No 18 Chambers

Financial Remedies Update

John Franklin

Introduction

- P v M (Appeal: Unfair Hearing: Variation of Periodical Payments: Global Orders [2026] EWHC 1330 (Fam)
- 2 June 2026
- Challenging costs budgets
- Issues of procedural fairness
- Segal orders
- FG v BN (Appeal Out of Time) [2026] EWFC 101 (B)
- Inferences
- Relief from sanctions
- Questions

PP's/Costs Budgets

- Except (rarely) where compensation engaged awards can only be justified by need [Waggott v Waggott [2018] EWCA Civ 727 [60]
- Budget provides evidential foundation[60]
- Need for budgets to be examined critically (TL v ML [2006] 1 FLR per Mostyn
- Typically involves:
  - Expenses actually incurred
  - Those they aspire to incur

- In *F v F (Ancillary Relief: Substantial Assets)* [1995] 2 FLR 45, in the context of a wife's claim for maintenance pending suit, Thorpe J (as he then was) said:
- "…even in the case of a family of unusual riches it would surely be wrong for the court not to look carefully and indeed critically as the suggested budget. Mr Pointer has said that the all-important particularisations in the bundle are the product of a team effort, the team members being the wife, her solicitor and her counsel. Well, it would be naïve to ignore the psychology of the team members. Inevitably it is a litigation exercise. It is in part an advocacy exercise. There is every incentive to put figures as high as they reasonably can be put and perhaps even to gild the lily. So I find that Mr Blair's most powerful submission is in his detailed exposure of certain elements within the wife's budget which are unjustifiable even in a 'super rich' case and which must result from excess of zeal on the part of the compilers of the budget."

- Not all budgets require critical analysis (per Moylan in *Rattan v Kuwud* [2021] EWCA Civ 1)
- [64] No hard and fast rule as to how [challenges] are to be mounted:
  - No requirement for every challenge to be put in XX
  - A few targeted questions will usually be sufficient to mount as assertion of general forensic examination.
- [65] points about failing to adapt to new realities can usually be dealt with in submissions.

Judicial Intervention in XX

- Denning LJ, in *Jones v National Coal Board* [1957] 2 QB 55. There, unusually, both sides complained that the extent of the judge's interventions had prevented them from properly putting their cases. The court upheld their complaints.

"interventions should be as infrequent as possible when the witness is under cross-examination" because "the very gist of cross-examination lies in the unbroken sequence of question and answer" and because the cross-examiner is "at a grave disadvantage if he is prevented from following a preconceived line of inquiry".

CTD

- In *London Borough of Southwark v Kofi-Adu* [2006] EWCA Civ 281, Jonathan Parker LJ, giving the judgment of the Court of Appeal, suggested at paras 145 and 146 that trial judges nowadays tended to be much more proactive and interventionist than when the *Jones* case was decided and that the observations of Denning LJ should be read in that context; but that their interventions during oral evidence (as opposed to during final submissions) continued to generate a risk of their descent into the arena, which should be assessed not by whether it gave rise to an appearance of bias in the eyes of the fair-minded observer but by whether it rendered the trial unfair.

- In *Michel v The Queen [2009] UKPC 41, [2010] 1 WLR 879*, it was a criminal conviction which had to be set aside because, by his numerous interventions, a commissioner in Jersey had himself cross-examined the witnesses and made obvious his profound disbelief in the validity of the defence case. Lord Brown of Eaton-under-Heywood, delivering the judgment of the Privy Council, observed at para 31:
- "The core principle, that under the adversarial system the judge remains aloof from the fray and neutral during the elicitation of the evidence, applies no less to civil litigation than to criminal trials.

- [77] As the Court of Appeal observed in *Re AZ (A Child) (Recusal)* [2022] EWCA Civ 911:

"Judges sitting in the family court have extensive case management powers which they are expected to exercise firmly. It follows that a judge in the modern era is permitted and indeed expected to intervene in proceedings to a far greater extent than in earlier times … This is particularly so when the family court is deciding a question relating to the upbringing of a child."

- W's points in particular:
  - She estimates that she was interrupted 45 times by the judge during the course of her submissions;
  - There were 16 occasions during the hearing when the judge interjected by saying '*it does not matter*' or '*it really does not matter*' in response to a point which Ms Newman-Saville was attempting to put either in cross-examination or in argument;
  - On occasion, the judge herself gave answers to questions put to the husband in cross-examination, enabling the husband then to adopt those answers even though they differed from his written evidence.

Segal Orders [112 – 113]

- Where court has jurisdiction to make a spousal maintenance order the ct may combine payer's obligation to pay child and spousal maintenance into a global order (AB v CD)
- If the child maintenance order is terminated by a CM assessment, the spousal order will be varied automatically
- Founded on s. 23 MCA 1973

Segal Orders [112 – 113]

- Anticipated CM Assessment being made and operate to avoid the need to return to court to vary the spousal maintenance order.
- Don't oust the CMS jurisdiction merely hold matters until assessment
- Can be made without consent.
- Made early on in proceedings in MPS apps or for Interim PP's as a short-term measure.
- Must be a substantial spousal maintenance element.
- Failure to apportion does not constitute a reason to set aside (AB v CD)

FG v BN (Appeal Out of Time)

- Recorder Chandler KC – appeal against DJ Hartley
- H appeal 10.5 months out of time
- £550K inferred into pot of £1.9m
- Married 26.5 years
- H 74 and W 58
- H failed to file Form E, questionnaire and FDR converted to FH in H's absence. Inferences drawn

Inferences

- [30] court still have undertake the 2-stage exercise (Charman) even where the evidential picture is obscure
- Inferences must be "properly drawn and reasonable" (Baker v Baker [1995] EWCA Civ 31, Otton LJ) but should not err in favour of the non-disclosing party
- Where [a party] leaves a gap in such a state that two alternative inferences may be drawn the court will normally drawn the less favourable inference (J v J [1955] P 215)

Inferences

- Per Butler-Sloss LJ in *Baker*:
- "…To accept Mr Holman`s alternative proposition that, unless the assets can be shown positively to be available an order cannot be made, flies in the face of the principles enunciated in the judgment of Sachs J [in *J v J*] and would send a clear message to spouses unwilling to make full and frank disclosure. It would indeed, as Mr Posnansky said, be a cheats' charter

Inferences

- In*Moher v Moher* [2019] EWCA Civ 1482, the Court of Appeal reviewed the authorities (including the above cases) with approval, concluding as follows:

"…When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court "engage in pure speculation" … This does not mean… that the court is required to make a specific determination either as to a figure or a bracket… better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in in *NG v SG*, at [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at [16(viii)], that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations." Per Moylan LJ [88-91]

Relief From Sanctions

- Permission to appeal out of time is relief from sanctions application pursuant to r. 4.6
- FPR Pt. 4.6 ("relief from sanctions"), i.e.
- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –

  (a) the interests of the administration of justice;
  (b) whether the application for relief has been made promptly;
  (c) whether the failure to comply was intentional;
  (d) whether there is a good explanation for the failure;
  (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol
  (f) whether the failure to comply was caused by the party or the party's legal representative;
  (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
  (h) the effect which the failure to comply had on each party; and
  (i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.

- In *TRC v NS* [2024] EWHC 80 (Fam), Lieven J confirmed that *Denton* applies in family cases, albeit allowance should be made for the subtle differences between FPR Pt. 4.6 and CPR Pt. 3.9

Any Questions?