

## Family Law newsletter - Q4 - 2022

### Adoption, Searching for Birth Parents and Rectification of Birth Certificates

There can be few questions of greater importance than 'Who is my parent'? A Judge made that point in taking the unprecedented step of enabling rectification of an adopted woman's birth certificate to reflect the identity of her natural father.

The woman's natural mother was from an aristocratic family and was unmarried and barely out of her teens when she gave birth to her. The woman was adopted as a baby and had spent much of the last 40 years trying to trace her birth father. She engaged private investigators but her efforts were to no avail until DNA results she submitted to a number of genealogy websites threw up a match.

She was devastated to discover that the man for whom she had been searching for so long had died some years previously. He turned out to be a brilliant academic who had apparently fathered 11 children. DNA testing of one of his bones confirmed to a very high degree of probability indeed that he was her father and members of his family had been quick to accept her as one of their own.

The woman, for whom discovery of her birth family was of monumental importance, sought a declaration of parentage as a formal recognition of her birth father's identity and rectification of her birth certificate accordingly. Her experience of adoption had been generally positive and she had no wish to expunge that aspect of her life. She felt, however, that the inclusion of her father's name on her birth

certificate would confirm her bloodline and formally complete her birth history.

Granting the orders sought, the Judge found that the woman's application

had been properly made notwithstanding that her adoption meant that, in law, her adoptive parents were her only mother and father. Given that she was an adult and both her adoptive parents were dead, there was no question of her application undermining the confidentiality of a current adoptive placement.

There was no public policy reason why the identity of her birth father should not be formally declared and recorded on her birth certificate. There was no legal bar on a declaration of parentage being made after an adoption order had been granted. The Judge granted similar relief in another case that raised identical issues.

**We can advise you on all aspects of family law. Contact our family law team for guidance.**



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## Relationship Ended in Acrimony? A Defamation Claim May Not Be the Answer

The acrimonious end of intimate relationships is sadly often marked by the making of wounding accusations. However, as a High Court case made plain, anyone involved in such personal disputes should think long and hard before resorting to defamation proceedings.

Following the end of a businessman's lengthy relationship with a woman, he claimed that she had subjected him to a vitriolic campaign, accusing him of domestic abuse, business malpractice and discreditable personal behaviour. He launched a defamation claim, complaining of 22 statements that she had made to others, mainly in the form of emails and texts. She contended that all her allegations were true.

Ruling on preliminary issues in the case, the Court noted that the accusations were grave. It had little difficulty in finding that all of the woman's statements had a defamatory tendency in that they would inherently tend to make an ordinary, reasonable reader think significantly worse of the businessman.

The Court, however, went on to find that he had failed to sufficiently establish on the evidence that the statements seriously harmed his reputation. That was not to say that there was no such harm and the Court had no doubt as to the strength of his objections to her course of conduct. Save for his own testimony, however, there was no evidence of any harm to, let alone destruction of, his reputation.

The Court acknowledged that, given the gravity of the allegations, the outcome of the case might well appear counterintuitive to him. It had nothing to say in its judgment about the truth or falsity of any of her allegations and expressed no views about their respective conduct. However, as he had failed to discharge the burden of proving serious harm to his reputation, an essential ingredient of any defamation claim, his case stood to be dismissed.

**Situations such as these can be avoided if expert legal advice is sought prior to proceedings being launched. Contact our specialist team for guidance.**

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## Divorce – Financial Proceedings 'Fast Heading for Ritz Hotel Status'



Justice that can be accessed only by the super-rich is not justice at all. A High Court Judge made that point in noting that financial remedy proceedings in divorce cases are fast heading for Ritz Hotel status – affordable only by the well-heeled few.

The case concerned a couple whose 12-year marriage was characterised by ever increasing prosperity and an ever more affluent lifestyle. A construction company of which the husband was a 50 percent shareholder had been phenomenally successful and the couple's total assets were worth £35,456,884.

Taking into account that the company had been founded by the husband prior to the marriage, the Judge ruled that the wife should receive £14,237,623, made up of a transfer to her of the former matrimonial home, another property and a lump sum of over £12 million. Her award represented half of the wealth built up during the course of the marriage and 40.2 percent of the total assets.

The Judge noted that the case involved no complex computational exercise and was straightforward when compared to many high-value divorce cases. The former couple had agreed that the equal sharing principle should apply to the case. However, they had between them run up legal costs in the extraordinary amount of £1,670,380, roughly 5 percent of their entire fortune.

