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Young v Young [2013] EWHC 3637 (Fam) how not to litigate in family cases

The divorce case of Young v Young (which has long been in the news) went to trial for 20 days in October and November 2013, with judgment finally being given by Mr Justice Moore on 22 November 2013.

The case

The issues in this extraordinary case were relatively simple. Mrs Young (the wife) sought on her divorce half of the matrimonial assets and support from Mr Young (the husband). The matrimonial resources included both parties' assets, liabilities and income sources. The sole question that vexed the courts was over what there was to divide and what was the true wealth of this couple?

From the very start the wife presented her case on the basis that her husband had enormous wealth of probably around £400 million, if not more. The parties' standard of living had been lavish as the husband's wealth had increased over the years and so the husband could continue to provide substantial financial support at this level. The husband on the other hand asserted that a considerable business deal had collapsed which led to the imploding of various business structures he had created. As a consequence he could not support his wife at all and was/is bankrupt with debts to the tune of £28 million. The hearing involving numerous witnesses (including Sir Phillip Green and Mr Richard Caring), and experts resulted in the court deciding that the husband did not have the extreme wealth that the wife had believed him to have, but likewise did not accept he had no resources whatsoever. In summary the Judge concluded "doing the best that he could" that the husband had hidden £45 million. After taking into account debts of £5 million his net wealth was declared at £40 million.

A full summary of the case facts and findings are found on the Bailii website.

Waste of costs

What is interesting about this case however is what the Judge said in respect of how the parties had litigated and the waste of costs and time that had occurred as a result.

The matter had taken some 6 ½ years to come trial with approximately 65 separate hearings. During the course of this there had been two committal applications against the husband for failure to comply with orders to provide full disclosure. At the second committal hearing the husband was sentenced to six months in prison albeit that he only stayed in prison for three months. There had been multiple occasions when the wife had applied to search and seize papers and throughout this time the husband had delayed and endeavoured to avoid disclosure of his resources. Ultimately the husband's passport was removed and held although this is now in the process of being released to him. What had been astonishing to the court was that the wife who had at various times been represented by a number of solicitors with different funding arrangements had spent approximately £6.5 million on legal fees. The husband had spent little in comparison as he had not been

represented although he did have the assistance of one set of lawyers to help him complete a Questionnaire.

In his judgment Mr Justice Moor stated that the parties litigated and pursued their case in the worst possible way. He said:

"I have also decided that I have to be highly critical of the way in which the case has been conducted and at various times by both parties. In many respects, this is about as bad an example of how not to litigate as I have ever encountered."

In the last paragraph of his judgment he goes on to say:

"Finally, I feel nothing but sympathy for the two children of these parties. Through no fault of their own, their parents' marriage broke down. A marital breakdown is distressing enough for any child, but for the disclosure to then be played out in the full glare of the media in the way that has occurred in this case, must have been absolutely appalling for them. What has occurred has not been child focused. I truly hope the parents will reflect on this. I also hope that it is does not happen to any other children".

Although the court has now dealt with the substantive issue of what orders it is going to make between the parties there still remain outstanding issues which, based on what has happened historically, could well mean that this case will continue for many years to come. There is firstly and most difficultly the enforcement of the order. The husband has been ordered to pay the wife £20 million in the next 28 days plus the arrears of maintenance that are owed plus interest. Interest will run from the point that he does not pay the order at the rate of 8% which is about £1.6 million per annum. Notwithstanding this the husband has of course not complied with any court orders for payment and we await to hear whether on this final occasion he does. If he does not comply the wife will encounter ongoing problems unravelling the complicated financial structures that the husband has created. There is then the issue of costs. The husband has been ordered to pay the wife's costs on an "indemnity basis" but assessed at what the court considers to be reasonable. This will lead to another potential hearing. The trial although completed, is by no means over.

So what did the parties do wrong and why have they got themselves into this situation?

Fundamentally they litigated seeking to resolve their matrimonial problems without any attempt to be reasonable, proportionate or fair. The matter was always conducted on the basis that each of them independently could 'win' their case. In family cases there are no real winners or losers. What they failed to appreciate was the real costs of taking such a litigious stance in their situation, including years of stress dealing with the litigation and impact upon their health (both parties suffered from ill health over the course of the proceedings); the negative impact it had upon their children and their dysfunctional parental relationship, not to mention the ongoing difficulties this will now have for both of them. The husband's business has undoubtedly been affected by these proceedings and his criminal conviction cannot assist him further.

The wife's position remains precarious and although on the face of it she has been awarded a vast sum of money, it remains to be seen whether she will be able to recover this in due course. It would be a good end to this case if the parties now quietly resolved this matter between themselves without further court intervention and media speculation.

They would not however have got themselves into this situation if at the outset they had both agreed that they wanted to reach a fair settlement so that they could separate sensibly. It is probable that first of all the wife would have come out with an award undoubtedly similar to

what she is receiving now earlier but without having incurred such costs on legal fees and without the publicity. Moreover she would not be anxious about enforcement as the husband will have bought into the settlement and provided the wife with the sums that are due to her.

It is always easy with the benefit of hindsight to say what could have happened but in family cases it is the starting point that fundamentally changes everything. This case is a good warning of all of the pitfalls of litigation and by coincidence happens to come at the start of Resolution's Dispute Resolution Week 2013. This is the week that Resolution is promoting alternative ways of dealing with family disputes putting aside litigation through the courts.

Lessons learnt

There is no doubt that the Young case will be analysed for some time to come and many points will emerge from it. There are however a number of very obvious lessons to be learnt to avoid litigation costs.

Our summary is:

1. If your resources are particularly complex and substantial, do not waste time camouflaging and not disclosing the extent of these. Provide documentation and moreover an explanation attached to that documentation if it is not clear. Articulate clearly future risks in relation to those resources, particularly business resources, and use your accountant to help.

2. If you do not manage your financial resources whatever is said during the course of the marriage about the extent of your wealth should not necessarily be treated as being 'true' on separation. Wait until there has been full disclosure before deciding and making an assessment.

3. Take at all times a pragmatic view of what is possible noting carefully what can be liquidated now and later. It is always possible to do an assessment whereby a settlement is achieved over a course of time as assets become liquid.

4. In assessing needs in the future do not base it simply on replicating the standard of living enjoyed during the course of the marriage. First work out what resources there are and consider how best to use those to try and achieve a standard of living that is comparative to the standard of living once had. Splitting assets between two parties often leads to a lower standard of living for each.

5. Consider very carefully all the dispute resolution options which covers negotiations directly with your partner, mediation, collaborative family practice, traditional negotiations through solicitors. Certainly once there has been a full disclosure of all resources focus on all attempts to negotiate a settlement.

6. In the event that a negotiated settlement cannot be achieved consider very carefully whether court is the best option. All cases are now heard in public and therefore there will be no shield from publicity and there will remain risks on costs increasing exponentially. This is particularly so with the court's resources being reduced and the inherent delays in the system. The alternative is to consider whether your case is suitable for arbitration.

Had the parties in the case of Young followed this guidance their litigation costs would undoubtedly be significantly less and perhaps not even into six figures.

For further information about mediation, collaborative family practice and arbitration contact a member of the Family Law team or visit our website pages on:

- collaborative law
- family mediation
- family arbitration

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