

ENGLAND AND WALES / JUDGMENT

PS v RS

COURT
IN THE LEEDS COUNTY COURT

BEFORE
THE HONOURABLE MR JUSTICE MOYLAN

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IN THE LEEDS COUNTY COURT

Case No.

FD12F00950

The Courthouse

1 Oxford Road

Leeds

LS1 3BG

Tuesday, 1

st April 2014

Before: THE HONOURABLE MR JUSTICE MOYLAN

Between: PS
-v-
RS
Applicant
Respondent

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The Applicant appeared in Person, assisted by a McKenzie Friend
Counsel for the Respondent: MR HENDRON

JUDGMENT

MR JUSTICE MOYLAN:

JUDGMENT

1. 2. 3. 4. The parties to these proceedings are former spouses, but I propose to describe them in this judgment as the husband and the wife. The wife applies for financial remedy orders under Part III of the Matrimonial and Family Proceedings Act 1984 (“the 1984 Act”). The parties have very largely acted in person during the course of the proceedings. The husband has been represented at this hearing by Mr Hendron, but the wife has continued to act in person, assisted at this hearing by a McKenzie Friend. In my view these proceedings have clearly demonstrated the difficulties which can be created for parties and for the court when the parties are acting in person. The court is not in a position to conduct the litigation for the parties and has to retain sufficient independence from the process, both to remain an impartial tribunal and to be seen as an impartial tribunal. Given also the volume of other cases, the court is not able to take on the role of inquisitor, certainly not to the extent necessary to replicate the forensic scrutiny which legal representatives would bring to bear during the course of proceedings. I refer to this at the outset of this judgment because, in my view, the evidence in this case is not that which would have been available if the parties had been represented, both in terms of their own cases and in terms of the evidence which would have been at least sought from the other party. This undoubtedly makes the attainment of justice more difficult. History 5. 6. 7. 8. The husband and the wife are both Egyptian nationals by birth. They married in Egypt in 1996. The husband was born in 1962 and is now aged 51. He came to live in England in or about 1989, having qualified as a doctor. He has worked since then as a general practitioner (although his membership of the NHS pension scheme appears to date to 1992). He is also now a British national. The wife was born in 1976 and is now aged 38. When the parties married the wife was at university in Egypt. She completed her studies and came to live in England in 1997. The wife has also become a British national. There are two children of the family now aged 15 and 12. The elder is due to move to sixth form later this year or possibly the next academic year and the parties expect both children, in due course, to attend university in England. Since 1997 the parties have lived in England. They initially lived in rented accommodation. The husband says that there was a proposed move to Egypt in 2008 but even if there was such a move, which is disputed by the wife, it did not last for more than a few months. During the course of the marriage the husband built up a very successful practice as a GP which included providing medical services to the local police force. The parties lived in a number of homes. In 2010 they were living in a substantial property which was sold for £650,000. The wife says that this property, which was in 9. 10. 11. 12. 13. 14. 15. joint names, was sold without her knowledge. It has not been necessary for me to determine this issue but there is no obvious reason why this property had to be sold and its value provides an indication of the family’s standard of living. The husband appears to date the difficulties in the marriage to 2008.

Divorce proceedings were commenced in 2010. The wife issued proceedings in England and the husband took proceedings in Egypt. The English proceedings were dismissed in late 2010 and the Egyptian process also came to an end because the parties reconciled. In her oral evidence, the wife said that, after they were reconciled, the husband started to get rid of his wealth. He told her they would make a fresh start at their next home which would also be in her name. The husband in fact purchased this property in his sole name. In or about February 2011 the husband again began the divorce process in Egypt. In July 2011 the wife also again commenced divorce proceedings in England. On 17th May 2012, with both parties then being represented by counsel, I declared that the marriage had been validly determined in Egypt on 3rd March 2011. As a consequence, the wife's petition was dismissed and it necessarily followed that her financial application was also dismissed. The husband later sought to contend, as described below, that this dismissal of the wife's financial application in some way debarred her from advancing her current claims. The parties separated in late 2011, with the wife and the children remaining in the family home. The wife and the children are still living in this property. In 2013 the husband purchased a home for himself in the same part of England as the former matrimonial home. The husband continues to work as a GP. The wife did not work in paid employment during the marriage until about four years ago when she started working part-time as an administrator, which she still does. I do not have a clear account of what payments the husband has been making to the wife for her or the children's benefit since 2011. The wife says that they have been limited; the husband says they have been extensive. It is clear however that the husband has paid the mortgage on the former matrimonial home, currently £1,345 per month; home insurance and other life insurance premiums, currently totalling £78 per month; and TV licence of £12.50 per month. In addition, following the wife's application to the Child Support Agency in 2012, the husband began making payments for the children either in 2012 or possibly early 2013 of approximately £440 per month. The CSA payment has reduced to £220 per month because one of the children spent a short period living with the husband. It has not yet been increased, although that child is now again living with the mother.

16. When paying at the full CSA rate, the husband has been making payments totalling £22,500 per year. He has in addition been making other payments for the children, such as for the school bus, pocket money, mobile phone, and other expenses. The husband puts the current total, including sums for clothes and holidays which he provides for the benefit of the wife and children, at approximately £34,000 per year. I give the husband credit, in particular, for continuing to make the household payments, which he has paid throughout since the parties separated at the end of 2011. It is not possible for me to determine whether these payments reflect precisely what he should have been paying but they have, nevertheless, been substantial payments. Proceedings 17. 18. 19. 20. Following the dismissal of the wife's English divorce proceedings, she applied for leave to make a financial application pursuant to Section 13 of the 1984 Act. She was given leave by Hedley J on 13th December 2012. The husband's application for permission to appeal this decision was refused by Thorpe LJ on 7th February 2013. The wife's financial application is dated 20th February 2013. It seeks

