No 18 Chambers

Financial Remedies Update

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Introduction

- Second update of 2025
- Standish v Standish
- Privacy issues
- Look at principles arising from some recent cases
- Questions

Standish v Standish [2025] UKSC 26

- Lord Reed, Lord Lloyd-Jones, Llord Burrows, Lord Stephens, Lady Simler 2 July 2025
- [6] The essential question is as follows. How does the sharing principle apply where, a relatively short time before the divorce, the husband made a transfer of assets ("the 2017 Assets"), worth some £80 million, to the wife for the purpose of setting up trusts to negate inheritance tax and where, at the date of the divorce, the wife had not set up the trusts and retains the assetsThe general rule is that it is not a contempt to publish information relating to such proceedings merely because the case was heard in private (*Scott v Scott*, *passim*; *Pickering v Liverpool Daily Post and Echo Newspapers Plc & Ors* [1991] 2 AC 370 at 416 per Lord Bridge
- First instance, Moor J held that transfer to W in 2017 matrimonialised non-matrimonial assets. W received £45m in total
- Court of Appeal held that the transfer of assets had not matrimonialised them, and that 75% that were non-matrimonial remained non-matrimonial. Total assets subject to sharing principle were £50.48m and W received £25M.

Standish v Standish [2025] UKSC 26

- [47] It has long been recognised that what is not determinative in deciding what is wat is not matrimonial is who as title to the property.
- [49] no example has been given in which there clearly has been, or hypothetically would be, sharing of non-matrimonial property (under the sharing principle as opposed to the needs or compensation principles). It was said in JL v SL (No 2) [2015] EWHC 360 (Fam); [2015] 2 FLR 1202, para 22, by Mostyn J, that "such a case would be as rare as a white leopard"…. it is our view that the distinction between matrimonial and non-matrimonial property becomes largely meaningless if the sharing principle applies to the latter as well as the former

Standish v Standish [2025] UKSC 26

- [52 . Although this has not previously been clearly spelt out, what is important (leaving aside matrimonial property resting on contributions from each party) is to consider how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared…. "Over time", which was the phrase used by Wilson LJ in relation to each of his three situations, means that the period of time must be sufficiently long for the parties' treatment of the asset as shared to be regarded as settled.

- [54] it is our view that it is the parties' treatment of what was initially non-matrimonial property, over time, as shared between them, that is central in deciding the fairness of that property being viewed as matrimonialised

Standish v Standish [2025] UKSC 26

- [56] . . In relation to a scheme designed to save tax, under which one spouse transfers an asset to the other spouse, the parties' dealings with the asset, irrespective of the time period involved, do not normally show that the asset is being treated as shared between them. Rather the intention is simply to save tax. Tax planning schemes to save income tax, involving transfers of assets from one spouse to another, are commonplace given that there is no capital transfer tax on transfers between spouses. However, transfers of capital assets with the intention of saving tax, do not, without some further compelling evidence, establish that the parties are treating the capital asset as shared between them.

Privacy of proceedings

- Subject to statutory exceptions, the open justice principle applies as forcefully in the Family Court as it does in other courts: it is not 'another country' (*Scott v Scott* [1913] AC 417; *Tickle v BBC* [2025] EWCA Civ 42 at [46] per Sir Geoffrey Vos MR)
- Mainstream financial remedy cases are heard in private in the Family Court (FPR 27.10), although the press and bloggers may attend (FPR 27.11
- The general rule is that it is not a contempt to publish information relating to such proceedings merely because the case was heard in private (*Scott v Scott*, *passim*; *Pickering v Liverpool Daily Post and Echo Newspapers Plc & Ors* [1991] 2 AC 370 at 416 per Lord Bridge
- A non-section 12 hearing in private does not cloak the proceedings in secrecy; it is merely a convenient way of conducting the hearing (*Scott v Scott* [1912] P 241 at 271 per Fletcher Moulton LJ: '[the rule] provides for privacy at the hearing. It has nothing to do with secrecy as to the facts of the case')

Party's obligations

- Parties to proceedings for a financial remedy are compelled to give full, frank and clear disclosure of all their financial affairs (*Boker-Ingram v Boker-Ingram [2009] EWCA Civ 412*).

- There is an implied undertaking of confidentiality when they do so (*Clibbery v Allan [2002] EWCA Civ 45* and *CPR 31.22(1)*) .

- The implied duty of confidentiality does not extend to information that a party chooses to include in an affidavit but is not compelled to provide (*A v A, B v B [2000] 1 FLR 701*).

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Section 12 AJAA 1960

- Section 12 of the Administration of Justice Act 1960 provides:

The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—

where the proceedings—

relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

are brought under the Children Act 1989[or the Adoption and Children Act 2002][2]; or

otherwise relate wholly or mainly to the maintenance or upbringing of a minor;

contempt of court except where the court (having power to do so) expressly prohibits the publication

BM v MB and others (Financial Provision: Identification of Marital Assets/Avoidance of Disposition Order)

- Over one million spent in legal costs.
- H's mother joined as a party
- W's statement was 312 pages long with exhibits
- 2000 page bundle
- Conduct not pleaded – W included conduct section in s. 25 statement but the court refused to read it.
- A property inherited by H towards the start of a long marriage was non-matrimonial
- There were transactions set aside
- Issues over valuations – W made 3 Daniels v Walkers applications.

