

ENGLAND AND WALES / JUDGMENT

GN v MA

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2015] EWHC 3939 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION No. FD09P02003 Royal Courts of Justice Strand London WC2A 2LL Tuesday, 22 nd December 2015 Before: MR JUSTICE BODEY (In Private)

- ----- B E T W E E N : GN

- and - MA

- ----- Transcribed by BEVERLEY F. NUNNERY & CO. (a trading name of Opus 2 International Limited) Official Court Reporters and Audio Transcribers 5 Chancery Lane, London EC4A 1BL Tel: 020 7831 5627 Fax: 020 7831 7737 info@beverleynunnery.com

- ----- Applicant Respondent MR. R. BUSWELL (instructed by Selva & Co) appeared on behalf of the Applicant. MR. M. GLASER (instructed by Russell-Cooke LLP) appeared on behalf of the Respondent.

- ----- J U D G M E N T MR. JUSTICE BODEY: Introductory. 1. This is an application under Sch.1 of the Children Act 1989 dated 25th November 2015 by the mother (whom I will call “the mother”) of a boy, whom I will call “C”, who was born in 2008 and is aged seven. The Respondent is C’s father, whom I will call “the father”. 2. The mother’s application is fundamentally for a substantial increase in periodical payments for C. The current order of mine is dated 1st March 2013 and is for periodical payments for C at a rate of £204,000 per annum. The mother puts the appropriate amount at something in the region of £780,000 per annum. She also seeks orders for various debts of hers to be paid off by the father, including certain legal costs; and for monies to be provided by him (additional to the periodical payments) for holidays and medical expenses in respect of C. 3. There are further issues raised in respect of a trust which owns the property in central London where the mother and C live, which I shall call “D Square”. These include (a) for a direction for the replacement of her previous trustee to represent her and C’s interests in respect of the property; and (b) for the provision of some £160,000-odd for repair works to the property. She says that she had to have those works done herself because the trustees, or perhaps the father’s trustee (in the absence of a trustee to represent her) failed to do so. 4. There is a cross-application by the father dated 15th December 2015 for an order summarily dismissing the mother’s applications today and for a s.91(14) order that the mother cannot make any further application for a given period of time without first obtaining the leave of the court. However, the father does not pursue his application under s.91(14) if the mother’s claim is summarily dismissed. 5. I held several years ago, after a long contested hearing that

although, as I found, the parties had gone through an Islamic marriage ceremony in 2007, that marriage is not recognised in this jurisdiction. Hence the mother's claims for C are under Sch.1 of the Children Act. 6. The mother has been represented at this hearing by solicitors and counsel. Her counsel is Mr. Buswell, who has said all that could be said for her application in the rather difficult circumstances of his coming to the case relatively afresh. The father has been represented by solicitors and counsel, his counsel being Mr. Glaser. That legal team has been in place throughout, by which I mean from 2009. Since then there has been voluminous and hugely expensive litigation over matters of income for C, over questions of a property for C (ie D Square) and the cost of funding it. The legal costs now run to several million pounds, almost all of which had been paid by the father, both for his own lawyers and for those of the mother. Other issues which have had to be determined by me along the way have been the satellite issue of so-called cost funding for the mother, which over the years became a quite complex issue. 7. This is a convenient moment to explain why the quantum of the orders in this case relating to C are, by usual parameters, so high. The reason is that the father, who is in his 50s, is a member of the Royal Family of a Middle Eastern country. I will mention at paragraph 14 below how I described his wealth in one of my many judgments in this matter. The mother, who is in her 30s, was born into an affluent family from a different Middle Eastern country; but now says, as per her statement of 24th November 2015, that she is 'in serious financial troubles'. 8. The parties never lived together. The father has never seen C, nor expressed any interest in him. The mother, therefore, bears the entire responsibility of caring for him and bringing him up. She wishes to do so in a lifestyle commensurate with that of the son of a member of a hugely wealthy Royal Family. 9. The Notice of Application and the mother's statement in respect of this hearing were prepared when she was acting as a litigant in person. Her statement runs to 59 paragraphs and I have read it with care. It looks, although I may be wrong, as though she did have some professional help over it, by reason of the references to "[insert]" in square brackets in one or two places; but no matter. Whilst somewhat rambling and repetitive, for which the mother is not to be blamed, her statement clearly enough puts across her case in support of her Notice of Application. The report of the case of *Wyatt v Vince* [2015] UKSC 14 was not in the bundle, nor was it discussed in argument at all, save that Mr. Glaser mentioned it en passant. It is something to which I will need to revert, but it will make better sense if I do so when I have explained the litigation history. The litigation background until the Court of Appeal's hearing in December 2014. Since the mother's current application seeks a holiday allowance for C (over and above the regular periodical payments) it is convenient to start with a judgment of mine which deals with just such an application. On 14th December 2012, I heard a Pre-trial Review prior to my hearing a few months later the full Sch.1 application. At that time the mother wanted to take C for a holiday to the USA after Christmas 2012. She said that this was a stressful time for her in the run-up to the main hearing and since the welfare of C depends on the mother's wellbeing, I did accede to that application. I ordered £21,000 to be paid by the father towards such a holiday in the USA. This was less than her claim for £46,000 against him, on the basis that she could and should have saved some of her then substantial interim periodical payments for C to put towards the cost of a holiday. I