periodical payments, a lump sum, property transfer orders, and a pension sharing order. The wife has only very recently served her application for a pension sharing order on the relevant pension managers. Hedley J, King J, and I have made directions for the progress of the wife's application. At the commencement of this hearing the papers assembled by the parties were in, what I can only describe as, a chaotic state. I am very grateful to Mr Hendron who took on the task of preparing one structured bundle containing the relevant documents. This has made the conduct of the hearing much easier than it would otherwise have been. In July 2013, the husband applied for the wife's application to be dismissed. His application relied on a wide range of arguments, including issue estoppel, res judicata, and abuse of process. The application seemed to be based very largely on the fact that the wife's previous financial application, made in divorce proceedings in England, had been dismissed and also on the existence of Egyptian proceedings. I dismissed the husband's application in October 2013 as it did not seem to me to raise any arguable issue. The wife's previous financial application was necessarily dismissed because the court had no jurisdiction to determine it following the dismissal of her petition. Further, the Egyptian proceedings, as will become clear later in this judgment, are not such as to justify the dismissal of the wife's claims. Factual Issues 21. 22. 23. The principal factual issue in the case is the nature and extent of the husband's resources. Another feature of the case is that the parties have also been engaged in financial and other proceedings in Egypt. It has not been easy to understand the purpose of these proceedings and the parties have given competing accounts of their progress. I will address these proceedings, as I must, when I consider the matters set out in the Sections 16 and 18 of the 1984 Act. It is the wife's case, as set out in her written statements and repeated in her oral evidence, that since the marriage got into difficulties the husband has sought to hide his wealth from her and from the court. She has pointed to steps he has taken to dispose of assets in England and contends that much of his evidence about the extent of his wealth is false. The husband asserts that he has given a truthful account, both of his current resources and of why his resources have been reduced to their current level. He points to a number of transactions which he says explain what has happened. These, in two to three significant respects, involve financial transactions with other members of his family. 24. In order to put this issue, as to the husband's resources, in context I propose in due course to set out a summary of his financial dispositions but, before doing so, I will deal with my view of the parties as witnesses. The Parties 25. 26. 27. 28. In addition to reading the documents in the bundle and their respective statements, the parties have both given oral evidence. Further, because until this hearing they were both acting in person, I have seen and heard them far more than if they had been represented. I have always found the wife to be calm and dispassionate. She gave her evidence clearly and openly. I am satisfied that she is an honest witness. The husband was, in some ways, an engaging witness but I regret to say that he was not a convincing witness. Throughout these proceedings he has sought to impede the proper progress of the wife's case. I have no doubt that he has failed to give an honest presentation, but rather has sought to hide his true financial position behind a variety of false evidence, including documentary evidence. I will deal with specific aspects of his evidence below. In coming to this conclusion, I have made

all due allowance for the fact that the husband is currently on medication. The side effects of the medication can include confusion and light headedness. I am satisfied that the husband was not confused when giving his evidence. He had a clear recall, or reasonably clear recall, of events when it suited his case. The only times when he had any difficulty during his evidence were when he was seeking to address matters which did not fit comfortably with his asserted case. Egyptian Proceedings 29. 30. 31. Turning now to the Egyptian proceedings. As referred to earlier in this judgment, it has not been easy to understand why proceedings have taken place in Egypt. Doing the best I can, the position appears to be as follows. I add that I was told during the course of the hearing last week that there was due to be a hearing in Egypt on, I believe, Thursday 27th March; I have not heard whether such a hearing took place and, if it did, what the outcome of that hearing was. Following the divorce in Egypt, the husband commenced a financial claim against the wife. The wife says that she was advised by a lawyer in Egypt that she had to respond to this claim by making her own claims. It appears that the husband's claim was at some point dismissed because it was not open to him to bring a financial claim. The parties own a property in Egypt in a building called L ("the L flat"). The wife brought a claim to occupy the L flat. As far as I am aware she has brought no other claim in respect of that property which is held in the joint names of the parties. An order appears to have been made giving the wife the right to occupy the property but it does not appear to have been enforced and indeed may not be enforceable. 32. The parties are agreed that the Egyptian court has ordered the husband to pay the wife a total of 350 Egyptian pounds per month – i.e. approximately £35 per month or £420 per year. In the context of this case this is not a significant amount. Technically, it appears that no sum has been paid under these orders but the husband has been making payments to the wife, for her and the children's benefit in England, as I have described, which very substantially exceed the sum of £420 per year. During her oral evidence, the wife indicated that she is willing not to pursue the husband in respect of these orders. My order in these proceedings will be on that basis, namely that the wife will not take any steps to enforce the financial orders in Egypt in her favour. Financial History 33. 34. 35. 36. 37. In February 2003 a property in HPW was purchased in the joint names of the parties for £80,000 with a mortgage from the Bank of Scotland. The parties still own the property. It is estimated to be worth £95,000. The outstanding mortgage is £91,000, so it has little, if any, net value. It is currently let. On 4th December 2005 the parties purchased a flat in Dubai. The husband's recollection is that it was purchased for £250,000 which was funded in part by re-mortgaging the then matrimonial home. The property was sold in August 2008 for about £300,000. It appears from bank statements produced by the wife, which she found at the former matrimonial home, that a significant part of the proceeds of sale may have been transferred into the husband's HSBC account in England. In 2006, the L flat in Egypt was purchased in the joint names of the parties. The wife's evidence is that it was purchased for about £150,000 and that, when the parties obtained possession of it in April 2007, it was fully furnished. The husband's evidence is that it was purchased for £200,000. They agree that the purchase price was paid in instalments, although their duration and amounts are not clear. The husband says that the property was purchased as a shell. It is his evidence, disputed by

