St.Mary's
FAMILY LAW SPECIALISTS

Financial Remedies Case Law Updates

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X v Y [2025] EWHC 727 (Fam)

Full judgment can be found here

Introduction

Mr Justice Trowell delivers judgment concerning what it termed a 'Barrell application'. This judgment confirms the established principle that a Judge may alter their decision at any time prior to an order being perfected.

This Barrell application was inviting reconsideration of a final order which had not been finalised, due to the Husband coming into some inheritance. The appeal was unsuccessful due to the first-instance Judge having already considered the inheritance in his decision.

Background [11]-[12]

This case was an appeal of HHJ Spinks' determination of the financial remedy applications of parties in the process of a divorce. An oral judgment was given after a final hearing, which lead to the uneven division of proceeds of sale of the former matrimonial home (FMH). This unequal division was due to the Wife having a significantly higher income and mortgage capacity than the Husband. The split was 62.5% in favour of the Husband.

This final hearing was on 15th November 2023. On 3rd January 2024, the Husband's father had died. At the time of the Husband's father's death, the order had not been perfected. The Husband bought an application for the court to oblige perfection on 29th January, together with an application for him to receive a share of the Wife's bonus that would have been available to him had the order being perfected. When heard, he received the share of the bonus, and a timetable was drawn up to lead to perfection.

On 26th February, the Wife made an application under the Barrell jurisdiction, due to the financial impact of the death of the Husband's father. She made an open offer to state that she would settle the matter with equalisation of the FMH sale proceeds, less the share of the bonus. The consequence of this was that the husband would have ended up with £70,000 less than the amount under the original judgment. By agreement, the parties invited the Judge to deal with this matter on paper.

On paper on 31st May 2024, the Judge rejected the application, and it is this rejection that was being appealed. The Judge did not have site of the probate which was granted on the 25th May 2024, which the Wife complained about. The Husband in response, stated that they were not aware of the grant of probate and the figures in the estate account they provided were almost identical to the figures in the probate (£1 difference).

In advance of the hearing on 31st May, the Husband did disclose estate accounts, a will, a letter of wishes in relation to a will and some emails from the solicitors detailing with the estate explaining the situation. The deadline for appealing the decision was 21st June 2024, but the Wife appealed on the 16th August 2024. In response to the delay, she relies on the fact that she did not learn of the grant of probate until the end of June and did not have any lawyers acting for her.

The Law [13]-[22]

Mr Justice Trowell describes briefly the law surrounding permission to apply out of time and the permission to appeal (outlined in paragraphs [13]-[14]). In addition, he discusses the case of Augousti v Matharu [2023] EWHC 1900 in which Mr Justice Mostyn Quotes Lord Kerr by stating that *'An appeal against an exercise of discretion will succeed if the decision-maker has failed to take into account relevant matters or has regard to irrelevant factors; or reached a decision that is plainly irrational. Otherwise, the review by an appellate court is 'at its most benign'. Even if the appeal court disagrees with the discretionary decision it cannot interfere.'*

Mr Justice Trowell also discusses the principles applied in Barrell applications. He accepts and confirms the summary of the law on Barrel applications by HHJ Spinks (derived from the cases in the matter of L and B [2013] UKSC 8, AIC Ltd v Federal Airports Authority of Nigeria [2022] UKSC 16, and AR v ML [2019] EWFC 56). These principles are of particular importance and are detailed below:

From these cases, I discern the following principles in particular:

a) *There is no doubt that the court is able to reverse/alter its decision at any time prior to the order being perfected;*
b) *For the power to be exercised does not require 'exceptional' circumstances;*
c) *That where the request is made on the basis of new evidence that was not before the court first time round, there needs to be good reason (in which there is a "due diligence" requirement) to depart from the finality principle (AR -v- MR);*
d) *The 'finality principle' is of considerable importance in financial remedies cases (not least given the costs involved) and also, in particular, after a judgment given at a final hearing;*
e) *The issue should be approached from the perspective (or "through the prism") of the Overriding Objective;*
f) *A judge considering such an application should not start "from anything like neutrality or evenly balanced scales…the question is whether the factors favouring re-opening of the order are, in combination, sufficient to overcome the deadweight of the finality principle…together with any other factors pointing towards leaving the original order in place" (AIC Ltd).*

The Wife's central criticism of the Judge in this case was that the Judge was too focused on the principle of finality, which was at the expense of rule 1.1(1) of the overriding objective, dealing with the case justly.

Application of the law [23]- [43]

Mr Justice Trowell granted permission to bring the application out of time. In doing so he was clear that no weight was attached to the Wife being a litigant in person and he did accept that the Husband was not aware probate had been granted. The Judge made it clear that he had regard to the factors in rule 4.6 (1) FPR 2010 and reached the conclusion that the delay is not such to outweigh the interests of the administration of justice and there was an explanation for the delay.

It was accepted that the argument of whether the Wife should have permission to bring her appeal was strained by the circumstances of this being a 'rolled up hearing' and the Judge accepted he had reached a view on the merits of appeal while being asked to determine whether or not the appeal had a realistic prospect of success.

