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**Divorcee Jailed After Revealing His True Colours to Private Investigator**

Divorcees who attempt to wriggle out of their financial obligations can expect to pay a crushing reputational and financial price for their deceit. In one case, a husband who revealed himself in his true colours to a private investigator received a prison sentence for his repeated failure to obey court orders.

Following the end of his marriage of more than 20 years, the husband submitted to a court order requiring him to pay maintenance of £1,250 a month for each of his three youngest children until they completed their education. However, after he failed to pay a penny in maintenance for more than four years, his ex-wife responded by seeking his committal to prison for contempt of court.

At the time of his divorce the husband was facing a judgment debt of more than £3 million as a result of a disastrous property investment. He was subsequently declared bankrupt at his own behest. Asserting that he had stopped paying maintenance due to lack of funds, he sought a downward variation of the maintenance order and remission of arrears.

Ruling on the matter, the Family Court noted that, in speaking with a private investigator whom the wife had instructed to look into his financial affairs, the husband had revealed his true self. The transcript of their conversation showed him to be a boastful, dishonest man, denigrating his ex-wife to a complete stranger.

In making false statements and failing to comply with judicial orders requiring him to make full disclosure of his income and assets, he had deliberately set out to mislead the wife and the Court. It was only due to the wife's tenacity and the admirable commitment of her legal team that his lies were exposed despite his best efforts. At no point did he lack the funds to pay at least some maintenance.

The Court noted that, although he had long since been discharged from bankruptcy, his employment prospects had inevitably suffered due to the insolvency process. It would be unrealistic and unhelpful to the wife to require him to pay everything he owed her. The Court therefore reduced the amount of his arrears and his ongoing maintenance bills by half.

His deliberate and continuous disobedience to court orders could not go unpunished, however. He had at no point apologised or shown any remorse for his actions, instead attempting to brazen out the case. He was sentenced to a term of three months' imprisonment.

If you are dealing with divorce proceedings, we can ensure you are expertly advised and represented.

**Partner Note**

Stelfox v Stelfox [2021] NIFam 26

**Family Judge Gives Girl in Foster Care a New Double-Barrelled Surname**

Surnames reflect family heritage and most people view them as an essential part of their identities as human beings. A family judge made that point in choosing a new double-barrelled surname for a little girl so that she would no longer bear a nominal connection to the stepfather who was alleged to have caused her harm.

The girl, aged nine, was taken into care after suffering significant harm and neglect whilst in the care of her mother and stepfather. The latter was incorrectly identified as her father on her birth certificate and she bore his surname although she was not related to him. After the stepfather's parental responsibility for her was terminated, the local authority that bore responsibility for her care applied to the judge for permission to change her surname.

She had for five years lived in the secure, loving and happy home of a foster carer who wished to look after her in the long term and had not ruled out the possibility of adopting her. Her biological father had recently been identified and had shown commitment to building up a father-daughter relationship with her.

The local authority, the foster carer, the girl's guardian, her father and the girl herself were unanimous that she should no longer bear the surname of the stepfather. The judge was, however, faced with an acute dilemma in that each of them had expressed varying views as to what her new surname should be.

Ruling on the matter, the judge emphasised that the girl's welfare was the paramount consideration. She felt very much part of her foster carer's family and had expressed her preference to bear her surname. Given her youth, however, her wishes and feelings, whilst important, were not decisive. There was no guarantee that she would continue to live as part of the foster carer's family until she reached adulthood.

The father had shown commendable commitment to his daughter and the judge ruled that he should have parental responsibility for her. However, she had yet to spend time with him or get to know him. She had lived with her mother for the first four years of her life and, although she had suffered harm and neglect in her mother's care, there were advantages in maintaining her nominal link to her birth family.

The judge ruled that the girl should bear a double-barrelled surname, the first part of which would be the foster carer's surname and the second part the mother's surname. Her new name would reflect both her roots and the reality of her current family situation. It would provide her with flexibility as she grew up – she could use either or both parts of the name as she wished – and would be more future-proof.

The judge emphasised that the father should not see his daughter's new surname as marginalising his role. He had made a good start in forming a relationship with her and his success in doing so depended not on a name but on his commitment as a father. She was likely to benefit in future from getting to know him and his large family.

Our family law experts are experienced in dealing with sensitive cases like this. Contact us for advice.

**Partner Note**

Re S (Change of Surname: Child in Foster Care) [2021] EWFC B42

**Family Judge Throws Lifeline to Troubled Mother of Four**

Not every parent is an ideal carer but the law recognises that, wherever possible, it is in children's best interests to keep their families together. In a case on point, a young mother who faced the prospect of all four of her children being placed in foster care was thrown a lifeline by a family judge.

