that such orders may be made on granting a decree of divorce ‘or at any time thereafter’. Yet there is a prominent strain of public policy hostile to forensic delay. The court will look critically at explanations for it; and, even irrespective of its effect upon the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant. Nevertheless, it remains important to address its effect upon the respondent. In some cases, albeit not in the present, a respondent can show that he has assumed financial obligations or otherwise arranged his financial affairs in the belief that the applicant would make no claim against him and that he has done so in a way which, even if it were possible, it would not be reasonable for him to put into reverse. Sometimes, instead, he can point to factual issues of which the dimming of memories or the disappearance of witnesses over the period of the delay no longer permits accurate determination.” 25. The principles to be drawn from *Wyatt v Vince* were summarised by King LJ in the Court of Appeal in *Roocroft v Ball* [2016] EWCA 1009 at paragraph 45, namely, so far as relevant to this case: “ (ii) The court’s power to strike out an application pursuant to FPR 4.4(1) is of ‘limited reach’ and has to be construed without reference to ‘real prospect of success’, it follows that an application is not an abuse of process for the purposes of FPR r.4.4(1) simply by reason of the fact that it has no real prospect of success. (iii) An application has ‘no reasonable grounds’ for the purpose of FPR r.4.4(1)

(a) if it is not legally recognisable in the sense that it is incoherent or the applicant has remarried. (iv) There is no summary judgment procedure under the Family Procedure Rules. That does not however mean that the court is constrained from exercising its case management powers to direct that to be some form of abbreviated hearing following a provisional evaluation of the issues.” 26. On behalf of A, Mrs Bailey-Harris submitted that, when deciding whether the claim should be struck out as an abuse of process on grounds of delay, the court should follow the approach of the Privy Council in *Icebird Ltd v Winegardner* [2009] UKPC 24, and in particular paragraph 7 of the judgment of the court delivered by Lord Scott: “Where, however, there is nothing to justify a strike-out order other than a long delay for which the plaintiff can be held responsible, the requisite external quality of the delay necessary to justify the order ought not, in their Lordships’ respectful opinion, to be reduced by categorising the delay as an abuse of process without clarity as to what it is that has transformed the delay into an abuse and, where necessary, evidential support.” The Council reiterated that *Birkett v James* [1978] AC 297 remains the leading authority for the approach to be taken on an application to strike out an action for want of prosecution, namely that the power should only be exercised where the court is satisfied: “either (1) that the default has been intentional and contumelious e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the court, or (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between them and a third party” (per Lord Diplock at p318). 27. On behalf of B, however, Miss Sally Harrison QC submitted that the court should adopt a different approach and analyse the issue through the prism of article 6 of ECHR. The first sentence of article 6 provides: “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Miss Harrison cited the observation of Lord Hope of Craighead in *Porter v Magill*

[2001] UKHL 67 at paragraph 109 that the reasonable time requirement in Article 6 is a separate guarantee and not to be seen simply as part of the overriding right to a fair trial, nor does it require the person concerned to show that he has been prejudiced by the delay. “The only question is whether, having regard to all the circumstances of the case, the time taken to determine the person’s rights and obligations was unreasonable.” Counsel identified a number of European cases in which the ECtHR had reiterated that the ‘reasonableness’ of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the complexity of the case, the conduct of the applicant and the relevant authorities and what is at stake for the applicant in the dispute: see, for example, *Frydlender v France* (2001) 31 EHRR 52 and *Charalambous v Cyprus* (Application 43151/04) [2008] 1 FLR 473. The parties’ arguments 28. In her statement in support of her application to strike out A’s claim, B asserted that she did not

believe that A ever included a prayer within the petition for financial relief because their financial arrangements were agreed in the way she describes as set out above. At the date of the statement, no independent evidence had been produced to support A's assertion that his petition had included a prayer for financial relief. She therefore contended that the claim should be struck out either on the ground that no prayer for financial relief was included in the petition so that the claim was barred by s.28(3) or, alternatively, if the petition did include such a prayer, on the grounds that the claim constituted an abuse of process. Following the late receipt of evidence from A's former solicitor to the effect that the divorce petition had included a prayer for financial relief, those representing B withdrew the application based on r.4.4(1)(a). B's argument that A's claim should be struck out is therefore based solely on r.4.4(1) (b), supplemented by an argument based on article 6 of ECHR.

