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Michelle Danique Young v Scot Gordon Young (2013)

[2013] EWHC 3637 (Fam)

22/11/2013

Barristers
Rex Howling QC

Court
High Court

Practice Areas
Financial Remedies

Summary
A court, having assessed a husband's financial position and who had been an undischarged bankrupt, awarded a lump sum payment of £20 million to his wife under the Matrimonial Causes Act 1973 s.23(1)(c).

Facts
The applicant wife (W) applied for a lump sum payment against the respondent husband (H), an undischarged bankrupt. H also applied to vary a maintenance pending suit order.

The parties, who had meet in 1988, began to coinhabit in 1989 and married in 1995. H had been a successful property entrepreneur, who had also developed and run various technology companies and invested capital in other business ventures. In 2006 H began to get into financial difficulties, and his marriage soon after broke down. In seeking a lump sum payment, W alleged that H had hidden assets which he had secreted in 2006 when his financial position began to falter, and that he was in fact worth many hundreds of millions of pounds. There was also an allegation that H had retrieved share certificates from his solicitors' office which had been the security on which his solicitor had given an undertaking to a bank that had provided various mortgages for property purchases. H countered that he was in fact insolvent with a deficiency of £28 million, and that the shares referred to had never existed. The court accepted that any assets that it were to find belonged to H would have been generated during their 17-year marriage. The issues were whether (i) evidence of an offer H made to W was indicative of undisclosed assets; (ii) a lump sum payment order should be made in light of H's financial position in March 2006 and following; (iii) the maintenance pending suit order should be varied. The court also made observations on when it was appropriate to take oral evidence before a final hearing.

Held
(1) An offer that H had made to W and his children of £300 was not a serious offer capable of acceptance; it was tolerably clear that H was not serious, and there was doubt as to whether W thought he was

serious. Additionally, the court could not rely on any offer H made as evidence that he had undisclosed assets (see para.120 of judgment). (2) The court was not precluded from making a lump sum order against an undischarged bankrupt, provided that consideration was given to the level of his debts, statutory interest and the costs of the insolvency when weighing in the balance the quantum of any lump sum order, Hellyer v Hellyer (Lump sum payments) [1996] 2 F.L.R. 579 followed. A schedule prepared in 2006 for a bank that had provided mortgage funds was not comprehensive; it did not include a significant number of businesses or assets which had existed. H's omission of those assets had been deliberate. It was clear that had H retained valuable assets in March 2006, but that he had not engineered the situation just to get assets out of the reach of W on a divorce; H rather realised that he had overstretched himself and decided that he had to make the best of a bad job. The court did reject, however, H's case that the share certificates had not existed, and found that H had removed shares then valued at £6.2 million together with a further block of shares worth £13.67 million from his solicitor's office in 2006. Ultimately, however, it was completely impossible to produce any sort of schedule of H's assets in 2006 due to the significant number of lies he told over such a long period and it was impossible to say, even on the balance of probabilities, where H had secreted any money. The court found, assuming additional assets of over £25 million, that H had assets of £45 million in 2006. Evidence post-2006 strongly suggested that H was still involved in business and that he had failed to give full and frank disclosure. The only true debts H had were those owed to HMRC and to a mortgage provider, which amounted to £5 million, excluding costs incurred by his trustees in bankruptcy, giving him a net worth of £40 million. Accordingly, W was entitled to a lump sum payment for £20 million (see paras 23, 148, 150, 153-154, 158, 160-161, 164, 166-167, 176, 178-179). (3) As the maintenance pending suit order had been thoroughly justified, the application to vary the order and remit the arrears was dismissed (para.180). (4) The taking of oral evidence before a final hearing was a proper use of the court's resources when it led to specific findings of fact that became res judicata so that the issues did not need to be revisited at a final hearing, and when it was part of an exercise in obtaining pre-trial discovery of documents where the witness was asked to give specific evidence to explain the document or how it came into his possession. The taking of oral evidence ought not be an unfocussed, wide ranging trawl through the evidence without findings of fact being made at the end of a hearing, as had happened in the instant case (para.85).

Application granted

Permission
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