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# 2022 Family Law Cases Report

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The most noteworthy  
family law cases.



# Introduction

**2022 was a momentous year for family law in England and Wales. At last a modern system of no-fault divorce was introduced, sweeping away the concept of fault that had always been a feature of divorce in the two countries. But none of that directly affected the work of the family courts, where judges were grappling instead with enormous post-pandemic workloads, and the realities of family breakdown in the second decade of the twenty-first century.**

**So what noteworthy decisions did the courts hand down in 2022?**

First, the usual disclaimer:

There is, of course, no definitive list of the most noteworthy decisions for any particular year. Which cases should be included in a list such as this is a purely subjective matter, and one person's ideas will no doubt differ considerably from those of another person.

However, the cases that follow are, it is suggested, all noteworthy, in the sense that they should be of interest to anyone concerned with family justice, whether they make a point of law, offer guidance on a particular subject, or are interesting for some other reason. Here, then, are some of the most noteworthy family law cases decided in 2022.

**Please note:** That this list does not include public law family cases, i.e. cases where social services are a party to proceedings.

# Guidance on contact costs

## Griffiths v Griffiths

**Should a mother who has suffered abuse at the hands of the father be required to contribute towards the cost of the father's contact with their child?**

This was the issue before the court in *Griffiths v Griffiths*, an appeal heard by Mrs Justice Arbuthnot in the High Court in January.

The case made the national media, as the father was a former Conservative minister, and the mother herself became a Member of Parliament. The relevant background to the case was as follows. The parties had one child, born in 2018. They separated in July 2018, when the mother left the family home with the child. The father initially had contact with the child on an ad hoc basis. He had various mental health difficulties, which led to his hospitalisation for a time. On 9th March 2019, supervised contact started, by agreement, on alternate Sundays.

In June 2019 the father applied for a child arrangements order. The mother alleged that the father had abused her. On 31 July 2019 the court ordered that supervised contact was to take place at a contact centre, for two hours a week.

Initially the father was paying the cost of the contact, but in March 2020 he applied for the cost of the contact centre to be met by the mother, as he was unemployed and he said the mother was earning a substantial salary (the mother had by then become an MP). The costs of the contact centre were considered by the court in May 2020.



The order of July 2019 was amended so that contact costs were to be shared equally between the father and the mother. In November 2020 a fact-finding hearing took place. The Judge found the allegations the mother had made against the father proved, including her rape and sexual abuse, a pattern of him controlling and behaving coercively towards her, and her being physically and verbally abused by him. In June 2021 the court made an order providing for the contact at the contact centre to continue, as before.

The mother appealed arguing, inter alia, that the Judge was wrong to order direct contact and that the mother, a victim of rape, share the costs of supervised contact with her rapist, the father. Mrs Justice Arbuthnot agreed. Setting aside both the order for direct contact and that the mother pay a proportion of the costs of contact, she provided guidance on the point, including that there must be a very strong presumption against a victim of domestic abuse paying for the contact of their child with the abuser, except in wholly exceptional circumstances where a number of factors then have to be considered.



# Unsigned post-marital agreement

WC v HC

## How should the court approach a post-marital agreement that has not been signed?

Marital agreements, whether pre- or post- nuptial, are becoming a regular feature in reported family cases, and 2022 was no exception. In WC v HC the question for the court was: how should it approach a post-marital agreement that has not been signed? Should it be given effect unless the court considers that would be unfair, as in Radmacher, or not taken into account at all?

The relevant facts were as follows. The parties were married in 2004 (after having entered into a pre-marital agreement) and had two children. In 2017 the husband raised the idea of entering into a post-marital agreement. Despite the wife's opposition, negotiations took place, and the parties agreed terms, after taking legal advice. The agreement was drawn up, providing that in the event of divorce the wife should receive about £7.1 million (about 56% of the combined net assets of £12.47 million), plus

child provision. Article 1 provided that the agreement should come into force on the date upon which the last of the husband and wife signed it. However, in the event the wife did not sign the agreement.