emphasised that this was “on the particular occasion” and I said at para.24 of my judgment: “It is very important that it be understood that, for example, the Christmas 2012 holiday is not a benchmark; nor is it the way (ie permitting piecemeal applications for funding) that the financial arrangements are going to work once final orders at whatever level have been put into place.” Next came the final hearing before me, concluding on 1st March 2013. Both parties were represented by leading counsel and junior counsel. This was a very detailed hearing covering a substantial range of issues in depth and concerning most aspects of the final arrangements for C. I recorded in that judgment that C has a diagnosis of a syndrome called MBL immune deficiency, as well as of Kawasaki disease, another immune-system illness, and that he had been very ill in 2010. These features have, I accept, made the mother protective of him and have led her to be very choosy about the way she brings him up, for example as to the foods which she purchases for him. She says for instance that she has to buy a particular food supplement for him which costs £241 a month or just under £3,000 per annum. By my order of 1st March 2013 it was provided, amongst other things, that the father must purchase the property in D Square, where the mother and C were already living under a lease. That property was to be held on arrangements to be agreed and to revert to the father after C ceased tertiary education, including a gap year. The purchase price of D Square was £3,450,000. I further ordered that various debts of the mother amounting to some £770,000 must be cleared off by the father via a lump sum paid to the mother for C’s benefit, and, as I have said, I ordered periodical payments for C of £204,000 per annum or £17,000 per month. There was no order as to costs because the father had accepted responsibility for the mother’s costs, save that he was ordered to pay her costs of the implementation of the order. That implementation was ordered to be down to and including a hearing which was fixed to follow shortly afterwards for finalisation of the way in which D Square was to be held and in respect of its maintenance, repair and so on. Certain observations which I made in the judgment on 1st March 2013 are important. At para.54 I said this about the father, having first noted that he had never himself attended court: “ ... it is to his credit that he has always paid the maintenance for C set by the court and has paid the mother’s legal fee funding, except for a spat in early 2012 when arrears accrued. It is impossible to know the reality of his lifestyle, save to say that his family, the royal family, appears to rank pretty clearly among the super-rich and that as a senior member of that family he moves naturally within a world of opulence (the mother’s word) where there is effectively little if anything which he cannot have, or have the use of.” At para.80, having referred to the existence of the mother’s debts, I continued: “ ... it cannot be in C’s interests that his primary carer [the mother] is beset by the financial stress of debts which she has no obvious wherewithal to meet. She says she has no capital and it is not suggested that she has. Aside from the maintenance for C, she has no income. It is very much in C’s interests, and will not impact on the father in any way which he will notice, that she should go away from this hearing with a fresh start, with a clear awareness of the budget within which she has to live and with her balance sheet at zero rather than in deficit. This is particularly so given her vulnerability to stress and depression.” I then went on to direct a lump sum which would pay off all her debts. At para.87 I took up the same theme: “ ... although the mother will thus be

