IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-001342-A**

Zahmoul –v– Zahmoul

HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION
04 Aug 2025
CA-2024-001342-A

ORDER made by the Rt. Hon. Lady Justice King

UPON consideration of an application to reopen an application or appeal, previously refused or dismissed.

Decision:

The application for permission to re-open the order of Moylan LJ of 23 December 2024 is **refused**.

The application for a stay on the order of MacDonald J of 5 June 2025 is **dismissed**.

Reasons

This is an application for permission to re-open a final determination of an application for permission to appeal.

The applicant is Nadia Zahmoul, the applicant wife in the financial remedy proceedings below. The applicant applied for permission to appeal the final order of MacDonald J dated 24 May 2024 (amended 3 June 2024 under the slip rule). This application was refused by Moylan LJ on 23 December 2024.

The order of Moylan LJ refusing PTA noted that the proper forum for one aspect of the applicant's challenge to the final order was by way of a set aside application to MacDonald J. This application was made by the applicant and was dismissed as totally without merit by the order of MacDonald J of 5 June 2025. The applicant seeks a stay of this order, which directed for enforcement of the final order and refused a maintenance pending suit application as totally without merit.

The applicant has filed numerous documents in support of this application. I have considered the documents in support, including the N244, the grounds of appeal, and the applicant's witness statement dated 22 April 2025 and appended documents.

The applicant ranges a wide range of arguments in support of the application to re-open. In summary, it is said that Moylan LJ failed to address the fundamental contention of the applicant's case that the judge did not refer to the applicant's mental health issues and disability in the judgment and failed to ensure proper participation directions under Part 3A and PD 3AA of the Family Procedure Rules. It is said that Moylan LJ's decision was therefore flawed, irrational, and violates the applicant's rights under the ECHR.

Pursuant to CPR rule 52.30, the final determination of an appeal will not be reopened unless:

(a) it is necessary to do so in order to avoid real injustice;
(b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
(c) there is no alternative effective remedy.

The application of this provision has been considered in a number of decisions. A structured approach is for the court first to ask whether the judge who refused permission engaged with the issues raised by the application for permission. Secondly, if the judge did engage with the issues, the court should then ask whether there is a powerful probability that a significant injustice has occurred because the decision in question would have been different if the integrity of the earlier proceedings had not been critically undermined.

I will deal with each question in turn.

First, it is clear that Moylan LJ engaged with all of the extensive grounds advanced by the applicant in support of her application for permission to appeal. The central contention of the applicant's re-open application is that Moylan LJ did not engage with her argument that the trial was procedurally unfair because of a failure to accommodate her mental health issues and disability. There is no basis for this argument. The order of Moylan LJ observes that this was the applicant's "overriding Ground of Appeal" and deals with the issue at length in his reasons.

The applicant also states that Moylan LJ did not consider the "Oxus perjury". The judge's factual findings, including those regarding the Oxus shares, were considered by Moylan LJ who concluded that MacDonald J had "comprehensively explained and justified his factual conclusions" and the conclusions are clearly based on his assessment of the evidence".

Second, I consider whether the integrity of the earlier proceedings have been critically undermined such that there is a powerful probability that a significant injustice has occurred.

The applicant's central contention that she has been denied a fair hearing by a wholesale disregard for her mental health issues and disability was correctly dismissed by Moylan LJ. The applicant was represented by leading counsel and as Moylan LJ notes, she did not point to evidence that any of these issues were raised by them before the judge beyond the request for participation measures. MacDonald J was not required to identify these issues explicitly in his judgment. Moylan LJ considered the possibility that these issues were overlooked in the judge's assessment of the substantive application as well as the procedure of the hearing and did not consider that this submission had any prospect of leading to a successful appeal. Further, there is no basis for the submission that the decision of Moylan LJ is "inconsistent" with the FPR or CPR. Moylan LJ considered the applicant's reliance on each of FPR Parts 3A and 15, and Practice Direction 3A and 3AA, in turn.

Regarding participation measures, contrary to the applicant's submissions in favour of her application for permission to appeal, MacDonald J did direct participation measures for the applicant's engagement in the final hearing. The applicant repeatedly states that the participation measures were "unlawfully" revoked after 28 February 2024. This was the last day of the final hearing. It is not open to the applicant to challenge the decision arising from the final hearing on this basis given that participation measures were in place for the duration of that final hearing. The fact that the reasons for making participation directions were not recorded in an order pursuant to FPR Part 3A.9 does not justify a grant of permission to appeal.

As regards the complaint that Moylan LJ "failed to consider the materiality of the Oxus perjury", this has no basis. Moylan LJ considered the judge's assessment of the facts and concluded that the judge's findings were open to him on the evidence before him.

Similarly, the applicant's complaint that the judge had no jurisdiction to revoke maintenance pending suit has no basis. MacDonald J was required to consider the continuation of maintenance pending suit on making the final order and having considered the position terminated the payments and remitted the missed payments. There is no basis for arguing that this conclusion was not reasonably open to the judge.

None of the matters raised by the applicant establish that the decision of Moylan LJ to refuse permission to appeal was "critically undermined". There is nothing to support the suggestion that the decision was marred by bias or a lack of impartiality. There is no basis for the contention that the decision contains "inaccuracies, deficiencies, errors of law, omissions, and procedural irregularities", allegations which are wholly unparticularised beyond the matters dealt with above.

In summary, therefore, there is no basis for re-opening the refusal for permission to appeal. The decision of Moylan LJ is not undermined and the application for permission to re-open the order is therefore refused.

The applicant also seeks a Stay on the order of MacDonald J of 5 June 2025 referred to above "pending final decision by the Court of Appeal". There is no appeal before the Court of Appeal in respect of the proceedings with this application having been dismissed and as such the application for a stay is refused.

Note: Where the application is refused the decision of the judge is final and the application cannot be renewed to an oral hearing - see rule 52.30(7) and *Taylor v Lawrence [2002] EWCA Civ 90*

Signed: BY THE COURT
Date: 4 August 2025