Hearing the case, Mr Justice Peel held that it would be unfair for the wife to be strictly held to a document which was carefully drawn up to require, as an express clause of the agreement, both parties' signatures. This was not therefore a formally arrived at agreement in the Radmacher sense. However, he was not prepared simply to discard and ignore the agreement, as the wife argued he should. He said: "this was an agreement reached by the parties, with the benefit of legal advice, and upon full disclosure. Even though [the wife] did not sign it, in my judgment I am entitled to take it into account and attach such weight to it as I think fit. It is one of the factors, to be considered in the mix. The terms agreed ... are relevant, albeit not determinative." In the event Peel J awarded the wife £7.45 million, which was about 60% of the total assets, saying that this approximated to that which was contained within the post-marital agreement, but went beyond it so as to meet what he considered to be the wife's needs.

# Embryo consent

## Jennings v HFEA

### Can an embryo be used without consent?

*Jennings v Human Fertilisation and Embryology Authority* ('HFEA') was a sad case with a (relatively) happy ending. The case concerned Ted Jennings and his late wife, Fern-Marie Choya. They were married in 2009, and wanted to have a family of their own.

Unfortunately, they experienced difficulties in conceiving naturally. They therefore underwent IVF treatment in 2013 and 2014, which was not successful. Ms Choya conceived naturally in 2015 and 2016, but both pregnancies ended in miscarriage due to ectopic pregnancy. Mr Jennings and Ms Choya underwent further cycles of IVF treatment, re-mortgaging their home to fund private treatment.

Their final cycle of treatment was in late 2018. Once they had two embryos in storage they proceeded with a single embryo transfer in November 2018. A positive pregnancy with twin girls was confirmed in November 2018.

Sadly, Ms Choya developed complications in her pregnancy, which resulted in a uterine rupture, and she died on 25 February 2019.

*As part of their fertility treatment Mr Jennings and Ms Choya both completed consent forms, a women's consent form and a men's consent form. The men's consent form provides a man with the opportunity to consent to an embryo created using his sperm being used for his partner's treatment if he dies. However, the women's form did not provide any opportunity for a woman to consent to a partner-created embryo being used for her partner's treatment if she dies.*

Mr Jennings applied to the court for a declaration that it was lawful for him to use the remaining embryo, in treatment with a surrogate. The application was heard by Mrs Justice Theis DBE.

*The critical issue was, of course, the question of consent. Clearly, Ms Choya had not given written consent, as required by statute, but could the court dispense with that requirement?*

Mrs Justice Theis held that it could. She made clear, however, that this was a case very much on its own particular facts, and that it will not open any floodgates. In this case Ms Choya had been denied a fair and reasonable opportunity in her lifetime to provide consent for the posthumous use of her embryos, and there was evidence that if that opportunity had been given, that consent would have been provided in writing.

Mrs Justice Theis concluded her judgment by suggesting that the HFEA may want to consider whether the women's consent form should be reviewed, in order to provide the clarity required and avoid this situation occurring again.



# Death of recipient

## Paul Clifford Goodyear v The Executors of the Estate of Heather Goodyear

**Death of a spouse was also central to another noteworthy case in 2022, albeit under very different circumstances: Paul Clifford Goodyear v The Executors of the Estate of Heather Goodyear (Deceased).**

In January 2021 Mr and Mrs Goodyear settled their financial remedy proceedings by way of a consent order. In round terms the capital was split reasonably equally so that each party received just over £500,000 and there was a pension sharing order in favour of Heather Goodyear in respect of 51% of Mr Goodyear's Shell pension, which had a cash equivalent in excess of £1 million.

*Tragically Mrs Goodyear died in August 2021.*

Mr Goodyear applied for the pension sharing order to be set aside. The executors of the estate of Mrs Goodyear opposed the application.

As His Honour Judge Farquhar, hearing the application, explained, the fundamental issue was whether or not the death of Mrs Goodyear invalidated the basis, or fundamental assumption, upon which the order was made, as is required following the Barder line of authorities.



