

THE HIGH COURT**FAMILY LAW****[2012 No. 25 M]****IN THE MATTER OF JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989, AND IN THE MATTER OF THE FAMILY LAW ACT 1995,****BETWEEN****F.L.S.****APPLICANT****AND****X.X.L.****RESPONDENT****(FICTIONAL INITIALS)****SUPPLEMENTAL JUDGMENT of Mr. Justice Henry Abbott delivered on 23rd day of January, 2015, as clarified on 6th day of February, 2015**

1. This judgment is supplemental to the judgment delivered herein on 31st July, 2014, in which the reliefs ordered (*inter alia*) consisted of the making of a property adjustment order in respect of lands which are hatched in green and purple on each side to the back entrance of C.H.. When the advisers of the parties investigated the detail of effecting such property adjustment orders (the scheme for which was enabling the applicant to develop some or all of the lands for housing purposes, with a view to sale), it transpired that to gain access to the lands hatched in green for the purpose of having a realistic chance of obtaining planning permission for a residential development, the entrance to C.H. would have to be moved eastwards, leaving a sufficient width on the west to have the possibility of constructing an entrance and roadway up to the standards likely to be required by the planning authority.

2. I heard the evidence of Mr. T.O'L, who had prepared a number of alternative maps, setting out with reference to description and coloured hatching and delineation, the routes of the proposed new entrances. I heard the submission of Mr. Rogers S.C., on behalf of the applicant, and Mr. Ragnal O'Riordan S.C., on behalf of the respondent. The submissions on behalf of the respondent were that the proposals outlined in the evidence of Mr. T.O'L. and the submissions of Mr. Rogers were not consistent with the judgment, and also that the proposals involved the encroachment of a shed at the back of the C.H. Farmyard. I rejected the submissions relating to the proposals being inconsistent with the judgment on the basis that the whole scheme of the judgment consisted of a means facilitated by way of property adjustment order, whereby the applicant could develop and sell some lands to cater for the hump of cost due to the fact that there were four young children whose requirements might not be met entirely by the maintenance likely to be paid or affordable by the respondent.

3. The submissions on behalf of the respondent relating to the shed have been met in large part by the proposal represented on Mr. T.O'L's map No.4, and described (in relation to disputed shed) as "blue hatched area returned to C.H. Farmyard together with a small modification thereof in this judgment".

Overall Conclusion

4. I accept the proposal contained in Mr. T.O'L's map No.4 as depicted by his diagrammatic sketch showing the new entrance to the green hatched area on the west with the new entrance to C.H. represented by the entrance running adjacent and parallel to the new entrance, with a dog leg to the left as it approaches C.H. I also direct that the order be made so as to allow the blue hatched area to be expanded so that there is an access area equivalent to the access distance on the south available for servicing and repair of shed on the west. I note that map No. 4 has a legend on it, consisting of "concession of lands from purple area to provide 5m driveway to link C.H. entrances", and that the respondent, through his counsel, opted not to press for that concession. I do propose to incorporate that concession in the light of the further clarification when this supplemental judgment was presented in its indicative form.

5. The obligation on the applicant will be to provide a "like for like" entrance to C.H. as described herein at her expense. Various estimates were made in relation to the cost of providing such an entrance, and counsel for the applicant indicated that such cost, if under or within the area of €40,000, would be commensurate with the likely benefit of obtaining a reasonable planning permission for housing on the section hatched green. However, the cost of such an alternative entrance would be best estimated by the representatives of the parties, (Mr. T.O'L, Mr. H.), specifying a practical technical description of the site works, preparatory works and time scale for the works, in accordance with this judgment.

6. A preliminary to the carrying out of the works is to obtain outline permission from the planning authority in respect of the entrance into the green area, as described by Mr. T.O'L. in map No.4, and also the realignment of the entrance to C.H.. The cost of such outline planning permission shall be borne by the applicant, and shall be sought forthwith, with the respondent signifying in writing his agreement, - as the person having paper title, - to the planning authority proceeding with the application. The said representatives of the parties should proceed forthwith to make a photographic record of the existing entrance for reference purposes, and also an inventory of all existing services, including drainage facilities available to the existing entrance so that plans may be made for replacement and comparisons available for the purpose of resolution of any disputes between the parties relating thereto. Map No. 4 has been signed by me in the presence of counsel for the parties on 6th February, 2015.

7. The said representatives should prepare by agreement an outline specification for the works entailed in providing the alternative entrance on a like for like basis, and prepare a flowchart and timescale of works and/or alternative arrangements for transitional

access. If such preparatory documentation cannot be agreed by the parties within three months of this date, then the same may be prepared unilaterally by the applicant with liberty to apply to court for approval of same. The applicant shall be responsible for full insurance cover and indemnity appropriately during the course of the works. The parties shall have liberty generally to apply to the court for the purpose of facilitating the works and development/securing of planning permission of all lands being taken on foot of the property adjustment orders. The maps associated with the property adjustment orders shall be prepared to allow for the realignment/reconfiguration of the access so that the respondent retains title to the new alternative access.

Access to M

8. Counsel for the applicant drew the attention of the court to map No. 5 of Mr. T.O'L. showing what counsel claimed was a right of way from A to B, with the position of M. identified by an arrow. He expressed his apprehension that the route of this way was owned to the midline by the respondent and, in large measure, by a relative of his who had agreed to buy the B. lands which were situated on the far side of M.. He asked the court to make a declaration to secure a right of way for M. along this route. For the time being, I refuse to make this order, as it appears that pursuing same might prejudice the vital sale of the B. lands to the relative. Also, I am far from satisfied that this way is a right of way in the sense of an easement but may, by reason of the fact that there are houses on the northern side, might be what is generally regarded as a "tertiary county road". The tertiary county roads arise by reason of a declaration by the local authority that they are to be declared public. This has had the effect of establishing the obligation of the local authority to maintain same. Even if such a declaration has never been made, there may be local authority involvement in maintenance through custom and usage and if neither situation pertains, it may well be that the way is one to which a public right of way exists anyway. In view of this set of alternative options, it is not for the court to take on the mantle of adviser to the parties, but I note that the solicitor for the applicant will look into these matters and, if necessary, a further court application to achieve whatever clarity is necessary consistent with the judgment (and I am not sure that the judgment would entirely encompass such relief), may be made to the court.