The mother, in her 30s, had a deeply troubled background. As a child she had witnessed her father's suicide, and she went on to form a violent and abusive relationship with the father of three of her children. She claimed to have beaten her drugs habit but, after hair strand analysis revealed the presence of cocaine in her system, she acknowledged that she was not always truthful about her narcotics use.

She had a loving bond with all her children, aged between 15 and just 11 weeks, and had been the subject of a positive parenting assessment. However, in the light of a psychologist's report and evidence of her continued drug use, the local authority had changed its initial view that the children should remain in her care.

The report highlighted the extent to which the children, particularly the oldest, had been emotionally damaged by living in a home blighted by narcotics and domestic violence. The psychologist was concerned that the mother was at risk of relapsing into heavy drug use and other risky relationships. In the light of those views, the authority argued that it was too great a risk to leave the children with their mother and that they should be moved into two separate foster placements.

Ruling on the matter, the judge noted that the three older children were unanimous in wishing to stay with their mother and would clearly be very upset if removed from her care. The oldest child, in particular, was mature enough to have formed views of her own. The mother's sister and her partner had also put themselves forward as potential alternative carers for the children.

Refusing to make full care orders at this stage of the proceedings, the judge found that the short-term risks of keeping the children with their mother could, with a good deal of support, be managed. There was no immediate threat to their safety that required their instant removal from their home and their separation from one another. In the hope of achieving a placement within their natural family, he directed a full assessment of the aunt's ability to act as the children's special guardian.

In adjourning the authority's applications, the judge warned the mother that, unless she cooperated closely with social workers and ceased using drugs, there remained a real prospect that her children would be taken from her.

For advice and guidance on any legal matters surrounding care proceedings, please contact <<CONTACT DETAILS>>.

**Partner Note**

Dorset Council v M and Others [2021] EWFC B43

**Giving or Lending Money to Your Children? Always Consult a Lawyer First**

When money passes between parents and their children, it can be very difficult to tell whether the transaction is a loan or an outright gift. A High Court ruling in the context of a bitter falling-out between a wealthy father and son showed why no amount of familial love and affection can be a substitute for expert legal advice.

The father, a very successful businessman aged in his 70s, launched proceedings to recover six million Swiss francs from his son. He said that he had advanced the money as an interest-free loan so that his son could purchase and complete construction of a flat in Switzerland that was to serve as his family home.

He relied on a loan agreement that purported to bear his son's signature in three places. The son denied ever having signed the agreement and asserted that the money was a non-refundable gift. Whilst accepting that his father had not actually used the word 'gift' during a critical conversation, he contended that his father reassured him that the flat was to be bought for him by the family.

Ruling on the matter, the Court noted that expert handwriting evidence, whilst far from conclusive, suggested that at least one of the son's signatures on the loan agreement was likely to be genuine. There was evidence, not least the father's obsession at the time with preserving family assets, which indicated that he was unlikely to have made an outright gift to his son.

There was also evidence pointing toward the money being a gift. Given the father's obsession and the son's practice of signing blank pieces of paper put in front of him by a financial adviser, it was plausible that the son's purported signatures on the loan agreement were forgeries. That, however, did not readily explain how his signatures came to match so neatly with the text.

Upholding the father's claim, the Court found on the balance of probabilities that the son signed the agreement and that the money advanced to him was a loan that he was obliged to repay in full.

**Partner Note**

Volpi and Another v Volpi [2021] EWHC 2143 (Ch)

**Homeowner Mis-Sold Solar Panels Awarded Thousands in Compensation**

If you buy goods that fail to live up to a salesman's hyperbole, you may be entitled to compensation and should consult a solicitor immediately. In one case, a homeowner who had solar panels installed in the forlorn hope that they would pay for themselves within 10 years was awarded thousands of pounds in damages.

The government was at the time running a green energy incentive scheme by which householders who had solar panels fitted received payments both for generating electricity and for exporting it to the national grid. After meeting with a salesman, the enthusiastic homeowner funded installation of solar panels, which cost £9,200, by entering into a 10-year loan agreement with a finance company.

After the panels failed to meet his financial expectations, he launched proceedings. The supplier from whom he bought the panels having long since entered liquidation, his claim was against the finance company, under the Consumer Credit Act 1974.

In upholding his case, a judge found that the salesman had falsely represented to him that the panels would pay for themselves within 10 years. The finance company conceded that the panels would never have achieved the necessary financial return for that representation to be true.

The salesman, as the supplier's employee or independent contractor, had ostensible authority to make the representation, on which the homeowner had reasonably relied. The judge awarded him £3,160 in damages, that sum representing the difference between the financial benefit he had and would derive from the panels and the greater cost of financing their installation.