Judge Farquhar found that it could not automatically be assumed that a pension sharing order has been entered into for the purposes of ensuring that each party has an income, and that the death of one of the parties would necessarily mean that the fundamental assumption behind the order was invalidated. The nature of a pension can be flexible, and there will be cases where the pension is

treated in precisely the same way as any other capital, and is simply divided equally. It was therefore incumbent upon the Court to understand the reasoning behind the pension share, in order to consider whether the death of Mrs Goodyear invalidated the basis, or fundamental assumption, upon which the order was made.

*After reviewing the evidence Judge Farquhar was satisfied that the thrust behind the pension share was in order to ensure that the parties had sufficient income during their retirement. If it had been known that Mrs Goodyear would not live more than 6 months after the order was entered into then the same pension share would not have been agreed.*

Accordingly, the death of Mrs Goodyear had invalidated the basis, or fundamental assumption, upon which the order was made, and the order was therefore set aside. The question then was: what order should be made? It was submitted on behalf of the estate that if the court was satisfied that the order should be set aside then it may be appropriate to amend the pension share to one of



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capital equalisation, on the basis that Mrs Goodyear had ‘earned’ an equal share of the pension following a 38 year marriage. This would result in a percentage share of 49.5% if the post separation contributions were ignored or 45.06% if they were taken into account.

*The argument on behalf of Mr Goodyear was that the reality was that the purpose behind the pension share was to meet the income needs of Mrs Goodyear, and as those needs no longer existed there should be no pension share at all.*

Judge Farquhar was satisfied that, bearing in mind the hybrid nature of a pension, both arguments were correct. Mrs Goodyear had ‘earned’ her share of this particular pension through this long marriage, but it would also have been required to provide for her income needs, at least in part. It was clearly a legitimate desire for Mrs Goodyear to be in a position to pass on the capital in which she was entitled to share to her beneficiaries, so long as the needs of the parties were met. The sole question was as to how

to fairly reflect these conflicting positions in terms of a pension share.

Judge Farquhar concluded that the correct level of pension share to order was one of 25% of Mr Goodyear’s Shell pension. This would ensure that he receives some 75% of the pension income that had been earned throughout the marriage, but would also provide a significant pension credit for Mrs Goodyear’s estate. This would appropriately reflect the ‘earned’ share, whilst providing a ‘discount’ for the many years over which income will not be required for Mrs Goodyear.

The order balanced the competing arguments as to the nature of the pension asset in a way that fairly met the income needs of Mr Goodyear, and a fair sum for the estate of Mrs Goodyear.



# Parental alienation expert

## F v M & Others: Qualifications of parental alienation expert

**Parental alienation, where a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent (as per the Cafcass definition of alienation) is an increasingly common issue raised in disputes between parents over arrangements for their children.**

In order to determine whether there has been parental alienation the court may seek the assistance of an expert, and obviously the findings of the expert are likely to play a central role in the court's decision.

In F v M, however, the mother called into question the qualifications of the expert, raising questions over the regulation and instruction of experts in such cases.

Very briefly, the case concerned arrangements for two children, aged 13 and 10. An expert was jointly instructed, whose CV set out her expertise in parental alienation. She prepared a report which concluded that the mother was alienating the children, and made recommendations about where the children should live.

The court duly found that the mother had alienated the children against the father, and ordered that they be moved from the mother to the father.

The mother applied for the case to be reopened and for a re-hearing, on the basis that the expert was not appropriately qualified or regulated, and that too much weight was attached to her report.

The mother's application was refused. The expert's CV had been approved by all parties, she fulfilled the letter of instruction, and she fulfilled the role which was expected of her. Further, there was no reason to think that a rehearing of the issue would result in any different finding. The judge did, however, hold that the expert could be named.



# Family law on the front line

Q v R

## Should the court make an order that would have the effect of returning a child to a war zone?

Family law, by its very nature, deals with almost all aspects of human experience. As such, it is affected by, and involved in, everything that goes on around us, including major events on the world stage.

