

Case name and citation	GW v GH FR by DJ Napier [2023] EWFC 298 (B)
BAILII link	<a href="https://www.bailii.org/ew/cases/EWFC/OJ/2023/298.html">https://www.bailii.org/ew/cases/EWFC/OJ/2023/298.html</a>
Date per BAILII	12 October 2023
Judge(s)	DJ Napier
Summary	<p>Determination of W’s application for financial remedies including XX</p> <p><b>Applications to admit further evidence</b></p> <p>W’s applications to (i) admit her father’s witness statement as hearsay evidence and permit him not to be called to give oral evidence and (ii) call W’s sister as a witness in lieu of her father were not allowed.</p> <p>H’s application to admit his accountant’s summary of his earnings was granted by consent.</p> <p>Three additional pieces of evidence were allowed by consent.</p> <p>Emails between W and her father and the judgment of Peel J on W’s challenge of the arbitration award in relation to the child arrangements – which is reported as <i>G v G</i> [2022] EWFC 151 at <a href="https://www.bailii.org/ew/cases/EWFC/HCI/2022/151.html">https://www.bailii.org/ew/cases/EWFC/HCI/2022/151.html</a> – were not permitted to be adduced.</p> <p><b>Issues</b></p> <p>The central question was the distribution of capital and the following issues were raised in relation to computation:</p> <ul style="list-style-type: none"> <li>i) The costs of sale to be attributed to the various properties;</li> <li>ii) Whether trust assets (in the XYZ trust or the bare trusts) were resources W could be expected to call on to meet school fees for the children of the family;</li> <li>iii) The extent to which two properties were financial resources available to W;</li> <li>iv) Whether various liabilities should be recognised.</li> </ul> <p>The court was also asked to determine whether there should be a pension sharing order and whether W’s legal fees for these and the Children Act proceeding should be top-sliced.</p> <p>Ancillary to the main issues was the question of whether an order for school fees ought to be made.</p> <p><b>Outcomes</b></p> <p>2% percent was accepted as being the likely costs of sale for all but one property, which was in London. 2% was the amount reached in light of the likely rates in West England as ascertained within the three valuations obtained for the FMH located there, which was less than 1.5% but with legal fees to be added.</p> <p>In relation to the London property, the actual costs of sale were known.</p> <p>In relation to the trusts, H sought ‘judicial encouragement to pay school fees in the form of a school fees order and indemnity, however, this was problematic given (i) the trustees had never paid school fees except for one term in 2021 despite W’s worsening financial situation (ii) put simply, the trustees had declined to meet school fees and given their reasons for the same and (iii) the trust deed of the XYZ trust provided that the trustees the trustees must act unanimously and W’s parents were not solely in control – there</p>

	<p>were over 10 beneficiaries of the XYZ trust and there was a third trustee along with W's parents. Additionally, the children were entitled absolutely to the £32,000 plus held in bare the bare trusts which was unlikely to be made available for school fees, thereby leaving them without support as intended upon settlement.</p> <p>In relation to an order for school fees, it was determined that their housing and emotional needs ought not be compromised by the imposition of an obligation to meet school fees. This reasoning was also extended to the trustees, who were considered unlikely to leave the children without support in favour of paying their school fees, which would amount to much more than £100,000 per child.</p>
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Other keywords	

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