If you feel you have been the victim of misrepresentation when dealing with a sales company, we can help you to pursue your consumer rights. Contact <<CONTACT DETAILS>> for advice.

**Partner Note**

Hodgson v Creation Consumer Finance Ltd [2021] EWHC 2167 (Comm)

**International Child Abduction – Children's Welfare is Always Paramount**

Where one parent moves abroad with his or her children, leaving the other behind, the result can be an international tug of war. As a High Court ruling showed, when called upon to play the part of referee in such contests, the paramount focus of family judges is always on the children's welfare.

The case concerned two US citizens who had two daughters, aged 12 and 11. After their marriage came to an end, the mother moved to England on a three-year work assignment, taking the children with her. The father, who remained in America, sought an order requiring the children's return to the USA.

The father's application was made under the Hague Convention on the Civil Aspects of International Child Abduction 1980, which is designed to protect children from the harmful effects of wrongful removal or retention and to ensure the prompt return of abducted children to the state where they are habitually resident.

Ruling on the matter, the Court found that the children could not in any meaningful sense be said to have been abducted. Although the father later came to regret his decision, he had given his unequivocal and informed consent to the mother taking the children with her to England. She had not pre-empted his custody rights or unilaterally decided to retain the children in this country.

Having settled into school and home life in England, the children had in any event become habitually resident here. Their welfare was best served by giving effect to their strongly expressed wishes to remain in England with their mother until she completed her work assignment. To overrule their wishes would be to undermine their confidence in their parents and in authority figures generally.

**Partner Note**

Re: P and Q (Hague Convention: Consent) [2021] EWHC 2184 (Fam)

**Neighbours Encroaching on Your Right of Way? Consult a Lawyer Today**

Many homes or businesses are only accessible via neighbours' land and that can prove fertile ground for dispute. However, as a High Court case showed, expert lawyers are adept at ensuring their clients' unhindered use of rights of way.

A couple's home and holiday accommodation business was accessed via a track that ran across land that formed part of the grounds of a country house hotel. They took action against the hotel's owners, asserting that they had for a number of years engaged in a persistent and systematic course of conduct that substantially interfered with the exercise of their right of way over the track. The owners denied the allegation and characterised the couple's complaints as an attempt to gain greater access rights than those to which they were legally entitled.

Ruling on the matter, the Court found that a succession of works carried out by or on behalf of the hotel's owners over the years – including the installation of a gate, the placing of boulders on the track's verges and changes to its entrance splay – amounted to unlawful interference with the couple's right of way.

Aerial photographs and other evidence indicated that the works had resulted in the track being significantly narrowed in places, making it harder for cars to pass each other and for heavier vehicles to access the couple's property. The Court was satisfied that the installation of the gate had nothing to do with security but was rather a deliberate attempt to inconvenience the couple.

The Court granted the couple an injunction that required the hotel's owners to, amongst other things, remove the gate and boulders and to broaden the entrance splay. The couple were awarded £1,000 in damages to reflect the inconvenience they had suffered and, importantly for them, the Court recognised their right to repair and maintain the track, which had at times fallen into a very poor condition.

If you are embroiled in a dispute regarding rights of way, we can ensure you are expertly advised and represented.

**Partner Note**

Barre and Another v Martin and Others [2021] EWHC 2039 (Ch)

**Seeking Investment Advice? Only Authorised Practitioners Can Be Trusted**

When seeking investment advice, it is vital to only use the services of authorised practitioners who are highly qualified and regulated by law. As a High Court case showed, it is otherwise all too easy to fall into a fraudster's clutches.

A woman was introduced by an acquaintance to a man who held himself out as an investment specialist. She quickly placed her full confidence in him and entrusted him with £2.1 million, effectively her entire fortune. Less than half of the money was in the event returned to her. She subsequently launched proceedings with a view to recovering her loss.

Upholding her claim, the Court noted that the man was currently in prison, having been convicted of involvement in a fraudulent tax evasion scheme. He was not a regulated investment adviser and undertook none of the checks that would be expected of a respectable financial professional. Due to her lack of financial sophistication, however, she was not put on her guard.

The Court found that the man had deceived her and breached the general prohibition contained in the Financial Services and Markets Act 2000 (FSMA) on the giving of financial advice by unauthorised persons. He also breached the fiduciary duty he owed her.

He and an offshore company, through which he operated and which was at the time entirely his creature, were also liable for breaching the FSMA prohibition by managing, or purporting to manage, her assets. The company also breached the trusts on which it held those assets. The Court made various orders that were designed to assist her in the recovery of her money.

If you have been the victim of fraudulent investment advice, our specialist lawyers can assist you. Contact <<CONTACT DETAILS>>.

**Partner Note**

Van Zuylen v Whiston-Dew and Another [2021] EWHC 2219 (Ch)

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