The Wife's case was summarised at paragraph [28] as being:

- It was unfair in a needs case for unequal division of FMH in favour of the husband when the husband had just received substantial inheritance
- The court can expect the husband's family will find a way to enable him to benefit from inheritance
- The court has fallen into procedural error not allowing the wife to challenge the husband's route to obtain a benefit from his inheritance.

It was clear in the Wife's skeleton argument that the Husband's inheritance was approximately £1.1 million and pointed out he was going to receive £140,000 more than the Wife on the unequal split of the FMH. On this basis, the Judge accepted that the Wife's case provided sufficient reason for him to think there would be a realistic prospect of success and therefore he granted the permission appeal.

Turning to the decision of the appeal itself, the Judge outlined that HHJ Spinks had given a 'careful reasoned account of his decision-making process'. Mr Justice Trowell outlines the Judges' reasons for the decision, whilst making added comments at paragraph [35]. By way of a brief summary, he agreed with the Judge's estimate of the Husband receiving around £42,500 from his father's tax band but stated that this sum was consumed in any event by the Husband's outstanding cost's, especially from the Barrell applications.

The Judge also included in his determination the fact that if he did grant the application for re-determination this would cause the parties in additional costs, delay and additional court resources and that the benefit of doing so was uncertain at best. Part of his decision also relied on the question of how he could provide fairly in this situation where the Wife also stood to gain inheritance.

Overall Mr Justice Trowell stated that the Judge's analysis could withstand the Wife's criticism of it. He held that the Judge rightly considered that this was not as simply as the husband inheriting £1m, it was instead a Husband who can cope with good cause for assistance over time from his father's money now held in trust.

Mr Justice Trowell accepts that there was force in the Wife's criticism that in normal circumstances one would expect to be able to question the reality of the situation and argue the inheritance may come sooner. Despite this, he concluded that there is nothing outside the bounds of judicial discretion in HHJ Spinks deciding that an enquiry into what the estate may do was not appropriate.

Mr Justice Trowell decided not to interfere with HHJ Spink's exercise of discretion as this was not an occasion where the exercise was irrational or took into it matters it should not. He reached this decision due to the following reasons (outlined at paragraph [41]):

a) There had already been substantial cross examination on the subject of family support;
b) The Judge, in making his original decision, had already factored in the support the Husband had available from his father;

c) The Judge had expressed horror at the level of costs already spent and a further enquiry would cost even more;
d) In circumstances where there had been a trial already, it was a matter for the Judge whether he considered it appropriate to open up matters again for further enquiry.

Conclusion

This case reaffirms the fact that Barrell decisions continue to be a possible way of examining a final decision, before the order has been perfected.

However, the need for maintenance of judicial discretion, especially in cases where the core matters have already been litigated against remains important. Where a Judge has included vital factors within his decision, there would be no need to re-litigate the matter to hear these matters again.

More indirectly, the large focus on the costs to date and whether incurring more costs would be proportionate continue to play a vital role in decision making. This serves as a reminder to all parties involved in financial remedies to ensure cases are litigated as proportionately and as low-cost as possible.

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DSD v MJW (Costs of mps)[2025] EWFC 119

Full judgment can be found here

Introduction

This judgment was delivered by DDJ David Hodson and concerns an application for maintenance pending suit.

It serves as a warning to practitioners to avoid making applications for maintenance pending suit late in proceedings. It also emphasises the importance of being cost proportionate when making these types of applications.

Preamble [3]-[9]

The Judge introduces the case by explaining how lawyers have had a bad reputation throughout history due to their being long delays which 'rarely suit anyone but lawyers and high costs including disproportionate costs'.

Whilst acknowledging that in modern times the profession is different to previous years due to more transparency, information about costs and tighter professional rules, the Judge questions why there are still many cases which have condemned unnecessary and inappropriate costs.

Background to the case [10]-[25]

The facts in this case, demonstrate, as the Judge describes, a 'problem of disproportionality'. Of particular importance in the case are the dates of each application, this application for maintenance pending suit was made in March and was heard in April. These dates were particularly late in the case as a whole considering that the final financial remedy hearing was due to be heard in early July 2024, a mere three months later. The Wife made this application as she was seeking £500 per month interim maintenance. This meant that (assuming the judgment was going to be given in Mid-July), this application was only going to allow 3 months of maintenance, which would have been £1500 or at most £2000, if allowed to backdate.

Despite this relatively modest application for spousal maintenance, in relation to solely this application, without any of the costs of the rest of the proceedings, the Wife had incurred costs of £8716, and the Husband had incurred costs of £4170. This, as the Judge pointed out, was almost 10 times what could have possible been recovered by the application.

The Judge describes situations in which he accepts interim applications have to be made no matter the cost implications, these include being about to lose accommodation, losing work without capital to fall back on and disclosure of a level of assets justifying a higher provision of maintenance. The Judge explains that lawyers must still manage the difficult task of proportionality, but the application may nevertheless be justified.

However, in this case, the First appointment was in June 2024, FDR in December 2024 and yet the application for maintenance pending suit was made in early March 2025. This established simply how late the application actually was in the context of the proceedings as a whole. The Husband's

case was that the Wife has sufficient capital between now and the final hearing (established by the lack of any previous applications) and therefore did not require any maintenance pending suit.