Daniels v Walker applications

- Application to rely on own expert
- SJE is the starting point.
- Lord Woolf CJ said in Daniels v Walker [2000] 1 WLR 1382, CA:

  In a substantial case such as this, the correct approach is to regard the instruction of an expert jointly by the parties as the first step in obtaining expert evidence on a particular issue. It is to be hoped that in the majority of cases it will not only be the first step but the last step. If, having obtained a joint expert's report, a party, for reasons which are not fanciful, wishes to obtain further information before making a decision as to whether or not there is a particular part (or indeed the whole) of the expert's report which he or she may wish to challenge, then they should, subject to the discretion of the court, be permitted to obtain that evidence.

GA v EL [2024] 1 FLR 1004

- First, the nature of the issue or issues;
- secondly, the number of issues between the parties;
- thirdly, the reason the new expert is wanted;
- fourthly, the amount at stake and, if it is not purely money, the nature of the issues at stake and their importance;
- fifthly, the effect of permitting one party to call further expert evidence on the conduct of the trial;
- sixthly, the delay, if any, in making the application,
- seventhly, any delay that the instructing and calling of the new expert will cause; eighthly, any other special features of the case;
- and, finally, and in a sense all embracing, the overall justice to the parties in the context of the litigation.

BM v MB and others (Financial Provision: Identification of Marital Assets/Avoidance of Disposition Order)

- Family business. H and W were directors and shareholders along with H's other
- Business built by H's grandfather
- Family history of passing on assets to next generation
- H owned 51% of shares but transferred 25% into a trust for children. W sought to set the disposition aside.
- Other transfers of land into LLP structures

Section 37(2) MCA 1973

- *2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—*
- *(a) …*
- *(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;*
- *(c) … and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.*
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CTD

- Per Mostyn J in Kremen v Agrest [2010] EWHC 2571 in connection with s.23 MFPA:

'*This is the Part III counterpart to the more familiar s 37 of the MCA 1973. It is entitled 'Avoidance of transactions intended to defeat applications for financial relief'. For W's application to succeed the following has to be demonstrated:*

(i) That the execution of the charge was done by H with the intention of defeating her claim for financial relief. This is presumed against H, and he has to show that he did not bear that intention. See s 23(2)(a) and s 23(7). The motive does not have to be the dominant motive in the transaction; if it is a subsidiary (but material) motive then that will suffice: see Kemmis v Kemmis (Welland and Others Intervening), Lazard Brothers and Co (Jersey) Ltd v Norah Holdings Ltd and Others [1988] 1 WLR 1307, [1988] 2 FLR 223.

(ii) That the execution of the charge had the consequence of defeating her claim. This means preventing relief being granted, or reducing the amount of any such relief, or frustrating or impeding the enforcement of any order awarding such relief.

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Outcome

- 1. I set aside the transfer of the 25% of the shares to the trust and of the three parcels of land to the LLP (unless the husband wishes to find a way to pay the lump sum without these transactions being set aside).
- 2. The husband will pay the wife a lump sum of £5,379,167. This will be paid as to £500,000 within 3 months, and I will hear submissions in relation to the balance.
- 3. The wife will transfer her shares to the husband in the most tax efficient fashion. (if the husband can find a mechanism to keep the family home and to keep tax liabilities at a reasonable level he is free to do so).
- 4. The husband will discharge the wife's DLA.
- 5. There be a pension share of 16% of the husband's pension.
- 6. The husband will pay £4,000 per month interim maintenance until the payment of the first lump sum at which point there will be a clean break.
- 7. The chattels will be shared, if necessary, by the mechanism (coin toss) proposed by the husband.
- 8. The joint account will be closed. The parties shall contribute equally to the overdraft.

Awolowo v Awolowo [2025] EWCA Civ 641

- Appeal concerning family court's treatment of debt alleged owed by H to a Nigerian company of his brother.
- Successful appeal against findings of fact.
- H claimed Hendon family worth £1.8m was held on trust for his brother's company who had loaned £1.6m for its purchase.
- H purported to have granted a charge over FMH.

Awolowo v Awolowo [2025] EWCA Civ 641

- Moylan J in CA:

'[40] These cases establish that, as set out in *Kremen v Agrest* at [11], when "the available assets are insufficient to satisfy both the financial claims of one former spouse (usually the wife) and the debts of the other (usually the husband) a conflict arises between the interests of the claimant and those of the creditors". In those circumstances, at [13], a balance has to be struck between the interests of a judgment creditor and the interests of a wife. In my view, although it is not necessary to decide the question for the purposes of this appeal, the effect of these authorities is that the issue of whether a charging order should be made in favour of a creditor, and on what terms, is determined by the court when also determining the financial application (through the balancing exercise referred to) and not prior to that determination. They also support the conclusion that this balance has to be struck *before* a charging order is made or, at least, before it is made final.'

Ozturk v Ozturk 2025 EWFC 162

- H sentenced to 28 days imprisonment (suspended)
- Failure to comply with direction to file completed Form E

Any Questions?