starting with a clean sheet and, although my income award is going to be substantially less than she seeks, it should not be thought by her that the solution is simply to spend above her means, running up debts so as to be able to come back to the court for lump sums for C, or for increased maintenance with which to service the debts. The budget below is what the court has calculated to be reasonable when balancing the various competing arguments which arise in cases like this. It is the mother's duty to C so to adjust her lifestyle as to bring him up within the budget and not to create for herself the stress of continuing debt from now on." Last I recognised the difficulty of determining the right figure for periodical payments in a case like this, when I referred to something I said many years ago in *Re P* [2003] 2 FLR 865 (C. A.), namely that: "... there will ... inevitably be numerous grey areas where the need being asserted [by the applicant] is of no direct benefit to the child but is (or is arguably) of legitimate indirect benefit in helping reasonably to sustain the mother's physical/emotional welfare. This will be most pronounced when the father is very wealthy and able without difficulty to provide for living costs of no clearly identifiable direct benefit to the child, but which would indirectly promote the mother's care of the child by allowing her such a lifestyle as not to feel 'out of place' in the society of the parents of the child's friends." Having been through the figures in detail and rejected the mother's claim for £668,000 per annum as it then stood, I concluded that the figure of £204,000 per annum index-linked would be reasonable in all the circumstances of this case, adding that: "... it should enable her to give C a very good quality of life, whilst recognising that she was not (legally) married to the father." I said in respect of the father's then application for a s.91(14) order that: "... in my judgment it would not be right at this stage to subject the mother to a sieving process. The periodical payments will be index-linked and the court will not expect to have to embark on a further consideration of the finances, all things being equal. So a line can be drawn at this point giving rise to a fresh start. If the mother were nevertheless to abuse the litigation process, then s.91(14) could be reconsidered." About six weeks after that order of 1st March 2013, the wife emailed the father's solicitors to say that she needed £28,000 per month (£336,000pa), which is £132,000 per annum more than the amount of the court's fully considered order. On 24th May 2013 the matter was back before me again. A range of matters were not agreed about the overall arrangements for C, for example; how D Square was to be held; whether or not the trustees and/or any other entity which the father wished to use could be outside this jurisdiction; questions of the responsibility for the maintenance and repair of D Square; questions about the wording of the covenants relating to it; issues of security for the periodical payments and so forth. I made the necessary decisions about how the property was to be held (which are not material today) and then dealt with the issue of the maintenance and repair obligations. Paragraph 5 of my order directed that the maintenance and repair of D Square was to be managed and funded such that (a) the mother was to be responsible for all internal maintenance, decoration and regular outgoings, to include the utilities, and that (b) the father was to be responsible for the maintenance and repair of the structure and fabric, including drains, gutters and exterior pipes, and for the external decoration. Any other repairs and maintenance of the property were to be the responsibility of the mother. It was directed that if the father did not

otherwise discharge the responsibilities placed on him by the order as they fell due, then he was to settle into the trust such additional sums as might be required in those respects. As to the question of the costs of that hearing on 24th May 2013 (and this is important in view of one of the mother's applications today) I directed that the respondent father do pay the costs of Charles Russell and Withers (both firms of solicitors then used by the mother) in respect of the implementation costs incurred by the mother since the judgment handed down on 1st March 2013, such costs to be the subject of a detailed assessment, if not agreed. On 30th August 2013 the mother made an ex parte application to Hayden J for orders about certain dental work required urgently by C. I will revert to this later. On the same day she issued a formal application for an increase in C's periodical payments. It then became obvious that there were many other issues causing problems between the parties and these all became wrapped up in a comprehensive one day hearing before me on 11th December 2013. At that hearing the mother represented herself and Mr. Glaser represented the father. In the result, I resolved eight issues as follows:

