

THE HIGH COURT

FAMILY LAW

[2018 No. 17 M.]

IN THE MATTER OF THE FAMILY LAW ACT 1981

AND IN THE MATTER OF THE FAMILY LAW ACT 1995

AND IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

AND IN THE MATTER OF THE CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010

BETWEEN

X.Y.

APPLICANT

AND

Z.W.

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 15th day of February, 2019

1. In these proceedings, the applicant claims various reliefs under all of the legislation referred to in the title hereof, but at the hearing of the proceedings, the claims for relief were confined to claims under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ("the Act of 2010"). The applicant seeks the following orders under the Act of 2010:-

- "(i) an order declaring that she is a qualified cohabitant within the meaning of s. 172 of the Act of 2010;
- (ii) an order pursuant to s. 174(1) of the Act of 2010, granting the applicant such property adjustment order as the court may deem appropriate;
- (iii) an order pursuant to s. 175 of the Act of 2010 for such periodic maintenance order, secured periodic payments order and lump sum order, for the benefit of the applicant in such sum or sums as the court may deem appropriate;
- (iv) such orders pursuant to s. 187 of the Act of 2010 in favour of the applicant as to the court shall seem meet;
- (v) if necessary, an order pursuant to the provisions of s. 197 of the Act of 2010, directing the respondent to provide to the applicant particulars of all property and assets held by the respondent required for the purposes of the within proceedings;
- (vi) an order pursuant to s. 187 of the Act of 2010, providing for such pension adjustment order and/or pension preservation orders in support of the applicant as the court may deem appropriate;
- (vii) an order pursuant to s. 194 of the Act of 2010 for provision for the applicant out of the estate of the respondent; and
- (viii) such further or other order as the court shall deem fit."

2. Since all of the reliefs sought by the applicant are dependent upon her establishing to the satisfaction of the Court that she is a "*cohabitant*" as defined in the Act of 2010, it is appropriate in the first instance to consider that definition and how it has been interpreted by the courts to date. Section 172 of the Act of 2010 provides:-

"172.—(1) For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

(2) In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:

- (a) the duration of the relationship;
- (b) the basis on which the couple live together;
- (c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;
- (d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;
- (e) whether there are one or more dependent children;
- (f) whether one of the adults cares for and supports the children of the other; and
- (g) the degree to which the adults present themselves to others as a couple.

(3) For the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.

(4) For the purposes of this section, 2 adults are within a prohibited degree of relationship if—

(a) they would be prohibited from marrying each other in the State, or

(b) they are in a relationship referred to in the Third Schedule to the Civil Registration Act 2004 inserted by section 26 of this Act.

(5) For the purposes of this Part, a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period—

(a) of 2 years or more, in the case where they are the parents of one or more dependent children, and

(b) of 5 years or more, in any other case.

(6) Notwithstanding subsection (5), an adult who would otherwise be a qualified cohabitant is not a qualified cohabitant if—

(a) one or both of the adults is or was, at any time during the relationship concerned, an adult who was married to someone else, and

(b) at the time the relationship concerned ends, each adult who is or was married has not lived apart from his or her spouse for a period or periods of at least 4 years during the previous 5 years.”

3. Prior to commencing a relationship with the respondent, the applicant had never been married previously and had no children. The respondent had married once previously but at all material times for the purpose of these proceedings had been divorced. The respondent has a daughter who was a pre-teen when the parties’ relationship first commenced, and while her date of birth was not provided, it is apparent from the pleadings that she will turn 22 years of age during the course of this year (if she had not done so already). She remains a dependent child of her father.

4. Since there are no children of the relationship between the parties, and since none of the provisions of s. 172 of the Act of 2010 that would disqualify the parties from being qualified cohabitants as defined in that section have any application in this case, the task of the Court in the first instance is to determine whether or not the parties lived together as a couple in an intimate and committed relationship as required by s. 172(1), and having regard to the factors set out in s. 172(2) of the Act of 2010, and, if so, whether or not the applicant was a qualified cohabitant within the meaning of s. 172(5) of the Act of 2010. This requires the applicant to satisfy the Court that, immediately before the time that the relationship ended, the parties have been living together for a period of five years or more. The respondent did not even attempt to argue that the parties had not been cohabitants (within the meaning of the Act of 2010) at all, and so the main focus of these proceedings was on whether or not they had been cohabitants for a period of five years or more prior to the time that the relationship ended.