the wife, that between 2008 and 2010 further sums, totalling £300,000, were spent on finishing the property. This money was spent on items, such as installing a kitchen, bathrooms and air conditioning, and furnishing the property. He points to the sum of £214,000 which was transferred from his English HSBC account on 3rd November 2008, as being part of the monies which were spent in this way. The wife has produced one copy statement for the husband's HSBC account in Alexandria. This is the only statement which has been produced because, according to a recent email to the husband from the branch manager, the bank is unable to provide any information to the husband or the English court. No explanation is provided for this, what I view as a surprising, assertion, especially as the email confirms that the manager knows the husband and knows that he used to be an HSBC customer. The statement produced by the wife, for 3rd August 2008, shows that at that date the husband had approximately £210,000 deposited with HSBC Alexandria. 38. I do not accept that £500,000 in all was spent on this property. I consider it likely that some sums were spent on equipping the property but significantly less than the £300,000 asserted by the husband. 39. 40. 41. 42. 43. In 2007 two flats in Dubai were purchased in the husband's sole name in a building at Dubai Marina. They were purchased for approximately £90,000 each. The purchase price was payable in instalments over a two to three year period. The properties were registered in the husband's sole name in August 2010. This is established by documents again produced by the wife from the former matrimonial home. The husband contends that these properties were purchased pursuant to what is called a Family Benevolent Organisation, in other words a type of trust. The parties to the Family Benevolent Organisation ("the FBO") are himself, his sister, his brother-in-law, and his nieces – his sister and brother-in-law's children. The husband has produced a document dated 5th December 2007, under which each party agrees to pay 20 percent of the purchase price of the two properties with the rental income being used to support the husband's father. The document also states that if any party wishes to retire from the FBO any other party may purchase their share. The husband says that he purchased the first instalment, or the first 20 percent, and that the other parties paid the balance. There is no documentary evidence of these payments having been made by the other family members. The limited documentary evidence available shows a payment being made by the husband in August 2009; this was the seventh of eight instalments. This is clearly substantially later than the first instalment referred to by the husband and, by that date, substantially more than 20 percent of the purchase prices had been paid. In his oral evidence the husband speculated that a credit received into his English HSBC account in February or March 2009 could be from his family in respect of these properties. The husband received approximately £133,000 on 4th March 2009 and approximately £131,000 on 11th March 2009. The husband spent some time in his oral evidence seeking to identify the source of these credits in response to a question from me. In part he sought to persuade me that they came from the parties' joint National Bank of Dubai account. They clearly did not come from this account as there is no debit from the account at the relevant dates. The husband further sought to rely on a fixed deposit payment of 610,000 Dirhams, as being the source of at least one of the credits. The problem with this explanation is that it is clear that this deposit was paid into, what might be

called, the current Dubai account on 31st March 2009. The husband states that he sold his interest in the two flats to his niece because he no longer wanted to manage the properties. He could not explain why his wish to withdraw from their management required him to sell his interest. He has produced a memorandum of understanding for the sale of each flat, dated 7th November 2012. The documents appear to refer to the whole property, not merely a percentage interest, and record that the price paid was the equivalent of approximately £12,000. This is said to have been paid into the FBO. The wife states that prior to the husband producing the document headed, "Family Benevolent Organisation" she had never heard of its existence. She believes it is a false document created for the purposes of these proceedings. She also does not believe that the husband has sold these flats. In her oral evidence she said that the husband went to Dubai to buy these flats and told her he was doing so as an investment and to get extra income. 44. Apart from the FBO document, there is no corroborative evidence that anyone other than the husband has had any interest in the flats or paid towards their purchase. I am 45. 46. 47. 48. 49. satisfied that the husband was sole legal and beneficial owner, to put it in English law terms, and still is. In my view the husband has created a false story or account to seek to hide his ownership of these properties. I can, for example, see no reason why he would have sold his interest to his niece as he alleges. On 28th April 2008 a piece of land at the rear of the former matrimonial home was sold by the parties for £249,000. The husband states that these funds, or a substantial part of them, were transferred to Egypt to pay for the purchase and equipping of the L flat. The documents available do not permit any proper analysis of the transfer of funds. It is clear that £214,000 was transferred from the husband's English HSBC account to his Egyptian HSBC account on 3rd November 2008, but it is also clear that £202,654 was transferred from his Egyptian HSBC account to his English account on 22 nd October

2008. There are also significant transfers between two of the husband's English accounts from late October 2008 to January 2011. However, as there are statements available for only one of these accounts for the relevant period, it is not possible to see the full picture. The husband states that in August 2008 he agreed to purchase a villa, on the coast some distance from Alexandria, from his sister for about £370/380,000. The husband's evidence in respect of this alleged purchase was particularly confusing. The only document, apart from bank transfer forms, relating to this purchase is a notice dated 6th August 2010. The notice purports to be a demand issued by the husband's sister against him seeking payment of sums due under six bills, each for 500,000 Egyptian pounds and dated 1st August 2008, 1st February 2009, 1st August 2009, 1st February 2010, 1st August 2010, and 1st February 2011. The notice states that none of the bills have been settled in spite of several demands (my emphasis). Initially in his oral evidence the husband said that he had made the payments due but not in accordance with the bills because he had been late in making some of the payments. He then said that he had made no payments, after paying the first instalment due in August 2008, until he made a payment on 10th August 2010. The husband has produced three internal transfer request forms which show that he transferred the following sums from his Egyptian HSBC account to an HSBC account in his sister's name:

£50,000 on 10th August 2010, £240,000 on 13th September 2010, and £60,000 on 17th July 2011. The husband has no documents relating to this villa because he says that he sold the property at the end of 2011 for £130/140,000 to a person whose name he cannot remember. On its sale, he gave all the documents he had to the purchaser, which he says is the custom in Egypt to prevent a vendor trying to sell a property again. The husband explained that he had made no payments to his sister between 2008 and 2010 because his other commitments meant that he was unable to do so - he did not have the money at that time. He added that his sister was very patient, which does not fit easily with the assertion in the notice that several demands had been made prior to 6th August 2010. 50. Further, his evidence that he did not have the money to pay his sister any earlier does not fit easily with the fact that between February 2009 and March 2010 the husband's English HSBC account had up to £470,000 and never less than £295,000 in it. I pointed this out to the husband during his oral evidence and gave him the opportunity to explain why, despite having these funds available to him, he had not paid any of the instalments apparently due to his sister. He said it was because he was paying for the second fix for the L flat. This does not explain why he did not pay his sister, especially when he later added that he had agreed to buy the villa from his sister because her husband needed the money to pay for medical treatment. To reiterate, in the period between February 2009 and March 2010 his account never had less than £295,000 in it. Following the sale of the villa, the husband says that he purchased a beach chalet in Alexandria for approximately £120,000. This is now said to be valueless because it is part of an historic building and the Egyptian government has prohibited the sale of any part of the site. The wife says that the beach chalet was bought, but in 2008 or 2009 and for approximately £25,000. She also says that she had never heard about the villa before she issued divorce proceedings in 2010. She did then hear about it and that was why it was included in her application for a freezing order, but she has never believed that the husband was in fact the owner of that property. The husband's evidence on this issue is simply not credible. He cannot explain why he paid nothing to his sister between 2008 and 2010, nor could he explain the terms of the notice. I am satisfied that he has created a false liability to seek to explain why he transferred £350,000 to his sister in 2010 and 2011. In my judgment, the husband's sister is holding these funds for him. As for the beach chalet, I do not consider that this is likely to be worth a very substantial sum, given that it is a small cabin. I do not propose to include it in the list of assets. In December 2009 the husband purchased a property in DS for £55,000. It was renovated after its purchase. It is let and remains owned by the husband. The husband has produced an informal estimate of its value of approximately £70,000. The outstanding mortgage is £33,000, giving an equity of approximately £35,000. On 17th June 2010 the husband purchased a property in London in his sole name for £480,000. The purchase documents have not been produced. It was sold in February