- (i) As to whether there should be a new security arrangement to secure the payment of the periodical payments for C; (ii) As to whether the father was to pay for any medical treatment for C not covered by medical insurance; (iii) As to whether the father should pay anything to the mother towards Withers' costs of representing her as regards seeking to secure her immigration status in this country; (iv) As to the mother's application (just mentioned) for increased periodical payments;
- (v) As to the mother's application for ongoing legal fees funding which she was claiming at the rate of about £276,000 per annum; (vi) As to the mother's application for the transfer of just over £100,000 into a trust account in the name of the trustees of the settlement of D Square; (vii) As to the mother's application that the father be ordered to provide her with a direct email and postal address for her to communicate with him personally; (viii) As to whether the father should make any contribution to the mother's costs of getting a detailed assessment of the costs which were ordered in her favour by my order of 24th May 2013. Having heard both sides, I dismissed all of those applications, except for numbers (iii) and (viii). As to application number (iii), I ordered that the father should pay to Withers £20,000 towards their costs of seeking to secure the mother's immigration status in this country. As regards number (viii), I ordered that he should make a contribution of £10,000 towards her costs of organising a detailed assessment of the costs ordered in her favour by my orders of 1st March 2013 and 24th May 2013. I need to record in a little detail what I said in my judgment of 11th December 2013 about the mother's application for an increase in periodical payments: "In March 2013 the court carefully reviewed the mother's budget. She was represented at that hearing by extremely experienced leading and junior counsel. It was writ large in the judgment that the mother had to set and adhere to a budget. As I noted, this periodical payments order for a five-year old boy of £204,000 per annum (with the mother's accommodation costs provided for in a £3.4 million house, with school fees paid and with all her debts of £770,000 cleared) was and is a very substantial order, even in the context of a man of the father's colossal wealth. Even now the mother's asserted budget remains at what

one can described as a mouth-watering level ... £714,000 per annum. Certainly on that budget there are a number of claimed items which can manifestly be brought down to a more reasonable level without sacrificing the welfare of C, even taking account of the mother's arguments (which are understandable to her) that he has the status which he has. For example, holidays there mentioned are in the sum of £188,000 per annum with staff at just over £100,000 per annum ... I bear in mind that the mother again seeks a box for C at the Emirates Stadium and a box for him at Ascot, although these were specifically rejected [by me] in March 2013. She continues to seek payment by standing order when I have held that there is no jurisdiction to make such an order against the father, because he is not resident in this jurisdiction. In a case like this where the 'millionaire's defence' is taken, a court simply has to taking a view as to what is the reasonable amount in all the circumstances of the case, bearing in mind the test that I mentioned in the March 2013 judgment of enabling the mother to bring up the child in circumstances which are not too dissimilar from those of the child's father (that is a paraphrase and not completely accurately stated). That view as to the reasonable amount was taken in March 2013. The remedy was to go to the Court of Appeal if it was felt that I was insufficiently generous and therefore wrong. If I was right, then it is not right to vary it in the manner now sought. I therefore dismiss the application for an upward variation in periodical payments for [C]." At the end of the costs of that hearing (11th December 2013), Mr. Glaser asked for the father's costs. It was apparent that the father had succeeded on the vast majority of the issues. I assessed his costs at £30,000 and ordered the mother to make a very modest contribution of £5,000 towards them, to be deducted at the rate of £500 per month from C's periodical payments. The father agreed not to enforce that order if the mother made no further application under Sch.1 for two years (ie not before 10th December 2015). In fact, the mother has done so and it will be for the father to decide now whether to enforce his costs order by deducting £500 a month until the £5,000 is paid off. I also dealt with another particular matter on 11th December 2013 (to which in paragraph 19 above, I said I would revert) and of which the mother complains in her statement dated 25th November 2015. It arose in this way. On 30th August 2013 the mother applied ex parte to Hayden J about urgent dental work for C. The judge acceded to that application, ordering a lump sum of £5,000 against the father with, as he put it, 'bad grace and reluctantly'. He said in addressing counsel then appearing for the mother: "C is the victim, surely, because your client [the mother] receiving £17,000 per month [£204,000pa] maintenance, so poorly regulates that provision that she has not got sufficient money in her account to counter this particular emergency. The reason that this child is in difficulty is because your client is just not acting responsibly as a parent ... in allocating her finances ... She has so poorly managed her affairs that this child has had to endure further pain and discomfort because she could not find £5,000. I am not for one moment impressed and it is time for this litigation to be closed down. If it were not for the fact of a little boy in pain and the mother's assertion that she has pennies only, I would not have acceded to her request. There was not, in my view, any need for this to have come on as an urgent application. It was finance mismanagement and not the treatment that has led to this. I make the provision requested, but with bad grace and reluctantly. It is time for the mother to arrange her