5. Both parties relied upon the decision of the Court of Appeal in the case of *M.W. v. D.C.* [2017] IECA 255. That case came before the Court of Appeal by way of case stated from this Court wherein three questions were asked, two of which are relevant to these proceedings:-

(i) Is the period specified in s. 172(5) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to be strictly interpreted?

(ii) If the answer to question (i) is yes, can a court overlook periods of separation in a relationship which has ceased and recommenced between the parties.

6. In that case, the parties were parents of two dependent children, and accordingly, to meet the requirements of the Act of 2010, the applicant had to satisfy the Court that the parties were qualified cohabitants for a period of two years prior to the end of the relationship, and not five years as in this case. It appears from a summary of the facts in the judgment that the parties had resided together from 1996 up to February 2010, and the respondent in that case asserted that the applicant then left the shared residence for a period. The exact period appears to have been in dispute but the respondent appears to have claimed it was four months, and the applicant appeared to have claimed that it was four weeks. In any case, they resumed living together in June, 2010, until February, 2011, when the relationship ended.

7. Counsel for the applicant submitted to the Court that a strict and literal interpretation of the Act of 2010 could defeat the purposes of the Act to give a cohabitant, as defined, a right to apply to the court for an order under s. 173. However, the Court of Appeal (Finlay Geoghegan J.) concluded, at para. 25 of the judgment, that:-

“... the ordinary and natural meaning of the words used by the Oireachtas in s. 172(5)(a) of the 2010 Act when viewed in the context of the entirety of that section and Part 15 of the 2010 Act is that the relevant period is a single period of two years immediately before the time that the relationship ended.”

8. At para. 29 of the judgment, Finlay Geoghegan J. pointed out that the concept of “living with the other adult as a couple” or living “together as a couple” as provided for in s. 172 is a legal concept for the purposes of that section. At the same time, she acknowledged that practical issues such as demands of work or ill health are such that the section does not require two persons to live physically at all times in the same shared premises. So, she continued:-

“I conclude that the legal concept of living together as a couple for the purposes of s. 172 does not require two persons to live physically at all times in the same shared premises. Hence, notwithstanding that a couple may not be physically living day by day in the same residence, during the two-year period immediately prior to the end of the relationship s.172 envisages that a court may decide on all the relevant facts that they, nonetheless, continued to live together as a couple during that period.”

9. Accordingly, the Court of Appeal concluded that the first question put by the High Court should be answered in the affirmative, *i.e.* a strict interpretation of the Act of 2010 is required. As to the second question, it was the view of the Court that this was not a question of law at all and that s. 172(5) requires the High Court to determine whether on the facts before it, the parties were living as a couple during the entirety of the period prescribed by s. 172(5), subject to the qualification that there will be periods in the ordinary lives of a couple when for one reason or another, they will be required to live in different places and that s. 172 envisages that a court may decide on all the relevant facts that notwithstanding such periods, a couple continued to live together for the

purposes of that section.

10. The respondent places some reliance on this part of the judgment against the factual background of these proceedings to which I now turn.

Background Facts

11. While there was some disagreement between the parties as to the precise commencement date and the precise date on which the relationship of the parties finally ended, the respondent at the hearing of these proceedings was prepared to accept those dates as contended for by the applicant. She recalls that the relationship commenced in January, 2007, and she claims that the relationship ended in April, 2016. While the respondent accepts that the relationship that they had at that point in time did indeed end in April, 2016 it is his contention that there were at least three other occasions on which their relationship broke down completely, and that on each occasion, the applicant ceased to reside with the respondent. While the applicant accepts that there were periods during which she moved out of the respondent's house, she denies that she ever actually ceased to reside with the respondent (until April, 2016) or that at any time prior to April, 2016, the relationship between the parties was severed. It is her contention that the parties argued regularly and she would move out for short periods for no other reason than to allow the parties have to some space and to allow the relationship to repair. The applicant contends that these arguments were normal and that, substantively, their relationship was just the same during these periods (which in her direct evidence she said were typically for a few days or a week, although she also said that the longest such period was two months in 2013). In the terminology of the Act of 2010, the applicant contends that during any period when she was not resident under the same roof of the respondent up to April, 2016, the parties remained a couple who were in an intimate and committed relationship.