2013. The gross sale price was £695,000 and the net proceeds of sale were £214,418. This sum was paid into one of the husband's English HSBC accounts and then immediately transferred out again. On 14th February 2013 the husband transferred £210,000 to his niece in Dubai. I

will return to this later. On 20th August 2010 the then matrimonial home was sold. The wife says its sale was effected without her knowledge. It was sold for £650,000 gross, £283,249 net. On 20th August 2009, £283,000 was paid into the husband's English HSBC account. In August and September 2010, £305,000 in total was transferred from this account by way of what are called in the statements, "Global Transfers". Following the sale of the matrimonial home, the husband purchased a property in CC in his sole name. This was the last family home. The wife and children remain living there. This property has been informally valued at £270,000. The outstanding mortgage is £170,000, giving an equity of approximately £100,000. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. In February 2012, the husband purchased his current home in NC for £185,000. This has an outstanding mortgage of approximately £150,000, giving an equity of between £30,000 to £35,000. Returning now to the payment made by the husband to his niece of £210,000. At a hearing before me on 20th May 2013 the husband, when explaining what had happened to the proceeds of sale of the London property, said that he had had to repay his niece monies she had lent him. I accordingly ordered him to produce documentary evidence of the loan of £200,000 alleged to have been made to the husband by his niece and of the alleged repayment of the loan.

61. With his replies to questionnaire dated 10th July 2013, the husband provided a promissory note dated 5th April 2012 and stated simply that the proceeds were paid to honour a loan. By this note the husband commits to pay his niece 2.5 million Egyptian pounds, being the "sum received by me in cash". During the course of his oral evidence I asked the husband to translate the Arabic version of this note. The husband translated it without the words "received by me in cash", which appear in the translated version. When I asked him whether these words also appear in the Arabic version, he agreed that they, or words to like effect, do appear. 62. 63. 64. 65. It was clear to me that the husband's omission was deliberate. It was deliberate because it is no longer the husband's case that he was lent 2.5 million Egyptian pounds by his niece. His case is now that this sum was due under a charitable obligation which he and his niece had agreed to make. The husband says that his father, at a family meeting, decided that the husband and his niece in Dubai should purchase a piece of land in Egypt for the purposes of building a hospital. This land was purchased in July/August 2012. The husband intended to sell the parties' flat in Alexandria to enable him to pay his share. This was thwarted by the wife obtaining an order from the Egyptian court in respect of that property on 8 th December 2012. Accordingly, the husband says that he had no choice but to sell the London property. Following the sale, he transferred £210,000 to his niece on 14 th February 2013. He has produced a foreign exchange transaction showing the sum being transferred to his niece in dirhams. During his oral evidence the husband said that he has tried to get a copy of the contract for the purchase of the land but has been unable to do so. His niece's husband has demanded payment of the sum of £30,000 to reimburse expenditure relating to the property incurred by him and/or the husband's niece before he will provide a copy of the contract to the husband. The wife does not accept that the husband would have acted in the way he has described and does not believe that land has been purchased by his niece. Again, I regret that I have concluded that the husband's evidence on this issue

completely lacks credibility. His case has grown and been embellished and is wholly unsupported by any proper documentary evidence. In my judgment, the husband has transferred £210,000 to his niece to hold for him during these proceedings in order to try and hide his ownership of it, but the money is still in fact his. 66. The husband also says that he spent £90,000 in 2009 or 2010 on buying life membership for the family of a club in Alexandria. The wife agrees that membership of a club was purchased but says the amount was more like 90,000 Egyptian pounds. Again, on this issue, I prefer the evidence of the wife to the husband. 67. In addition to the above, the husband's NHS pension has a transfer value as at 10th January 2014 of just under £770,000. The Matrimonial and Family Proceedings Act 1984 68. The relevant provisions of the 1984 Act for the purposes of this application are Sections 16, 17 and 18. Section 17 provides that the court may make any one or more of the orders which it could make under Part II of the Matrimonial Causes Act 1973. In other words, all forms of financial remedy order, including a pension sharing order if the marriage has been dissolved. Section 16 imposes on the court the duty to consider, before making a financial remedy order, whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales. A list of matters is contained in Section 16(2) and I will consider these below. Section 18 sets out the matters to which the court has to have regard when exercising its powers under Section 17. These mirror the provisions contained in Section 25 of the Matrimonial Causes Act 1973. 69. In *Agbaje v Agbaje* [2010] 1 FLR 1813, the Supreme Court considered how the court should approach these provisions. Reading from the Headnote starting at paragraph 2: "Part III of the Family Proceedings Act 1984 was to be applied in the light of the legislative purpose which was the alleviation of the adverse consequences of no or no adequate financial provision being made by a foreign court in a situation where there were substantial connections with England. The court had two interrelated duties before it made an order under Part III. The first was to decide under Section 16(1) whether England and Wales was the appropriate venue for the application, having regard to the matters set out in Section 16(2), notwithstanding that the divorce proceedings had been in a foreign country that might well have been the more appropriate forum for the divorce. The second duty was to consider whether an order should in fact be made under Section 17, having regard to the matters set out in Section 18. While neither Section 16(2) nor Section 18 refer to an exhaustive list of matters to be taken into account and some of the matters referred to in Section 16(2) might be relevant under Section 18 or vice versa, the factors in Section 16(2) were the matters to which regard must be had in considering the question of venue and did not determine the criteria for the making of the order for financial provision which depended on the combined effect of Section 17 and 18." 70. Paragraph 3: "The doctrine of *forum non conveniens*, used when deciding which of two jurisdictions was appropriate, did not apply to Part III as no choice between jurisdictions was involved. The whole basis of Part III was that it might be appropriate for two jurisdictions to be involved; one for the divorce and one for the ancillary relief. There was nothing contrary to comity in legislation that gave a court power to order financial provision, notwithstanding a foreign decree of divorce, whether or not the foreign court had ordered financial provision, provided the forum had an appropriate connection to