The Husband asserted, in regard to assets, that the Wife's assets left her with around £2600 per month for herself after accommodation costs. The children spent time equally with each parent and their expenses were shared. The Husband argues he is left with around £1500 per month for his and his children's living expenses. However, it is noted that the Wife disputed these figures and asserted the Husband had a higher income and material capital available.

With the Wife asserting he had a higher income than disclosed, the Judge explains that she was running a conduct case in relation to disclosure. The Judge explains that if this argument were brought at the start of the case, then the Court would have spent time investigating. Although case law was referred to him, the Judge explained that they did not apply as much so late in the case when almost at a final hearing where a Judge will have enough time to investigate, look at full disclosure and make findings.

In response to being told that the Wife could lose her accommodation, the Judge explained that the addition of the word 'could' showed him that the application was on shaky territory as it had not happened yet. If it had happened, the Judge explained, then the Wife could have applied for an urgent hearing, but there was no evidence presented that showed there would likely be a loss of accommodation before the final hearing.

The Judge did accept that there were good conduct arguments given, in respect of the Husband providing further disclosure which suggested a company lost around £160,000 of marital funds. However, he stated that these arguments would have been pertinent on an application made at the beginning of the case or after initial disclosure.

Although the Judge accepted the authorities placed before him (which were not explicitly named in the judgment) which established the need for a broadbrush approach to potentially unreliable disclosure, this was not right when there was only 3 months to go before a final hearing when an experienced Judge would have 3 days to look at the issue of disclosure and reading into the detail of the finances. The timing of the case was therefore highly material in the Judge's decision.

The argument was placed before the Judge that there was a risk that the final hearing would not go ahead because of the lack of a Judge to hear it, but in response to this DDJ Hodson specifically checked after the hearing if a Judge had been allocated, and there had been. The Judge explained, however, that even there had to be a last-minute adjournment, the process would be to allow a short hearing to find out what directions would be needed and to consider matters as the Wife suggests may be. In any event the Judge explained he should not make an order base on a general risk that the July hearing may not go ahead.

When discussing the costs by both parties, it was explained that the Husband had been more conservative in costs than the Wife, due to the Wife having the benefit of her parents paying for legal costs. At the FDR, the Wife had incurred £43,000 in costs and expected another £22,000 and the Husband incurred £18,000 and expected another £12,000. This would mean that the Wife would have incurred £65,000 and the Husband £30,000 namely £95,000, with £13,000 extra for this exercise.

Although the Judge accepted, he couldn't find any major faults in principle of the Wife's budget, he explained that the 'entire proportionality of what [the Wife] was seeking, had been coloured by the costs'. [Para 21] Having regard to the reasonableness criteria in the law, the Judge stated he must carry out a broad assessment of whether intervention by the Court is required and he was ultimately not convinced it is required in general here, but especially not at this high cost at this late stage.

The Judge stressed that it is 'incumbent upon lawyers and parties to find creative solutions in financial remedy work' [paragraph 23]. The Judge gave an example of a possible creative solution specifically in this case. This was that there was over £700,000 sitting on the solicitors' deposit account, from the proceeds of sale of a property which was waiting for determination in the final hearing. The Judge questioned why each party could not have £2000 paid out of it, as doing this would have saved £13,000 in costs. In response to the submission that this solution should not be done as this would be coming from capital and the interim maintenance should come out of income, he quoted Nicholas Wilson in saying 'income or gains, profits or dividends, it's all money'.

The Judge acknowledge the Wife did make an application for £800 per month at the FDR, which was refused, but stated she could have made the application then, without waiting further months. The Judge queried whether the delay in applying for this was simply a tactic. But he stated that if it was, and the tactic was with an intention of increasing interim level, so the capitalisation figure is increased, it falls flat. He stated Judges were aware of such tactics and in final hearings would look at the appropriate level of maintenance freshly, and only then look at capitalisation if possible and appropriate.

Conclusion [26]-[31]

The Judge started his conclusion by frankly stating this was a bad application to make at this late stage in proceedings, and that it simply should not have been made. As well as it diverting attention from preparation for the final hearing, it also added greater animosity in the case.

The Judge explained it failed to satisfy the criteria for making such an order and was 'thoroughly cost disproportionate' [paragraph 26]. It was held that the costs in this application would have been better spent preparing s25 statements and similar for final hearing. The Judge remarked that the Wife's parents (who were funding legal costs) may have been appalled at this decision and made the comment that the brief to counsel was even more than what could have expected to recover.

He stated that 'This family court will not entertain such cost disproportionate applications and thoroughly criticises this approach. It has done only ill for the reputation of the family courts and family lawyers.'

Lessons to be learnt

This judgment makes it clear that: -

- Applications for spousal maintenance should be made as soon as possible, and in any event should not be made only a couple of months before the final hearing
- In making applications for costs, parties should be advised on the costs of such applications in comparison to what they seek to gain
- Applications should be avoided if the costs will end up being larger than any award that could be made.

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