12. It is not in dispute that at all times during their relationship, the applicant was financially supported by the respondent. Although the applicant maintained that she did some housework for the respondent, even on her own evidence, this does not appear to have been very significant, and the respondent had a housekeeper.

13. The applicant was supportive of the respondent in his activities, accompanying him to many events which, although of a social nature on the one hand, also have an importance in the life of the respondent from a business perspective.

14. The applicant gave evidence that she had previously had some work experience doing bookkeeping/accounting work, and the respondent gave evidence that he encouraged her to train and achieve qualifications in this field. He said that he paid for her to do a course, and he brought her to the classes in the evening and waited for her to finish. However, the applicant did not finish the course. The respondent subsequently assisted the applicant in setting up a business, which became a major source of contention between the parties. I will return to this later.

15. The applicant gave evidence, which was not disputed, that she developed a very close relationship with the respondent's daughter. She said that the relationship of the parties became serious very quickly and she moved in with the respondent in 2007. Apart from the social activities to which I have referred, she said that they also did a lot of other things together, such as walking or playing golf. They went on holidays together. The applicant said that at this stage in their relationship they were very much in love and always affectionate to each other.

16. The parties became engaged (for the first time) on 23rd December, 2009. However, they did not decide on a date for the marriage. The applicant said they simply never got around to doing so. The applicant said that as far as she is concerned, the engagement only ended in April, 2016, when their relationship finally came to an end.

17. The applicant kept diaries in which she generally recorded factual rather than emotional matters. So the entries largely comprise notes as to what she did on a particular day, where she was or where she went and the company she kept. The applicant brought with her to Court the original diaries for the years 2007, 2011 and 2013. She was unable to locate diaries for any other years.

18. The applicant said that the parties decided to try and have children. When this was not successful naturally, the applicant had IVF treatment, with the support, emotional and financial, of the respondent. Her first IVF treatment was in September, 2012, in Dublin. Unfortunately the treatment was unsuccessful. The same month the respondent gave the applicant a birthday present of a car. In either 2013 or 2014, the applicant again had IVF treatment, this time outside the country. She herself was unsure of the year. The respondent thought it was 2014. It seems likely it would have been recorded in her diary if it was 2013. Again, this was unsuccessful. The applicant again had further IVF treatment in 2015, which, regrettably for the parties, was again unsuccessful.

19. It is the applicant's case that she at all times lived with the respondent in his residence. The only exceptions were when they were on holidays or when she might need "headspace", following a row or a disagreement of some kind. In her evidence in chief she was asked how long she might spend away on such occasions. She answered that it could be for a few days or a week. However, she said that the longest such period was two months in 2013. During such periods out of the respondent's residence, the applicant would stay either with one of two close friends or with her parents. She said that during such periods she considered that their relationship was "just the same". She said that she never "moved out". She left most of her belongings in the respondent's residence. It was put to the applicant that the respondent had said in his affidavit that there was a period of six months between July and December, 2012 when the applicant did not reside with the respondent. The applicant denied this. She said the parties had an argument on 29th October, 2012 when she left the residence for a period, but she returned on 4th November, 2012. She acknowledged that she may have been gone for a period again in December, 2012.

20. It was then put to the applicant that she did not stay one night with the respondent in his residence during the period commencing on 9th, 10th or 11th November and ending on 23rd December, 2012. The applicant was uncertain about this, but she did not deny that this could have been the case and that it appeared to be indicated by her diary. On 19th November, 2012, her diary records that the respondent told her to go and stay in another property that he owned. The applicant did not do so. The applicant agreed that she filled her car with clothes and other items that were important to her when leaving the respondent's residence in mid-November, 2012. However, she denied that this was a split in the relationship of the parties. She said she just needed to get away for a couple of weeks.