finances in a mature manner. It is as a result of her not doing so that this little boy has had to suffer.” The father applied to me on 11th December 2013 to set this ex parte order aside, ie the order of £5,000 for the dental treatment for C and the costs which Hayden J ordered the father to pay. I recorded in my judgment of 11th December 2013 that the dentist’s report spoke of the dentist having seen C on 12th August 2013, two weeks before the ex parte application. That report referred to C having “multiple cavities” due to “an advanced level of decay and chronic infection”. It had led to C requiring dental treatment under general anaesthetic. I continued as follows at para.17 of my judgment on 11th December 2013: “ ... it does not seem to me, having read the dentist’s report, that this should have been an urgent application. It falls to me to consider it de novo (a clean sheet) because the father was not present nor heard. I have to say I would have set this award of £5,000 aside if I had thought it would not be detrimental to C for me to do so; but it was an application to stop him suffering pain and the money has now actually been paid and spent. It was vitally in C’s interests that the treatment could go ahead. Even though the dental condition was chronic, that was not his fault and I think it would be detrimental for it to be set aside, being a wholly irrelevant sum to the father, except as a matter of principle. I will not, therefore, require it to be repaid [by the mother] to the father, but I do propose to set aside the costs order against him in respect of that ex parte hearing.”²⁵ So like Hayden J, I did not see, why the mother’s application about dental work had had to be made ex parte. Nor did I see why the husband should have been expected to pay the costs of it, when he had had not had a chance to be heard to resist it and when it was now a *fait accompli* that he had to pay the £5,000. I therefore felt it appropriate to discharge the costs order made. It is a small episode but indicative of the mother’s approach that the father should just be expected to pay for everything. The Court of Appeal in December 2014 and the Supreme Court in April 2015. Following that hearing dated the 11th December 2013, the mother applied for and obtained permission to appeal to the Court of Appeal against my order as to periodical payments. There she was represented by leading and junior counsel. On 8th December 2014 (judgment on the 10th) her appeal was dismissed. Macur LJ set out the approach which I had adopted in calculating the appropriate sum for periodical payments (which I have cited above) and continued at para.33: “Consequently I consider the criticisms of Bodey J’s approach summarised at para.6 above to be baseless. The articulated exercise of his discretion in making the award and subsequently refusing to vary the same is faultless

[34] His refusal in December 2013 to vary the order made in respect of periodical payments in March 2013 was undoubtedly right [Macur LJ then read from my December 2013 judgment as already cited above]

[35] By making the totally unmeritorious application for variation heard in December 2013, the mother was thereafter able to seek to challenge the March 2013 order some five months out of time from the date of sealing the order as a necessary antecedent to the appeal she brought within time. This manipulates the procedural rules and in my view should be guarded against by a refusal to extend time, absent good and compelling reasons.” At paragraph 44, Lewison LJ said this about the mother’s appeal: “ ... the judge was rightly

guided by the mother's choice of home in determining (very generously one might think) the capital sum and future income payments appropriate to a lifestyle in that home and, moreover, to pay off all the mother's debts. There is no appealable error in the judge's

judgment.