29. Miss Harrison's submissions can be summarised as follows. There remains a very limited cohort of cases in which the power to strike out can be exercised under r.4.4(1)(b) where it can be said to be an abuse of process provided that the power is not exercised by reference to the prospect of success of the claim. Although there is no limitation period for making a claim for financial relief after divorce, there are cases where a long delay before starting to prosecute a claim for financial relief is an abuse of process by reason of the breach of B's article 6 rights to a fair hearing within a reasonable time. The delay of 24 years in this case is so substantial that it interferes with B's article 6 rights and amounts to an abuse of process which should lead the court to strike out the claim. Relying on Lord Hope's dicta in *Porter v Magill*, Miss Harrison submits that it is not necessary for her client to demonstrate that she has suffered prejudice as a result of the delay, merely that the delay of 24 years before A started to pursue his claim for financial relief following divorce was unreasonable. If, contrary to her principal submission, it is necessary for the purposes of an application to strike out under r.4.4(1)(b) to demonstrate not only that there had been unreasonable delay but also that the delay has resulted in prejudice, Miss Harrison submitted that there was ample evidence that B had suffered prejudice in this case. 30. In this case, Miss Harrison identified a number of factors set out below in support of her contention that the period of twenty-four years that passed before A launched his application was unreasonable. In so far as may be necessary, she also relies on these factors as demonstrating that T has suffered prejudice as a result of the delay.
- (1) On B's case, such assets as existed at the breakdown of the marriage were shared between the parties.
 - (2) B fully supported both children until 2009 when they were aged twenty- three and rising twenty respectively. She had increased the level of financial support during that period.

- (3) At no stage in the intervening period did A ever intimate any intention to start financial remedy proceedings or suggest that he had any claim. (4) For a number of years, until 2006, A was in employment. (5) (6) In the interim, B married C who in turn provided funds to support A and the children. In 2006, B gave up work and thereafter was dependent on C for financial support.
- (7) B and C provided further support to A, for example by allowing him to retain all the rental income from the property, and by paying off his credit card debt.
- (8) B and C agreed to allow A and D to stay on in the property for a longer period while they made arrangements for alternative accommodation
- (9) Had B known that A would make, or was intending to make, a claim for financial relief, she would not have provided the support particularised above. Her actions over the past twenty-four years are entirely consistent with the belief that he had no such claims.
- (10) A has now remarried D who has a home of her own which could be used to meet their housing needs. 31. 32. In this case, Mss Harrison submits that, as a result, A's delay in pursuing his claims is manifestly unreasonable and that, after a passage of twenty-four years, a fair trial is no longer possible. In those circumstances, she submits that the claim should be struck out as an abuse of process. In response, Mrs Bailey-Harris on behalf of A stresses the fact that there is no statutory limitation period for claims for financial remedies after the presentation of a divorce petition and that, following the decision in *Wyatt v Vince*, the circumstances in which a claim can be struck out as an abuse of process are extremely limited. She contended that the arguments advanced based on article 6 did not materially strengthen the argument for striking out the claim. Mrs Bailey-Harris submitted that the Supreme Court in *Wyatt v Vince* must be understood to have considered that FPR r.4.4(1) is compatible with article 6. In any event, both parties' article 6 rights are engaged in this case, as also are A's rights to an effective remedy under article 13.
33. Mrs Bailey-Harris submitted that the present case is different from *Wyatt v Vince*, not for the reasons suggested on behalf of B, but because, unlike in the former case, there was a continuing financial relationship between the parties since their separation in 1992 up to 2015, which culminated in the purchase of the property. That relationship was described by A in his statement in response to the strike out application in these terms. He says that, from a layman's perspective, his claim should not be seen as coming totally out of the blue. There has been an ongoing link between the parties since the divorce, both financial and more generally in terms of the children. He relies on the fact that throughout the last twenty-four years he had made a significant contribution in relation to children. He summarises his case in these words: "Importantly since 2006 I have been living in a property registered in the name of B's and C's joint names on the basis that I understood I had a right to occupy the property for life and that that was the understanding under which it had been purchased. It is as a result of B's and C's actions in 2013 and 2015 in saying I no longer have a right occupy the property that it has been necessary for me to bring this claim." 34. In all the

circumstances, it was not accepted on behalf of A that the delay would prevent a fair trial of issues. Most of the factual background is not in dispute and the scope of the court's enquiry would be limited. Furthermore, it was not accepted that the delay in making the claim had caused serious prejudice to B. Mrs Bailey-Harris conceded, however, that her client's claim would be limited and could properly be the subject of tight case management directions for an abbreviated hearing, focusing on magnetic factors, as propounded by Lord Wilson in *Wyatt v Vince*. Discussion and conclusion