21. In cross-examination the applicant agreed that she met the respondent's sister for lunch on a day in December, 2012. However, the applicant could not recall the conversation that she had with the respondent's sister in any detail. She was asked if she recalled telling the respondent's sister that she (the applicant) did not think at that time that there was any chance that the parties would resume their relationship, and she said she had no recall of saying so. While the applicant could not recall the content of this conversation, the respondent's sister gave evidence about this lunch engagement and the conversation that took place. She said that she and the applicant got along quite well. She knew from the respondent that the parties had not been getting along well and she was concerned to meet the applicant to see if she was happy. She said that she enquired of the applicant if there was any

chance that the parties would reconcile, and the applicant said no, that she had been very unhappy with the respondent. At this time the applicant was talking about setting up a new business.

22. The applicant returned to the respondent's residence on 23rd December, 2012, when they shared intimacy. The next day, Christmas Eve, the respondent was meeting friends for lunch and he invited the applicant to join him. Her diary records that she said to the applicant she did not think it was a good idea. Her diary then records that the respondent asked the applicant if he could tell the others at lunch that the applicant had been to visit him the day before. The evidence did not establish how she answered this question.

23. The parties did not spend Christmas Day, 2012 together, although the applicant agreed that in previous years she had done so. However, on this occasion the respondent spent Christmas Day with his brother and the applicant spent it with her family. The applicant said that she had already decided to do this before going to the respondent's residence on 23rd December.

24. It is apparent from the diary entries that the parties were not getting on well in the days that followed Christmas Day, 2012. Although it is not entirely clear, and the applicant could not recall, it is reasonable to infer from the diary entries that the applicant did not stay with the respondent on 28th, 29th or 30th December, 2012. On the last date, the diary records that the respondent had a party for his cousin in his residence at which there were about 20 people present, but the applicant did not attend. The applicant appears to have stayed in the respondent's residence again on 31st December, 2012 and 1st January, 2013, but her diary then records that she "left again" on that date.

25. It was put to the applicant in cross-examination that from at latest the beginning of November, 2012 until 23rd December, 2012, she did not stay with the respondent. The applicant appeared to accept that this was correct without expressly saying so. It was also put to the applicant that she did not stay at all in the respondent's residence between 2nd January, 2013 and early March, 2013. The applicant agreed that she was away for much of this period, but was uncertain if she was away for all of it. She said that during this time she stayed with her friends and family.

26. In a diary entry of 13th January, 2013, the applicant records that the respondent said in an interview that the parties might be getting back together again, but she for her part said in another interview that they would not be getting back together again. In cross-examination, the applicant accepted that she said this, but claimed that she was put on the spot and decided to say "no" to the question because it was none of the interviewer's business. This was a television interview, and the applicant agreed that she was "used to the camera". In cross-examination, the applicant also said that she was not with the respondent at the time, *i.e.* that night, so she thought it appropriate to say "no" to the question. Her exact words were: "I wasn't with [the respondent] at the time ... that night, so I said "no"."

27. While the parties were apart, they continued to have communication whether by phone or by text. The applicant's diary records that the parties spoke on 1st March, 2013 and the applicant agreed to go to the respondent's residence on 3rd March. Her diary then records that on 3rd March the respondent again proposed marriage to the applicant, and they again discussed having a child, or words to that effect. It appears that the parties then resumed their relationship and at the end of March spent a week in Portugal.

28. However, relations fractured again in early May, 2013 and it was put to the applicant that between 9th May and 27th June she did not stay in the respondent's residence at all. In answer to this question, the applicant said that she was with family or friends most of this time. She also accepted that for the vast majority of the period between November, 2012 and the end of June, 2013 she stayed in places other than the respondent's residence, but she claimed that her base at all times was that residence.

29. A diary entry on 11th June, 2013 refers to a news item quoting one of the applicant's friends (whom she stayed with regularly) as saying that the applicant and respondent "were finished for good". On 12th June, 2013 the diary records another publication stating likewise. On the same day there is another diary entry referring to the respondent coming home and cooking and in this entry there is a cryptic reference to a third party who is simply referred to "as someone". This entry has relevance to evidence given by the respondent that that third party was a woman with whom he had a brief relationship. I will return to this later.

