Neutral Citation Number: [2019] EWFC 32

Case No: BV16D03987

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/05/2019

Before :

MR JUSTICE MOSTYN

- -

Between :

Gary Paul Gladwell	**Applicant**
- and -	
Rebecca Elizabeth Gladwell	**Respondent**

- -
- -

Approved Judgment

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published.

Mr Justice Mostyn:

1. On 4 May 2017 the Family Court at Chelmsford made a consent order resolving the financial remedy claims of the parties. The order was made in the divorce proceedings issued in the Family Court and given the number BV16D03987.

2. Paragraph 6 of the order stated:

> "The applicant shall pay or cause to be paid to the respondent a lump sum of £5,889 in lieu of her claims against his pension. Such payment is to be made from his share of the proceeds of sale of the timeshares as referred to at paragraph 6 (sic) above or from other capital assets"

The false reference to paragraph 6 was in fact to paragraph 5. This provided that the parties' timeshares (which were in Malta) would be marketed forthwith and sold at the best obtainable price on the open market. Although paragraph 6 is poorly drafted and is not free from ambiguity the only reasonable construction of its terms is that the respondent would not be obliged to make the payment of £5,889 until the timeshares had been sold

3. Nonetheless, on 12 March 2019 the respondent applied to the Family Court at Chelmsford for a writ (sic) of control or a writ (sic) of possession in respect of the sum of £5,889 allegedly unpaid under the consent order.

4. On the same day a document was generated by the County Court at Chelmsford. It is headed:

> No 53 Writ of Control
> IN THE HIGH COURT OF JUSTICE
> QUEEN'S BENCH DIVISION
> Chelmsford District Registry
> High Court Claim No:
> County Court Claim No: BV16D03987

5. The document goes on to command an enforcement officer to seize the goods of the "defendant" and to realise from such goods £5,889 plus £117.75 costs, a total of £6,006.75. It goes on to state:

> THIS WRIT WAS ISSUED BY THE Queen's Bench District Registry of the High Court on date: 12 March 2019
> On the application of [blank].

6. On 28 March 2019 enforcement officers attended at the home of the applicant. The enforcement officers' costs had increased the debt to £8,304.72. This sum was paid by the applicant on his credit cards.

7. On 29 March 2019 the applicant applied to the "Chelmsford District Registry" using the Family Court number BV16D03987 to "set aside judgement tending (sic) enforcement outcome of application made against me by Rebecca Elizabeth Gladwell". His statement in support did not deny that the sum was due but claimed

that the timeshares had not been sold and that the respondent had not cooperated in their disposal. He explained that he did not have the disposable capital to meet the sum in question.

8. This application was treated as an application to stay the writ. An order was issued by the Family Court at Chelmsford giving notice that the hearing of the application would take place at the Family Court sitting at Ipswich on 15 May 2019 at 2 pm.

9. On 24 April 2019 solicitors instructed by the respondent wrote to the "Chelmsford County and Family Court". The letter stated:

> "We note that there is a hearing in respect of the above matter listed in the family court for 15 May 2019 at 2 pm.
>
> Please note that the application made by the respondent Gary Paul Gladwell whilst it states it is to set aside a judgment granted by the Family Court but was made to the Chelmsford district registry and relates to the return of monies paid relating to a High Court writ of control.
>
> Indeed his accompanying witness statement clearly states he "I do not deny that I am due to pay this sum". As such the application was made to the correct court but has been listed in the incorrect court as the Family Court do not have jurisdiction to make a ruling on this matter as it relates to a High Court writ.
>
> In an effort to save time and costs we respectfully request a hearing listed for 15 May 2019 at 2 pm be vacated and the case transferred to the High Court district registry and listed for hearing in this court"

10. That letter was placed before a District Judge who ordered on 10 May 2019:

> "Upon the court reading correspondence from the applicant's (sic) solicitor
>
> And upon the County Court (sic) confirming it has no jurisdiction in this application as it is in relation to a High Court writ
>
> IT IS ORDERED THAT
>
> 1. The hearing listed on 15 May 2019 is hereby vacated
>
> 2. The case is transferred to the High Court for the respondent's application to be considered"

11. The file was duly transferred to London, rather than to the Chelmsford district registry, and was placed before me today, 14 May 2019.

12. It is obvious that numerous errors have been committed and that orders have been made without jurisdiction. As a result, monies have been unlawfully taken from the applicant and he has been denied access to justice in the Family Court at Chelmsford.

13. I propose to spell out the relevant principles in the hope that events like this never recur. I should say that this is the second time in as many weeks that I have had to deal with a purported transfer for enforcement purposes of a Family Court matter to the High Court.