the parties or their property. The whole point of Section 16(2) was to weigh the connections with England against the connections with the foreign jurisdiction to ensure that there was no improper conflict with the foreign jurisdiction. Comity did not require that a foreign maintenance order be regarded as determining the rights of the spouse to financial relief but did require that the English court should not lightly characterise foreign law or a foreign order as unjust.” 71. Paragraph 4: “Part III contained no express reference to hardship, injustice or exceptionality and these were not conditions for the making of an award. However, the presence of either hardship or injustice might make it appropriate for an order to be made and might affect the nature of the provision ordered. An order under Part III would not usually be made where the wife had a right to apply for financial relief under foreign law and an award had been made in the foreign country. Certainly, mere disparity between a foreign award and what would be awarded on an English divorce would be insufficient to trigger the application of Part III.

5. The amount of financial provision awarded would depend on all the circumstances of the case and there was no rule that it should be the minimum amount required to overcome injustice. The court had a broad discretion subject to three general principles: (i) primary consideration must be given to the welfare of any child of the marriage; (ii) it would never be appropriate to make an order giving the claimant more in total than the English court would have awarded if all the proceedings had taken place in England; (iii) where possible, the order should have the result that provision was made for the reasonable needs of the spouse. Where the English connections were very strong, there might be no reason why the application should not be treated as though it were made in purely English proceedings.” 72. 73. The Supreme Court’s judgment, given by Lord Collins, makes it clear that the court must approach sections 16, 17 and 18 from a broad perspective, taking into account all the circumstances of the case, including those matters specifically mentioned in sections 16 and 18 and matters which are not expressly identified, such as hardship or injustice. Starting at paragraph 62, the judgment considers the question of, “... on what basis the order for financial provision should be made.” The view, that it is only appropriate for an English court to intervene to the minimum extent necessary to remedy injustice, is rejected. Quoting paragraph 64: “There is no statutory basis for this limitation, and it is contrary to principle. For example, a talaq entitled to recognition may be granted abroad in a ‘big money’ case when almost all relevant connecting factors are with England. In those circumstances there would be no reason not to apply English law so as to give the same provision for the wife as she would have obtained had there been divorce proceedings in England. There would be no need for any enquiry as to the minimum required to remedy the injustice. Nor, if the wife had independent means, would an enquiry into hardship be necessary or relevant.” 74. Later, in paragraph 70, he said: “... Section 18 could have provided that, once England and Wales was to be regarded as the appropriate forum under section 16, then the case was to be treated as a purely English proceeding for financial relief. But it did not do so. Instead a more flexible approach was deliberately adopted. There will be some cases, with a strong English connection, where it will be appropriate to ask what provision would have been

made had the divorce been granted in England. There will be other cases where the connection is not strong and a spouse has received adequate provision from the foreign court. Then it will not be appropriate for Part III to be used simply as a tool to 'top-up' that provision to that which she would have received in an English divorce." 75. The next paragraphs appear under the heading, "The proper approach": "71 ... the proper approach to Part III simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England. There are two, inter-related, duties of the court before making an order under Part III. The first is to consider whether England and Wales is the appropriate venue for the application: section 16(1). The second is to consider whether an order should be made under section 17 having regard to the matters in section 18. There are two reasons why the duties are inter-related. First, neither section 16(2) nor section 18(2) and (3) refers to an exhaustive list of matters to be taken into account. Section 16(1) directs the court to have regard to 'all the circumstances of the case' and section 16(2) refers the court to certain matters 'in particular.' Second, some of the matters to be considered under section 16 may be relevant under section 18, and vice versa. An obvious example would be that section 16(2)(e) refers the court to the financial provision which has been made by the foreign court. Plainly that would be relevant under section 18. So also the direction in section 18(6) to the court, in considering the financial resources of a party, to have regard to whether an order of a foreign court has been complied with would plainly be relevant in considering whether England is the appropriate venue.

72. It is not the purpose of Part III to allow a spouse (usually, in current conditions, the wife) with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases. There is no condition of exceptionality for the purposes of section 16, but it will not usually be a case for an order under Part III where the wife had a right to apply for financial relief under the foreign law, and an award was made in the foreign country. In such cases mere disparity between that award and what would be awarded on an English divorce will certainly be insufficient to trigger the application of Part III. Nor is hardship or injustice (much less serious injustice) a condition of the exercise of the jurisdiction, but if either factor is present, it may make it appropriate, in the light of all the circumstances, for an order to be made, and may affect the nature of the provision ordered. Of course, the court will not lightly characterise foreign law, or the order of a foreign court, as unjust.
73. The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice. The following general principles should be applied. First, primary consideration must be given to the welfare of any children of the marriage. This can cut both ways as the children may be being supported by the foreign spouse. Second, it will never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all

proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse. Subject to these principles, the court has a broad discretion. The reasons why it was appropriate for an order to be made in England are among the circumstances to be taken into account in deciding what order should be made. Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings.” 76. The other authority to which I propose to refer, briefly, is the decision of *Baker v Baker* [1995] 2 FLR 829. In the course of his judgment, Otton LJ referred to the position where a party was found by the court to have deliberately concealed his true financial position: “In such a situation, that party cannot complain if the judge drew inferences which may turn out to be less fortunate than they might have been had he been more frank and disclosed his affairs more fully. Such inferences must be properly drawn and reasonable.”