30. The diary records that on 14th June, 2013, the applicant went to the respondent's residence in mid-afternoon to "pick up some clothes". The applicant also records on this date that "my photos were gone from the kitchen but not from anywhere else". The final entry on this date records that the respondent attended a concert with a number of other people, not including the applicant, but including the third party referred to above.

31. On 21st June, the applicant records in her diary that she went to the respondent's residence to "pick up some shoes". She also observes that her photos were now gone from the hallway. On 27th June, the applicant visited the respondent at home. The respondent cooked the applicant a "lovely dinner". There is an entry suggesting intimacy. On 28th June, 2013, the diary entry concludes with a note that the parties drove "home" to the respondent's house. On 29th June, the diary records that the respondent asked the applicant if they could have a child together.

32. In June, 2013, the applicant gave an interview to a magazine in which she referred to the breakup of the parties' relationship, and the fact that they had just got back together. The applicant acknowledged that she had been gone for a period of time, following an argument. She said that during such times the parties would still stay in touch and the respondent would look after her needs by sending her money. The applicant agreed that following the final break in the relationship of the parties, in April of 2016, the parties would still stay in touch with each other by phone and by text, and the respondent continues to assist her financially.

33. There were no diaries available after 2013. The applicant was asked if there was a further breakdown in the relationship of the parties between January and March, 2014. She confirmed that they had arguments but she does not recall not living with the respondent during this time. It was put to her that the respondent started going out with another companion during this time, but the applicant said she was unaware that that was so.

34. It was put to the applicant that between February and April of 2015, the parties again lived apart. The applicant said she did not recall. It was also put to the applicant that the respondent went to quite a number of events by himself during this time, and the applicant did not disagree. The applicant was asked about specific events which she did not attend with the respondent at this time, and she accepted that this was the case. She also accepted that the respondent went to Portugal by himself (or at least not with the applicant) at around this time and she acknowledged this.

35. The applicant was asked about typed letters which the respondent sent to the applicant at her parents' address in March, 2015. The applicant said that the respondent always wrote to her at her parents' address, even when she was living with the respondent, and she did not know why he did so.

36. The applicant agreed that she did not attend a specific function with the respondent in May, 2015, and that he was accompanied by another lady to that function. This was the same lady, referred to as "someone" in the applicant's diary, who was in the company of the respondent at his residence on 13th May, 2013, when the applicant was not there.

37. On re-examination, the applicant denied that she knew the respondent was having a relationship with another party between January and March, 2014, and again in March, 2015. She said that she was having IVF treatment at that time (it's not clear specifically which time she was referring to; on her own evidence she had IVF treatments in July and November, 2015 and before that, in Dublin in 2012 and in another country either in July, 2013 or 2014 – see para. 18).

38. The applicant confirmed that, early in their relationship, in 2008, the respondent leased a premises on behalf of the applicant with a view to her running a business. She agreed to participate in this venture, but it is clear from her evidence and indeed that of the respondent that this was a source of much contention between the parties. The respondent funded the venture and considered that the applicant was not fulfilling her end of the bargain by spending enough time working in the business. For her part the applicant said that she had to attend a lot of events with the respondent and also assisted in caring for the respondent's daughter and these factors interfered, at least to some extent, with her ability to spend time in this business. This business closed at the end of May, 2014. It was put to the applicant that the venture had cost the respondent of the order of €240,000, but the applicant did not know whether or not this was correct.

39. The applicant also gave evidence that she helped to care for the respondent and in particular assisted him in managing a medical condition from which he suffered. In her diary for 2013, there is a record of a period during which it appears the respondent was very unwell and was admitted to hospital. The applicant visited the respondent every day and the entries during this period make it clear that the applicant was very upset and worried about the respondent and cared for him as best she could.

40. The applicant gave evidence about other matters of some significance that occurred during her relationship with the respondent. There is however no need to delve into these matters for the purpose of this decision. The applicant's case concluded with her own evidence. No witnesses were called to give evidence on her behalf.