14. The relevant principles are as follows:

    i) The Family Court has full power to issue a warrant of control or warrant of delivery. The powers of the High Court and County Court to issue such measures (respectively writs and warrants) in CPR parts 83 and 84 are made available to the Family Court by their importation into FPR 33.1 which provides:

> (1) The rules in this Part apply to an application made in the High Court and the family court to enforce an order made in family proceedings.
>
> (2) Parts 50, 83 and 84 of, and Schedules 1 and 2 to, the CPR apply, as far as they are relevant and with necessary modification to an application made in the High Court and the family court to enforce an order made in family proceedings.

    ii) Standard orders for such warrants appear as Orders Nos 4.11 and 4.12 in the Standard Family Orders (volume 1, financial and enforcement orders), promulgated by the then President on 30 November 2017. The commentary to the standard orders in question explains clearly that the Family Court has power to make them.

    iii) Rule 33.4 allows an application to be made for a transfer of an order made in the Family Court to the High Court for enforcement. It states:

> (1) This rule applies to an application for the transfer –
>
> (a) to the High Court of an order made in the family court …
>
> (2) The application must be –
>
> (a) made without notice; and
>
> (b) accompanied by a statement which complies with rule 33.3(1).
>
> (3) The transfer will have effect upon the filing of the application.
>
> (4) Where an order is transferred from the family court to the High Court –

(a) it will have the same force and effect; and

(b) the same proceedings may be taken on it,

as if it were an order of the High Court.

iv) However, and notwithstanding the terms of rule 33.4(3), this power is subject to the stringent requirements of rule 29.17(3) and (4) which provide:

(3) A case may not be transferred from the family court to the High Court unless –

(a) the decision to transfer was made by a judge sitting in the family court who is a person to whom paragraph (4) applies; or

(b) one or more of the circumstances specified in Practice Direction 29C applies.

(4) This paragraph applies to a person who is –

(a) the President of the Family Division;

(b) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);

(c) a puisne judge of the High Court.

v) In his Guidance: *Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court*, issued on 28 February 2018 the former President stated at [27] and [28]:

"27 The effect of this is that:

(a) The only circumstances in which a District judge, a Circuit Judge or a Recorder (even if sitting under section 9) can transfer a case from the family court to the High Court are those specified in paragraph 1.2 of PD 29C (which, in practice, applies only in cases where disclosure is required from HM Revenue and Customs).

(b) A transfer in accordance with paragraph 1.1 of PD 29C is temporary, being "solely" for the purpose of making the disclosure order. As soon as the order has been made the matter should be re-transferred back to the family court.

28 There are still far too many instances in which, despite the plain and peremptory language of FPR rules 29.17(3) and (4) and of PD 27C, cases are being purportedly transferred from

> the family court to the High Court by judges other than those authorised to do so under FPR 29.17(4)."
>
> And at [30(c)] he continued:
>
> "There is no justification for transferring a case from the family court to the High Court merely because of some perceived complexity or difficulty. The proper course is to re-allocate the case for hearing in the family court by a "judge of High Court level" or, if appropriate, a judge of the Family Division. It is, for example, virtually impossible to conceive of a divorce or financial remedy case which needs to be transferred from the family court to the High Court"

vi) Accordingly, a High Court Writ of Control can only be issued in a case otherwise proceeding in the Family Court if (and only if) a transfer to the High Court of the proceedings has been authorised by the President of the Family Division, a judge of the Court of Appeal or a puisne judge. It is virtually impossible to conceive of a case where such a transfer would be appropriate.

vii) In my opinion rule 33.4(3) is potentially misleading and should be revoked. It is comparable to CPR 83.19(2) which allows a judgment creditor to apply to the County Court for a certificate of judgment and on the grant of the certificate takes effect as an order for transfer. That process does require some act, albeit minimal, on the part of the court. In contrast, on a literal reading of rule 33.4(3) any application, however abusive or nonsensical, actually effects a transfer of the case to the High Court. This cannot have been intended, nor can it have been intended that the very important, stringent terms of rule 29.17(3) and (4) should not apply to an application to transfer a judgment to the High Court for enforcement. The notes in the White Book to CPR 83.19(2) reveal, interestingly, that the Senior Master issued a practice note on 21 March 2016 in which it was stated that the High Court would not accept form N293A for transfer to the High Court for enforcement of a possession order of the County Court other than in respect of possession orders against trespassers. This is a good example of the court taking a firm line against what on a literal meaning of the rule would devolve a general transfer power to litigants.

15. My conclusions on the facts of this case are:

i) The High Court Writ of Control of 12 March 2019 was not lawfully generated and issued as no order sanctioning a transfer of the proceedings to the High Court was made by the President of the Family Division, a judge of the Court of Appeal or a puisne judge. It is therefore set aside.

ii) Accordingly, the High Court enforcement officers are to return immediately to the applicant the sum of £8,304.72 wrongly taken from him on 28 March 2019.

iii) The purported transfer on 10 May 2019 of the applicant's application of 29 March 2019 was made in violation of rule 29.19(3) and (4) and is set aside. The case is returned to the Family Court at Chelmsford.

iv) The respondent's application dated 12 March 2019 shall be treated as an application to the Family Court for general enforcement pursuant to FPR 33.3. It shall be listed before a district judge and heard inter partes.

16. That concludes this judgment.