This was amply demonstrated by the case *Q v R*, in which family law was, quite literally, on the front line. The case involved what must have been a very difficult decision for Mr Justice Williams: should he make an order that would have the effect of returning a child to a war zone?

The mother of the child is Ukrainian and Hungarian, and his father is British and South African. The child, who is just five years old, is a British and Ukrainian national. Prior to the invasion of Ukraine by Russia in February 2022, the mother and the child had been living in Ukraine.

The father was living in the UK. When the war broke out the mother, like so many others, sought to escape to the safety of the West. She and the child arrived in this country in April, where they lived with a host family in southern England. However, the situation changed in mid-June, when the question of the mother and child returning to Ukraine arose. Concerned by this the father obtained a prohibited steps order preventing the mother from removing the child from the jurisdiction.

*In July the mother made an application under the Hague Abduction Convention for the summary return of the child to Ukraine. The father opposed the application, making the obvious claim that a return order would expose his son to a grave risk of harm or other intolerable situation, by reason of the war.*

Importantly, the town to which the mother wished to return lies in the far west of Ukraine and had not been involved in any sort of hostilities - the nearest that hostilities had come was more than 100 miles away.

Life in the town goes on not quite as normal, but with minimal or limited disruption. Thus, the child's return to that environment would seem not to expose him to any immediate or direct risk of exposure to armed conflict, which would only come with a significant escalation in the extent of the war.

The risk of missile attack could not be ruled out, but seemed to be at a low level. That coupled with the promises given by the mother to protect the child and her ability to remove him to a place of safety (including to Hungary which was close by and a country in which the mother was a citizen) and her promises to promote the child's relationship with the father, the Judge was satisfied that the threshold for a grave risk of harm had not been established. Accordingly, Mr Justice Williams ordered the return of the child to Ukraine.



# Ownership of cohabitants

Lee Hudson v Jayne Hathway

## The last noteworthy case involves the ever-tricky subject of constructive trusts.

Before looking at the case, a very brief explanation of constructive trusts, for the benefit of the uninitiated.

For any number of reasons the true ownership of land may differ from that stated on the deeds. In such a case the owner(s) stated on the deeds are said to hold the property on trust for the true owners, who are said to hold a 'beneficial interest' in the property.

A constructive trust is a trust of land imposed by the court where the court finds that it was the common intention of the parties to share the beneficial interest in the property, and that the party asserting a claim to a beneficial interest has acted to his or her detriment in reliance on that common intention.

Constructive trusts often arise in cohabitation cases, where the court has no power to adjust ownership of property, in the way it can on a divorce. Thus, for example, a cohabitee who had lived in a property owned by their former partner may claim that a constructive trust arose, giving them a share in the property, as the partner had agreed to them having a share, and they had acted to their detriment in reliance upon that agreement, for example by paying the mortgage on the property.



## So to the case of Hudson v Hathway.

The case concerned an unmarried couple who bought a house in joint names, in 2007. The relationship broke down in 2009, and the man moved out of the property. In 2013 the man sent an email to the woman stating that he had "no interest whatsoever" in the property. It was agreed that the house should be sold, thereby releasing the man from the mortgage on the property.

Unfortunately, and for reasons we need not go into here, there was a delay selling the property. Impatient, in 2019 the man applied to the court for an order that it be sold and that the net proceeds be divided equally. The woman agreed to the sale, but argued that she was entitled to all of the proceeds of sale under a constructive trust created by the 2013 agreement.

The question arose as to whether, in these circumstances, it was necessary to show that the woman had acted to her detriment in reliance on the agreement.

*The man claimed that detriment was required, and that the woman had not acted to her detriment. The woman claimed that detriment was not required, but that if it was, she had acted to her detriment.*

The Court of Appeal held that detriment was required, but that the woman had acted to her detriment, by desisting from claiming against assets in the man's sole name acquired during their relationship. Accordingly, the woman was entitled to the entire proceeds of sale.

For more information on this report or to answer any questions, please contact:

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