Evidence of Respondent

41. At the outset, it should be observed that the respondent freely accepted that his memory for dates is not good and that he found the diaries of the applicant to be very helpful to him in this regard. The respondent gave evidence that the parties were introduced in September, 2006 and started dating soon afterwards. The applicant was living at home at the time, and had no income of her own. He said that he assisted her with repayment of a credit card debt and also encouraged her and helped her to enrol in an accountancy course. This was sometime around 2007/2008. The respondent recalled the applicant staying with him occasionally during this time, but it was his recollection that she did not move in until the end of 2008 or the beginning of 2009.

42. The respondent said that he wrote letters to the applicant wherever she was living at the time and he exhibited certain letters in an affidavit refer to these letters. I refer to these in more detail later in this judgment.

43. The respondent said that he felt that the applicant needed a purpose in life and he encouraged her to start a business. He said that the applicant said that she would like to do so and they came up with an idea in respect of which he secured the lease of a premises. He described problems with the business and frustrations that he had with the applicant who he felt did not commit herself adequately to the business. He said the parties became engaged to be married in December, 2009.

44. The respondent agreed with the applicant's evidence in relation to the efforts of the parties to have a child and the occasions on which the applicant had IVF treatment. He said that he felt that the applicant would have been a great mother and he himself would have been very happy to have a child with the applicant.

45. The respondent said that until he saw the diaries of the applicant, it had been his view that the parties had been spilt up for the second half of 2012. He said there were two central problems with the relationship, one involving the business of the applicant and the other involving family relationships. They had a lot of arguments about these and other issues and the applicant would, on occasion, go to live with her parents for a couple of days. However, in early November, 2012, the respondent said that the parties "broke up". He specifically recalled the applicant packing her car full. He said that this was different to previous occasions when they had rows and the applicant had packed a small bag and left for a few days. In his recollection, the relationship, at this time had run its course and he said to the applicant that they should "call it a day".

46. He said that the applicant had a considerable collection of clothes and shoes (this was not disputed). She kept those in daily use in a small room off the parties' bedroom, and the remainder she kept in a much larger room. On this occasion, the applicant cleared out the small room entirely before leaving and she had not done this before. In spite of all of this, in his evidence, the respondent said that he left photographs of the applicant on display during November and December, 2012 in order to leave time to see "how matters would pan out". He said he felt there was still a possibility that the relationship might re-kindle.

47. The respondent confirmed that the applicant returned on 23rd December, 2012 when they shared intimacy. He confirmed also that the following day, he was lunching with friends and he texted the applicant to ask her if he could say they were together again, and according to the respondent, the applicant said that he could do so. He said his friends were surprised and one in particular, an old female friend, advised him that this was foolish. Later that day, he repeated this remark to the applicant and an argument ensued. The respondent said that the applicant left the following day and spent Christmas with her parents. The respondent said the parties did not meet again until 30th December, and that things did not go well on that day. They met again on 31st December, following which they separated until sometime in March, 2013. The respondent said that the applicant came and went and gradually cleared out her wardrobe (although not the large room to which I referred). The respondent said that he specifically asked the applicant to clear out all of her belongings at this point in time, but she did not do so.

48. The respondent said that in the first quarter of 2013, he went to a lot of events by himself or with a close female friend, referred to above, or with another female friend but these were platonic arrangements. However, the respondent said that sometime around May or June of 2013, he began to see other women romantically. He said that he took down all remaining photographs of the applicant in his house in January, 2013.

49. While he was unclear about it, the respondent thought that the parties got back together again sometime in April, 2013, but by the following month, they were separated again, for the month of May and June, 2013. During this period, the respondent began seeing the lady referred to at paras. 29 and 36 above. In summary, in the period between November, 2012, and the end of April, 2013, the respondent considered that he was with the applicant on three days in December 2012, and for a few weeks in April, 2013.

50. In spite of all of this, the respondent confirmed that the parties reunited in July, 2013, until early 2014. He said that in January, 2014, the applicant moved out again, and he was certain that the relationship was now fully over and that he was free to and did see others. He said the applicant was gone on this occasion for about three or four months. He said the applicant returned in April, 2014, and that the parties again tried for a baby. The applicant had IVF treatment outside of the country. The respondent was not sure exactly when this was but he thought it was probably during July and August of that year.