35. Miss Harrison began her written submissions with the observation that this is a highly unusual case. She is right. Neither counsel cited any authority in which a claim for financial relief after decree had been made twenty years after the divorce where one party had voluntarily provided ongoing financial support to the other throughout that period. 36. 37. I have little doubt that B's decision to apply for an order striking the claim for financial remedies was propelled by the absence of evidence that a claim for financial relief had been included in the petition. Once that point was conceded, B's lawyers had to fall back on the alternative argument based on rule 4.4(1)(b). As Miss Harrison acknowledged, the cohort of cases in which a claim can be struck out for abuse of process is limited, in the light of the Supreme Court decision in *Wyatt v Vince*. It seems to me that there are important differences between the facts of *Wyatt v Vince* and those of the present case. Those differences do not assist B in her application to strike out the claim. In *Wyatt v Vince*, the parties lived completely separate lives for thirty years after the breakdown of the marriage with no financial relationship between them. The husband provided no support for the wife or children throughout that period. In contrast, in the present case, the parties' lives have not been completely separate since the breakdown of their relationship. On the contrary, their lives have remained interconnected to an extent rarely encountered after divorce in this country. 38. At paragraph 33 of his judgment in *Wyatt v Vince*, Lord Wilson, (citing the observations of Baroness Hale of Richmond in *Miller v Miller*; *McFarlane v McFarlane* [2016] UKHL 24 at paragraph 138), stated that: "in order to sustain a case of need, at any rate if made after many years of separation, a wife must show not only that the need exists but that it has been generated by her relationship with her husband". In the present case, A contends that his need now arises because B has withdrawn significant material support which she had provided for a substantial proportion of the period since their separation and, on his evidence, had promised would continue indefinitely. In effect, he asserts that the need has been generated by his relationship with B, which started during the marriage but continued for many years after it came to an end.
39. Miss Harrison pins her colours to the mast of article 6, and contends that the delay in pursuing the claim has been unreasonable. In doing so, she relies on a number of factual assertions which are disputed by the other side. In assessing her argument, I have not been asked to make any determination on the factual issues in dispute, in particular the important difference between the parties as to the purpose for the purchase of the property and the terms on which A was allowed to occupy the property. From A's perspective, however, the delay is not unreasonable. In short, his case is that (1) B and C promised him

that he could live in the property for as long as he wanted; (2) he relied on their promise; (3) Band C have now broken their promise and he has suffered, or will suffer, loss as a result; (4) he has now discovered that he has a claim outstanding under the Matrimonial Causes Act 1973, and (5) it was not unreasonable for him not to pursue the claim before now because up to this point he has not had to think about litigation as he has relied on the promise about his unlimited occupation of the property.

40. Without reaching any conclusion on the factual disputes between the parties, I find it impossible to say that the delay was unreasonable. If the facts are as A alleges, it seems to me that it was not unreasonable – nor, to adopt the word used in *Birkett v James*, inexcusable – for him not to have made a claim before 2016. Until the exchange of emails in 2013, it appears that the parties were getting on amicably. No one seems to have considered litigation as necessary. 41. 42. Furthermore, on the facts of this case, I do not regard the passage of time since the breakdown of the relationship as a factor which prevents the parties having a fair trial. Very unusually, A's claim is based not on the level of support he received during the marriage but rather on the level of support provided subsequently. Although the parties' emotional and personal relationship ended long ago, their financial relationship has continued almost without interruption. As a result, the principal focus of the forensic enquiry will not be on the events of the marriage but rather on matters that have occurred since it came to an end. The evidential dispute will traverse a number of years, but that is not at all unusual in matrimonial financial disputes. Many such disputes concern long marriages and the court is obliged to consider evidence about what happened years, even decades, ago. The marriage in this case was not a long one, but the financial relationship between the parties has continued for over thirty years. A is entitled to bring a claim for financial relief at any time after the filing of his petition. The absence of any statutory limitation period in the MCA for the bringing of such claims, and, as Lord Wilson pointed out in *Wyatt v Vince*, the absence of any power provided by statute or statutory instrument to dismiss summarily a claim on the grounds that there were no reasonable prospects of success, must be regarded as deliberate rather than accidental. The court must therefore assess any application to strike out the claim on grounds of abuse without reference to the prospects of success. Having carried out that assessment, and for the reasons set out above, I conclude that B has not demonstrated that the delay in bringing the claim was unreasonable or that the claim is an abuse of process.
43. Whether or not A's claim succeeds will depend on the court's assessment of the evidence – in particular, crucially, the sharply conflicting evidence as to the basis upon which the property was acquired and occupied by A – and the arguments deployed on behalf the parties. It is important to add, however, that, in considering an application brought many years after the breakdown of the marriage, the court will, in carrying out its analysis of the factors in s.25, inevitably consider the delay and its consequences for the parties, along with any other relevant matters that have occurred in the intervening period. Although the factors identified by Miss Harrison do not in my judgment justify a conclusion that A's claim should be struck out as an abuse of process, they are plainly relevant to the merits of the

claim for financial remedy brought by A. B's assertion that, had she realised that A would or might pursue a claim for financial relief, she would not have provided him with the degree of financial support that he has enjoyed in the past twenty-four years is plainly a factor which, if it accepts it, the court must take into account when considering whether to grant A any financial relief and, if so, the quantum of that relief. To my mind, however, that assertion does not entitle B to succeed on a summary application to prevent A from bringing his claim altogether. 44. I do, however, consider that the circumstances of this case fully justify the court using its case management powers to arrange an abbreviated hearing of the claim, for the reasons identified by Lord Wilson. In the course of the hearing, I was informed by counsel that they had agreed that, in the event of the court declined to strike out the claim, they would agree directions for an abbreviated hearing to last no more than one and a half days. To that end, a hearing has been fixed for April 2018. I will be grateful if counsel would endeavour to agree appropriate case management directions for the court to consider when this judgment is handed down, or at a convenient date shortly afterwards. At that point, I will also consider any applications as to costs.

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Prepared on 25 October 2026 · Esheria