Submissions

77. 78. 79. Turning now to the parties’ submissions, I propose to summarise them very briefly. The wife seeks orders providing her with a half share of the parties’ capital wealth and of their combined incomes. In his submissions, Mr Hendron sought to support the husband’s factual case and raised questions about the wife’s case. He argued forcefully that the wife was aware of all the financial transactions being effected by the husband. The husband proposes that the wife should receive the DS property, mortgage free, providing her with capital of approximately £70,000. The L flat in Egypt would be sold, providing each party with 80. 81. £200,000. In addition, the HPW property would be transferred to the wife. This would be on a clean break basis. This proposal would provide the wife with total capital of approximately £270,000, while the husband on the resources which he admits to having would retain wealth totalling not less than approximately £900,000, even allowing for a part of the husband’s debts. During his submissions, I asked Mr Hendron how this imbalance could be justified in the circumstances of this case. With respect to Mr Hendron, he clearly struggled to identify any factor or factors which would render such a result fair, other than pointing to the parties’ respective ages, so that the wife potentially has a longer earning capacity, and to the husband’s health. Section 16, 1984 Act 82. Turning to the factors set out in section 16(2), starting with paragraph: (a), “the connection which the parties to the marriage have with England and Wales”: It will be clear from the history set out above that the parties to the marriage have a very substantial connection with England. This marriage and this family’s life have been centred in England. It is where the family has lived, effectively, for the whole of the marriage. Both the parties have become British nationals. The parties both still live in England as their home. It is where the children have been born, brought up and educated and where they still live and are being educated. It is where the husband has worked and continues to work and where the family’s wealth has been generated. In my view, the parties to the marriage in this case have very substantial connections with England and Wales. 83. (b), the connection which the parties have with

Egypt: 84. 85. 86. The parties have a connection with Egypt, in that they are Egyptian nationals, were born and lived there until they came to live in England in, respectively, about 1989 and

1997. They have property in Egypt. They have also spent holidays there. Pausing to consider the provisions of these paragraphs: on any view, the connections which the parties have and have had with Egypt, both throughout the marriage and currently, are very, very significantly less substantial than their connection with England. (c), is not relevant in this case. (d), “any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce ... , by virtue of any agreement or the operation of the law of a country outside England and Wales.” I am not aware of any financial benefit which the wife or the children will receive or have received by virtue of any agreement or by operation of law. I will deal with the L flat later in this judgment. 87. I will consider paragraphs (e) and (f) together: (e), “in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with”; (f), “any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission.” I am not aware of any right which the wife has or has had to apply for financial relief in Egypt which she has omitted to exercise. The wife has currently received no direct financial benefit as a result of the proceedings in Egypt. In respect of the maintenance payment due of £420 per year, this has not been paid directly, although, as referred to above, can be treated as having been subsumed by the amounts paid by the husband in this country to or for the benefit of the wife and the children. 88. There was reference during the course of the hearing to a further application made by the wife remaining undetermined. I was informed that there was due to be a hearing in Egypt on 27th March (last Thursday) and that the court might have delivered a judgment by now. I have not been provided with a judgment nor informed what happened. The wife has stated that she does not intend to pursue any benefit she might be entitled to under any order made in Egypt, save for the purposes of enforcing any orders which I might make. 89. (g), “the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made.”: There are clearly significant assets available in England, including, in particular, the final matrimonial home and the husband’s NHS pension. 90. (h), “the extent to which any order made under this Part of this Act is likely to be enforceable.”: Any orders which I make against assets located in England will be enforceable, as will any maintenance order having regard to the source or the principal source of the husband’s income. 91. (i), “the length of time which has elapsed since the date of the divorce...” The lapse of time between the date of the divorce in Egypt and the commencement by the wife of her application under Part III is not significant. Although the divorce took place in Egypt in March 2011, this court did not declare that the

Egyptian divorce was entitled to recognition until May 2012. The wife's leave application was initiated in November/December 2012. 92. Having regard to all the circumstances of this case, including the matters set out in section 16(2), in my judgment it is entirely appropriate for this court to make financial remedy orders. This court is, undoubtedly, the appropriate forum or venue. It is plain that no adequate financial provision has been or is likely to be made by the Egyptian 93. 94. courts. In my view, if the English court declined to exercise its powers to make financial orders in the wife's favour, this would cause the wife serious injustice. Indeed, the opposite has not been argued by Mr Hendron. He has confined his submissions to the nature of the orders which I should make. He has not submitted that it would not be appropriate for me to make any order at all, nor that I should not exercise my power to make an order. This was a realistic position for him to adopt, given this family's very substantial connections with England. In my judgment, this family and this marriage have such strong English connections that it is a case within the category identified by the Supreme Court in which it is appropriate to make those orders which would have been made if the divorce had been granted in England. To adapt the words, from paragraph 73 of the Supreme Court's judgment in *Agbaje*, the English connections are very strong and I can identify no reason, and none has been advanced, why the wife's application should not be treated as if it were made in purely English proceedings. Section 18, 1984 Act 95. Turning now to the factors set out in section 25 of the Matrimonial Causes Act 1973 as incorporated into the 1984 Act by section 18: I have already dealt with the matters referred to in section 18(6). Financial Resources: 96. Capital Assets: The agreed capital assets are as follows: The CC Property is in the husband's sole name and has an equity (i) of approximately £100,000; The HPW property is in the parties' joint names and has a very (ii) small or negligible equity; The DS property is in the husband's sole name with an equity of (iii) approximately £35,000; The NC property is in the husband's sole name. As it was (iv) purchased in 2012 for £185,000, I do not consider that its value would be significantly less than that now. The mortgage is £148,000, giving an equity of approximately £30,000; (vi) The husband's NHS pension has a transfer value, as at 10th January 2014, of just under £770,000. The husband's membership of the scheme started in or about 1992. The above assets total £935,000. The L flat is in the joint names of the parties. The husband says (vii) this property is still in the parties' joint names and is worth approximately £400,000, based on an informal valuation dated 5th January 2014 which he has obtained. He proposes that the property is sold and the proceeds divided equally between the parties. In the course of her oral evidence, the wife expressed considerable doubts as to the value of the property and also as to whether it is still in the joint names of the parties. She has been told by the owner of the building that he has seen a document which shows that the property has been sold to the husband's nephew. I am not able to determine what the current position is in respect of the ownership of this property, nor its current value. Further, I have considerable doubts as to whether any order I might make in respect of the property would be enforceable in Egypt. There is no evidence to that effect. I propose to determine the wife's application on the basis put forward by the husband, namely that the property will be sold and the net proceeds of sale will be divided equally