[45] Like Macur LJ I also deplore the mother's opportunistic and spurious application for a variation of the judge's order made when she was acting in person. There was no possible ground on which to make it and one can only infer that it was made for the purpose of generating an order against which an in-time application for permission to appeal could be brought, so as to avoid having to confront the delay in appealing the judge's original order. In my judgment it was an abuse of process to make that application ... " On the question of the costs of the appeal, the Court of Appeal recorded that the father's costs were in excess of £92,000 and the mother's in the region of £130,000: total approximately £222,000. They ordered that the mother make a contribution of £25,000 towards the father's costs, such to be deducted at the rate of £1,000 a month from the periodical payments for C which I had ordered in 2013. Macur LJ said at para.36: "The argument routinely deployed that such orders impact upon the monies available for C begs an obvious question. The mother must act responsibly in the stewardship of the monies that are paid for C's benefit. She is not entitled to assume that a court will countenance her unmerited applications by declining to order costs against her, or by ordering further lump sums to be paid by the father to make good the shortfall." The mother applied to the Supreme Court for permission to appeal against the Court of Appeal's decision. On 16th April 2015 the Supreme Court dismissed that application. The mother's present application for increased periodical payments for C and whether it should be dismissed today. In November 2015, seven months after the Supreme Court's decision, the mother issued her Notice of Application which brings the matter before the court today. Unhappily the mother has a fervent belief that C and therefore she herself, by way of a carer's allowance, should be allowed a vast income provision to enable C's lifestyle to replicate that of the father; but almost without regard to the fact that he is a seven-year old growing up in London. In her statement of 25th November 2015, she still, for the third time, seeks a box at the Emirates and at Ascot for C, together with membership of Ascot and Wentworth golf clubs. This is even though her claims for boxes have been specifically dismissed. She still refers to needing a nanny/governess/house manager and a housekeeper. She seeks air travel for herself and C, first class return twice a year (admittedly with an airline in respect of which the father has connections) and for economy flights for a nanny/governess, until C completes his tertiary education. I make all possible and reasonable allowances, as Mr. Buswell asks, for the fact that the mother prepared her statement of November 2015 as a litigant in person; and for her tendency (as noted by her psychiatrist in January 2010 and recorded at para.17 of my judgment of 1st March 2013) to make "chaotic and unwise decisions, quite fragmented and impulsive"; also for the fact that she can "...be her own worst enemy" as I have said in the past. But her present application is nothing more than a second repetition (the first time being by application of August 2013