Emphasising the fundamental principle that those who invoke the rule of law should have true access to justice, the Judge noted that there is no such access if justice is only open to all in the same way as the Ritz Hotel. The expense of financial remedy litigation was fast making it the preserve of the very rich. He urged either the Lord Chancellor or the Family Procedure Rule Committee to address the situation in the public interest.

**If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.**

The information contained in this newsletter is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances, please contact us.



## Father Who Recorded Private Family Law Proceedings Brought to Book

For very good reasons, unauthorised recording of any court proceedings, and particularly family hearings held in private, is strictly prohibited. In one case, an angry father received a stern judicial reminder of the strength of that embargo.

The father was engaged in bitter and long-running family proceedings concerning his children. He did not deny that he had made a series of sound recordings of hearings held in private and published excerpts online. The Attorney General's response was to seek a finding of contempt of court against him. Such a finding can result in a maximum penalty of an unlimited fine or two years' imprisonment.

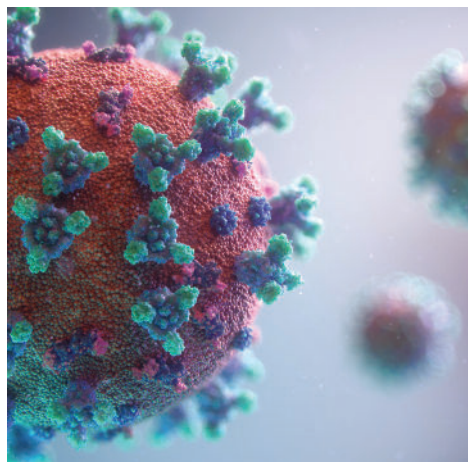
He contended that he was unaware at the time that the proceedings were in private and that his mental health difficulties prevented him from appreciating that what he was doing was wrong. He pointed out that the recordings were published long after the conclusion of the relevant family proceedings and, on that basis, contended that the administration of justice had not been undermined.

Upholding the Attorney General's application, however, the High Court found beyond reasonable doubt that he had, without permission, brought into court a device and used it to make covert sound recordings. Although he knew that the proceedings were being heard in private, he on three occasions uploaded videos containing excerpts of the recordings to YouTube.

In also finding that he intended to interfere with the due administration of justice, the Court noted that he used the recordings to paint a highly partial and partisan picture of the family proceedings and to level serious and unfounded allegations against the Judge, barristers and others involved in the case. In doing so, he can only have had one aim: to undermine with spurious allegations the credibility of the court process in the eyes of the public at large.

In an attempt to justify publication of the recordings, he contended that he had been subjected to pervasive corruption and institutional racism. However, the Court noted that it is no defence to a charge of contempt to say that relevant actions were carried out in order to expose alleged wrongdoing. The question of sentencing was adjourned for further argument.

## Foot-Dragging Divorcee Pays Price for Unnecessary COVID-19 Adjournment



Some divorcees drag their feet in a misguided attempt to put off the hour when they must divide their assets with their ex-partners. However, a case involving a husband who caused costly delay when he asserted that he had COVID-19 showed that family Judges are well able to detect and deal with such behaviour.

Ruling on the financial aspects of the man's divorce, a Judge found it highly likely that he had engaged in various delaying tactics with the aim of doing all he could to prolong the litigation and make it as difficult as possible for his ex-wife to bring the matter to a final conclusion.

The most egregious example occurred when he stated on the eve of a vital hearing that he had taken a positive lateral flow test for COVID-19 and that he was not well enough to attend remotely. The Judge had no option but to adjourn the hearing, at substantial cost to the wife.

After she raised suspicions, the husband was ordered to undergo a PCR test, which came back negative. He continued to insist that he was very poorly at the time, but the Judge was satisfied on the evidence that he did not have COVID-19 and that he could have attended the hearing.

The Judge commented that his actions in failing to attend the hearing fitted with his modus operandi throughout the

proceedings. He was not satisfied that the man's stated health position was correct. The information that had been provided to the court was fully self-serving and had been contradicted by the PCR test.

The husband, the Judge found, had failed to comply with court orders, deliberately protracted the proceedings and effectively cocked a snook at the court and the proceedings as a whole by orchestrating the adjourned hearing. To mark his litigation conduct, the Judge took the rare step of ordering him to contribute £4,000 to the legal costs incurred by the wife in preparing for the adjourned hearing.

The marital assets had been eroded by the legal costs of the proceedings and were, at most, only just sufficient to meet the former couple's needs. The Judge directed a division of those assets with a view to achieving a clean break between them.

**We can assist you with any family law matter. Contact us for advice.**

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