between the parties. 97. I also need to refer to the beach chalet in Egypt. I do not consider this is likely to be worth a substantial sum, given that it is a small cabin and I do not, therefore, propose to include it in the list of assets. 98. Liabilities: The wife owes her former solicitors approximately £2,000 which she is repaying at the rate of £100 per month. She also owes the legal aid fund approximately £10,000. This liability is likely to be a charge on any property recovered by the wife. 99. 100. The husband has produced a list of liabilities totalling £152,000. These are a mixture of different categories of debt. They include longer term liabilities which will be repaid over time, such as a bank loan to his GP practice currently at £25,000, which was obtained in April 2013, and a car loan of £8,900. They also include a variety of tax liabilities, both current, namely £35,500 and prospective of £38,000. Part of the latter relates to the husband's company which ceased trading on 31 st March 2013; the husband having lost the Police contract in October 2012. The latest accounts for that company are to 31st March 2012. As at that date the company had just under £20,000 in its bank account with creditors due of £8,900. I do not know what the current position is. In my view, a significant element of the husband's liabilities can be treated as being payable over time. Indeed, the husband did not contend that he needs to use any of the available capital or other resources to discharge any of these debts, nor did he put forward any payment proposals in respect of them out of his income. There was no analysis at all as to how they might affect his current financial circumstances. I do, however, take the husband's liabilities into account when determining the wife's claims.

101. Other Capital Resources: I now turn to deal with the issue of whether the husband has other resources which he has not disclosed. I have already addressed the evidence when dealing with the financial history earlier in this judgment.
102. Given the evidence in this case, it is not possible for me to identify where the proceeds of sale of the various properties sold by the husband have gone. However, I am satisfied that the husband has embarked on a course of conduct by which he has sought to conceal his true wealth from the wife and from this court.
103. As referred to earlier in this judgment, I am satisfied:
 - (a) that the husband has transferred £350,000 to his sister to be held by her for him;
 - (b) that the husband has transferred £210,000 to his niece to be held by her for him; both of these sums were transferred to, respectively his sister and his niece, to enable the husband falsely to assert that he no longer was the owner of those resources;
 - (c) that the husband still owns the two flats in Dubai worth not less than £200,000. These assets total £760,000. 104. In addition, I consider it likely that the husband has other wealth which he has failed to disclose. This conclusion derives in particular from his evidence, which I have rejected, that he spent £300,000 on equipping the L flat. Further, I consider it implausible that the husband has been unable to obtain bank statements or to disclose bank statements for his accounts in Egypt.

105. However, although the husband could not complain if I overestimated his additional hidden wealth I propose, adopting a perhaps unduly conservative approach, to take the total of the husband's hidden wealth at between £800,000 and £850,000. Income
106. Turning now to income. The wife's income consists of her earned income, approximately £680 net per month; Working Tax Credit of approximately £210 per month; Child Tax Credit of approximately £433 per month; Child Benefit of approximately £88 per month; and payments through the Child Support Agency of approximately £220 per month. The total of these amounts is approximately £1,630 per month, or £19,600 per year. The amounts will inevitably fluctuate because, for example, the wife is at present only receiving payments through the CSA for one child and only receiving Child Benefit for one child.
107. During her oral evidence, the wife was questioned as to whether she has other sources of income and whether she could earn more than she is currently earning. I am satisfied that the wife's current earnings are a fair reflection of her current earning capacity and that it would not be reasonable to expect her to work more hours, even if they were available, either now or for several years whilst the children are still at school. I am also satisfied that the wife has no other sources of earned income.
108. The husband's income. The husband's income has derived from his GP practice and from medical services supplied by him through two companies. The companies have ceased trading, following the husband losing his contract to supply medical services to the Police in October 2012. Accordingly, the historic position does not represent the current position.
109. However, to give the historic details, the husband's total gross income by way, principally, of profit from his GP practice (of £153,000) and from dividends (of £28,000) totalled, for the tax year 2010, £187,000. The equivalent figures for 2011 were £145,000, £21,000 and £169,000; for 2012 they were £163,000, £34,000 and £197,000; for 2013 they were £145,000, £60,000 and £205,000. From the gross totals, pension contributions, tax, and national insurance have to be deducted giving approximate net totals respectively of, for 2010, £106,000; for 2011, £83,000; for 2012, £100,000; and for 2013, £108,000 – an average of approximately £100,000 per year.
110. The latest accounts for the husband's GP practice are for the year ended 31st March
2013. These show a net profit, before tax, but after pension contributions of £50,000, of £92,000. One of the principal reasons for the reduction in profit from the previous year is a significant increase in the cost of locum cover from £1,500 to £25,000. During the course of these proceedings the husband has said that this reflects the time he has had to spend dealing with the financial proceedings in England and Egypt. Accordingly, the cost can be expected to reduce in the future.
111. The husband states that his current net income comprises the monthly sum of £4,000 which he draws from his GP practice. A net annual amount of approximately £48,000 would, very broadly, be equivalent to £73,000 gross profit before tax, significantly less than the profit

figure of £92,000 for 2013 which would produce a net income of approximately £60,000 per year. Given the ability to reduce the cost of locum cover, I propose to take the husband's gross profit before tax, but after pension contributions, at approximately £100,000 which would give a net income of approximately £65,000. The rental income from the properties referred to above is broadly an extra £3,000 per year (after expenses). 112. Financial Needs Capital: The parties' respective current housing needs are met by the properties which they each occupy. Given the value of the home sold in 2010, they could each have sought to argue that they should have housing at that level. Neither has, but if the resources were available, in my view, it would not be unreasonable for them each to seek to acquire a similar property. 113. Income: The parties' respective income budgets merely reflect what, on their cases, they have had available to spend on their income needs. Accordingly, the wife has put forward her income needs as being £21,000 per year, being what she has been spending directly. The husband has put forward his income needs at £58,000 per year