heard in December 2013) of her dissatisfaction with the quantum of the periodical payments order of March 2013. That has now been definitively ruled upon by the Court of Appeal with further appeal being refused by the Supreme Court. Mr. Buswell says that the Court of Appeal hearing was all to do with a legal point about the appropriateness of the so-called ‘millionaire’s defence’; but it is clear that the Court of Appeal was also looking at the quantum of my award (see per Macur LJ at para.1). Is it proper, then, to strike out or dismiss the mother’s claim summarily as sought by the husband? Or should I adjourn her applications, as Mr. Buswell seeks, for her to make her claim more focused and organised with the help of her lawyers? I have already mentioned *Wyatt v Vince* at which I have looked, albeit briefly in the time available. The facts there were very different. The wife’s claims for financial remedies in that case were taken as never having been adjudicated upon; and so the Supreme Court held that the strike-out imposed by the Court of Appeal was inappropriate and wrong. Here, however, the mother’s claims in respect periodical payments for C have been adjudicated upon three or even four times: twice by me, once by the Court of Appeal and once by way of the Supreme Court refusing permission for any further appeal. These decisions have all been made in the relatively recent past. In *Wyatt*, Lord Wilson spoke of the question being whether the claim was ‘legally recognisable’. He said that a claim would not be ‘legally’ recognisable if, for example, a wife had remarried; or the application was an identical application to one which had been already dismissed; or one which had otherwise been finally determined. It is clear to me that the mother’s application for periodical payments for C falls into the second of those examples and that it would therefore be open to me to strike it out under the Family Procedure Rules 4.4(a) or (b) on the basis of there being no reasonable grounds for making the application, or on the basis of its being an abuse. If, however, I am for any reason wrong about that, then I look alternatively at a summary consideration of the mother’s application today. If it were not to be so dismissed, it would require (as Mr. Glaser submitted) a three or four day hearing. There would need to be full discovery by the mother and an examination of how she currently spends the money which she gets for C. She is, for example, driving a Bentley on contract hire, which she says costs her £2,000 per month. I do not know the age of the car, but if that be right, it comes to £24,000 per annum, for someone living in central London. It would not be right for me to adjourn the hearing today and for there to be the expense and time of a further hearing if the certainty, or near certainty, or even overwhelming probability, would be that the application would ultimately be dismissed. With that in mind, I have reminded myself of the factors and circumstances which a court has to take into account by virtue of clause 4 of sch.1 of the Children Act 1989. They are all the familiar circumstances: income, earning capacity, property and other financial resources; financial needs, obligations and responsibilities; the financial needs of the child; income and earning capacity and any financial resources of the child; any physical or mental disability of the child (I have mentioned that above) and the manner in which he was being or was expected to be educated or trained (as to which the father is paying and has always paid the school fees). Those particular factors are in addition to the court’s having regard to “all the circumstances”. One of those circumstances is that the court has already and fairly recently

investigated in depth the question of financial support for C. I am satisfied, bringing those factors into the equation and taking them into account, that the present order is suitable and appropriate for C's upkeep and welfare in all the particular circumstances of this case. I am aware that the mother says that prices are going up and she refers particularly, through Mr. Buswell, to BUPA. He placed before me quotations from BUPA, which appear to show an increase from some £12,000 for 2013/2014 to almost £18,000 predicted for January 2015 to January 2016. Closer inspection however indicates that the greater part of the increase in the quotations is the amount payable for the mother, which goes up from £5,000 in the first one to £12,000 in the second one, whilst the figure for C goes up by only £1,000. There is no evidence before me as to what the mother has actually paid for BUPA cover; but everyone knows that these health insurance policies depend on just how much of a gold-star package one wishes to pay for. More broadly there will of course always be individual items of expense which will go up. There may equally be some that go down. Such variations are predictable for everybody. That is the reason for the court having index-linked the award and for its having emphasised that the mother has to budget in broad terms within the amount allowed to her. Taking all relevant matters into account, I am satisfied that it is appropriate and just to accede to the father's application to strike out or to dismiss the mother's application today for an increase in C's periodical payments. For the same reasons I dismiss her applications for individual sums for medical insurance and holidays. The court has said all along that it is inappropriate, costly and engendering of much aggravation that such items of expense should be claimed piecemeal. The mother's application for a lump sum for C to enable her to pay costs bill owed by her to her former solicitors. I now turn to the mother's claim for a debt of her's to be paid by the father in the sum of about £49,000, being legal fees owed by her to Messrs. Withers. It will be remembered that there was an order of 24th May 2013 for the father to pay the costs of the mother's former solicitors Messrs Charles Russell and Withers, in respect of implementation of the orders after the judgment of 1st March 2013, such costs to be the subject of a detailed assessment if not agreed. By the time the case came back before me on 11th December 2013 the father had offered to pay £70,000 on account of those costs of Charles Russell and Withers, on the basis that if any subsequent assessment of costs assessed a lower sum to be owing, then the mother would refund the overpayment. The order of 11th December 2013 recorded that that offer remained open for acceptance and I directed that the father should pay those costs to Charles Russell and Withers totalling £70,000, within 14 days of any acceptance of that offer by each of the mother, Charles Russell and Withers. Thereafter, both Charles Russell on 19th December 2013 and Withers on 7th January 2014 agreed to accept that sum of money between them in the sum of £70,000. Charles Russell specifically said that they would write off the remainder of their claim against the mother; but Withers did not specifically say that. On 7th January 2014, the same date as the Withers letter, the mother emailed the father's solicitors Messrs. Russell Cook in terms which made it clear that she too accepted the father's proposal and did so " ... without the need for a detailed assessment ... ". She said " ... so can you please make a payment for trust department and for the family department as offered by your client in settlement of the total amount due without the need for a detailed

assessment or any further challenge in respect of these costs?” By “the total amount due” she clearly meant the £70,000 offered by the father. She added, “I agree these terms.” It is clear from that email and from the way the father had made his offer that the right to a detailed assessment was compromised. There did not need to be a detailed assessment because the mother and her two former firms of solicitors had accepted the sum of £70,000. Withers then rendered the mother a bill for the amount of their costs which were not covered by the payment from the father’s solicitors, namely some £49,000. The mother’s bundle puts in evidence that she referred this claim to the Legal Ombudsman and includes at pages 114 to 126 the Legal Ombudsman’s investigator’s report. The investigator looked into the whole matter and must have had a number of documents which I have not seen and which probably would originally have been privileged. Her conclusion was that Withers had made their position perfectly clear to the mother and that she, the Ombudsman’s investigator had seen “...nothing to indicate that Withers were willing to write off their costs above the amount received from the father”. Her report continued, “Withers have consistently told the mother that she is responsible for their costs.” Thus the investigator’s recommendation to the Ombudsman was that Withers had provided the mother with a reasonable service in respect of which no remedy by the Ombudsman was required. It is not entirely clear to me what this bill for £49,000 is actually to cover. It may indeed be that it was the costs wrapped up in the compromise for the payment by the father of the total of £70,000; or it may alternatively be that it was other costs. But if it was any costs to do with the hearing on 11th December 2013, then the costs order at that hearing was actually that the mother should pay a contribution to the father’s costs. That would mean, if there were any costs owed by her to Withers relating to that hearing, that she would have a responsibility to them herself for those costs, without recourse to the father (except of course by seeking a lump sum against him nominally for C’s indirect benefit). In my Judgment, it is quite inappropriate that the father should now be expected to pay the Withers bill for the mother (whatever services it precisely covers) as being something for the indirect benefit of C. It would serve to undermine the court’s determination on costs. That bill will have to be something for the mother to sort out as best she can as between herself and Withers. The two issues raised in the mother’s application regarding D Square. This leaves two further matters raised in the mother’s application. First, there is the question of a new trustee to represent her as regards the trust which owns the shares in the company which owns D Square. This issue has not been put into evidence by either party; but in short I understand the point to be that the mother is being advised that the individual she wishes to represent her as trustee should be cloaked in some entity, like a trust or company. The father does not want this, particularly if it were to be a shell company, and he wants her trustee to be ‘a person’. That is because it is his belief that the mother would make herself the shareholder and director of a company and thus become the individual with whom his trustee would have to deal. He considers this would create all sorts of aggravation in the management of D Square. The second issue is as regards a substantial building work bill for £160,000 in respect of some ceiling work which is being carried out at D Square because it was in a poor state and leaking. The mother says that the builder whom she instructed has inflated the bill and

that the father/the father's trustee will not pay it. She is apparently being sued for it by the builder and says she cannot pay it. In distinction from the matters mentioned earlier in this judgment, there are justiciable issues on these latter two points. In the first instance the parties should attempt to deal with them by negotiation/mediation and by the injection of a good dose of common-sense to avoid having to come back to the court. But in the last resort it will be necessary for the matter to come back, reserved to myself if available, to deal with the questions of (a) how the new trustee is to be set up to represent the mother and (b) what is to happen about the cost of the works which she is being asked to pay for.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/fam/2015/3939>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/gn-v-ma-2015>

Prepared on 27 October 2026 · Esheria