- £24,000 for himself and £34,000 for the wife and children. Both of these budgets slightly exceed their respective incomes. Having regard to the other factors in this case, including the standard of living enjoyed during the marriage, if the resources were available both parties would, in my view, be able, justifiably, to put their income needs at a higher level.
- 114. Other Section 25 Factors: Turning now to the other Section 25 factors. The marriage endured for 15 years, from 1996 to 2011. The family enjoyed a good standard of living derived from the significant income being earned by the husband.
- 115. The husband has very recently produced three medical reports dated 28th February, 4th March, and 19th March 2014. None of these reports refer to any impact on the husband's ability to work. In any event, I do not consider it would be sensible for me to speculate about the future.
- 116. Both parties have made substantial contributions during the marriage and both will continue to make substantial contributions to the welfare of the family, at least whilst the children are completing their full-time education. Discretion 117. In this judgment I have not dealt with all the issues raised by the parties nor have I other than summarised the evidence. However, I have taken all the evidence and all the issues raised into account when determining this application.
- 118. Having regard to all the circumstances of this case, in my judgment, for the reasons outlined above, England and Wales is clearly the appropriate venue for this application. 119. It is also, in my judgment, appropriate to make financial remedy orders under Section 17, again having regard to all the circumstances of the case, including the matters set out in Section 18 and the relevant matters set out in Section 16. As Lord Collins said, these two issues are interrelated but, to repeat, when the English connections are very strong, the court can decide that the application should be treated as if it were made in purely English proceedings. Having regard to the very substantial English connections which exist in this case, I consider that I should approach the exercise of my discretion as if these were purely

English proceedings. I can identify no reason – no factor of any weight - why I should not take this approach.

120. This is a case in which the determinative distributive principle is that of sharing. It is also a case in which the wealth should be divided equally. All the wealth, or very substantially all of the wealth, has been accumulated during the course of this marriage. The husband's conduct, namely his failure to provide full and frank disclosure and the false case which he has advanced in a number of respects, means that I cannot undertake a complete analysis of how the family's wealth has been accumulated and utilised and its precise current location. However, the evidence is sufficient for me to determine that no significant wealth had been accumulated prior to the marriage. The years during which the husband worked as a GP in England prior to the marriage are not significant when weighed against the other factors in this case. In particular, I do not consider that the additional pension contributions made by the husband, both before the marriage and since the parties separated, are such as to justify a departure from equality having regard to the other circumstances of this case. Indeed, in my view, there are no factors present in this case which would warrant a departure from an equal division given the factors – principally, the accumulation of the wealth during the 15 year marriage and the parties' contributions - which so strongly justify such a division.
121. The assets in England total £930,000. The husband's non-disclosed wealth totals £825,000, giving a combined total of approximately £1.76 million. I do not propose to make any specific deductions for the parties' debts but I make some allowance for the husband's debts when determining the lump sum which I order him to pay to the wife. An equal division would require each party to have resources worth approximately £880,000. I propose to transfer the CC property to the wife which will provide her with £100,000 of equity. I have considered whether to transfer the DS property to the wife as well but have decided not to do so, as the equity is relatively modest and the husband has always managed the property. I also propose to transfer the HPW property to the husband, which will provide him with an additional modest income but no additional capital.
122. The balance due to the wife of £780,000, namely £880,000 less £100,000, could be achieved by transferring to the wife all of the husband's NHS pension. I do not propose, at this stage, to make such an order because I consider that I should give the husband the opportunity to pay the wife a lump sum, in addition to my making a pension sharing order. That would, in my judgment, be a fairer structure. If the pension were divided equally, £385,000 each, the husband would need to pay the wife a lump sum of £395,000. Making some allowance for the husband's debts, I reduce the lump sum to £350,000. Accordingly, I make an order, in addition to the property transfer orders referred to above, that the husband should pay the wife a lump sum of £350,000. 123. 124. 125. I also order the husband to transfer to the wife the benefit of the Legal and General life policy and the Aviva life policy. Pursuant to the above orders, and on the assets as I have found them to be, the husband will have total capital resources of £925,000 and the wife would have £835,000. This provides the husband with £90,000 to put towards his debts. In my judgment, in the circumstances of this case, this

is a fair division of the wealth. I do not, however, currently propose to make a pension sharing order. I propose, instead, to adjourn the wife's application for a pension sharing order to give the husband the opportunity to pay the lump sum order. If that sum is not paid, either in part or in its entirety, in my view the wife can apply to enforce it by way, in part, of a pension sharing order. I will also, because I am adjourning that application, make an order restraining the husband from disposing of or in any way dealing with his NHS pension, pending the adjourned hearing.

126. Turning now to maintenance. The husband's net income, excluding rental income from the Dubai flats referred to above, is approximately £68,000. I have no evidence as to the rent which could be generated by the Dubai flats, so I propose to take a conservative figure of £10,000 per year net. This gives a total of £78,000. The wife's income, excluding the CSA payment, is £17,000 per year. The combined total is £95,000. If this income was divided broadly equally between the parties, having regard to the fact that the children are living with the wife and to the fact that the parties' earned incomes are generated by their respective endeavours, this would give each a net income of £47,500. 127. In order to provide the wife, and children, with this level of income, the husband would need to pay maintenance of, broadly, £30,000 per year or £2,500 per month. The husband is in fact already paying a total of £34,000 per year (£2,900 per month), including the CSA payment, to or for the benefit of the wife and the children. A substantial part of this comprises payments for the children, approximately £1,100 per month, excluding the CSA payment. Accordingly, I propose to order the husband to pay the wife maintenance of £1,800 per month, being broadly equal to the amount he is currently paying for the mortgage, the insurance and life policy premiums, the CSA payment and the TV licence. The wife will assume responsibility for these payments (in other words the mortgage, the insurance and life policy premiums and the TV licence) once maintenance is being paid. Because the total sum in respect of maintenance includes the CSA payment, which may vary, I propose that the maintenance to the wife is to be less the amount received by her from the CSA (or the CMS) (what is called in this jurisdiction a Segal order, after District Judge Segal). [Judgment ends]

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