51. The respondent said the applicant then stayed with him in his residence until early 2015, when she left again. During this period, the respondent attended events with other female companions. He said that this was the third occasion that he recalled the applicant clearing all of her day to day belongings out of his residence, and this break also lasted about three or four months.

52. Under cross-examination, the respondent agreed that he had a poor memory for dates, and that he would have struggled with dates of events without the diaries of the applicant. It was put to the respondent that he had given no dates in respect of the breakups in the relationship to which he referred as having taken place in the years 2014 and 2015, and that he did not have any idea when these events occurred. In reply to this, the respondent said that while he could not say the precise date on which the applicant left his residence on these occasions, he was able to pinpoint, by reference to events that he attended, times from which she was definitely no longer living with him. He referred then to a number of functions that he attended in 2014, and 2015, in the company of other partners which he said he would not have done if he was still with the applicant. He referred to five specific functions.

53. It was put to the respondent that some of what he said was contradictory. On the one hand he said he considered the relationship finished in late 2012, but on the other he confirmed that he deliberately did not seek the company of other women during this period. Furthermore, in his evidence in chief, he said that at this time he decided to see how things would "pan out" and with this in mind he left pictures of the applicant up in his residence for a period. In reply to this question, the respondent said that while he considered the relationship over, he did not want to rush into meeting others, and he agreed that he was leaving the door open to be sure that it was the right decision. That became clear to him in February or March, 2013.

54. The respondent was referred to a media item of January, 2014 in which an earlier break in their relationship was described as a "setback". It was put to the respondent that "a setback" is not a complete breakdown of a relationship. The respondent says that he did not agree; he said there were three breaks in the relationship, each of which was for a significant period. He said the applicant herself referred to it as a split. He referred to the fact that he offered the applicant alternative accommodation at one stage, although she declined.

55. The respondent again confirmed that there was a breakup of the relationship in early 2015, between February and April. During these months he was at functions (to which he referred) accompanied by other females. He was again referred to another media item in which at the end of April, 2015 which recorded the parties getting back together again and in which the respondent is quoted as saying they have always remained committed to each other, and speak again of getting married. It was put to him that while there were ups and downs in the relationship, overall it was one of commitment. The respondent agreed, but he said there was no commitment during periods when they broke up. The respondent concluded his evidence in cross-examination by saying that the parties had three breaks in their relationship: the first of six months and the other two of between three and four months duration. He agreed that when they were together, the parties were committed, but they were not during these periods.

56. The respondent gave evidence as to his business affairs, which was subjected to very detailed cross-examination. Apart from intending to elicit information from him in relation to his business affairs, the purpose of this cross-examination was to demonstrate that information which the respondent had given by way of his affidavit of means (and otherwise) prior to the trial was inaccurate and in some ways inconsistent with his oral testimony and also to demonstrate the unreliability of his evidence. If he were found to be unreliable in respect of these matters, that should impact upon his credibility as a whole, and not just in relation to financial matters.

57. The respondent agreed that he has a poor memory for dates of events, and that he would struggle to remember accurately when things occurred without a prompt of some kind. So therefore he found the diaries of the applicant to be of some help. The most striking example of his poor memory was that he thought he had purchased his house five years earlier than he actually purchased it, and since that was only in 2006 it is a little bit surprising. But it is fair to say that the respondent lives a very busy life and he says that he places heavy reliance on others to record accurately his financial affairs in particular, especially where the Revenue are concerned. However, the respondent has a significant indebtedness to Revenue and in swearing his affidavit of means he actually understated the extent of this indebtedness by €189,809, against his own interests. Moreover, there were some significant items in his business accounts which he did not understand and which he said would be explained by his accountant, and while making due allowance for appropriate reliance on accountancy advice, his inability to explain these figures for himself was surprising. However, the evidence of his accountant did clarify the entries concerned and in particular that clarified there was no hidden advantage to the respondent or that he was attempting to keep information from the applicant or the Court.

58. The respondent gave evidence about how, having succeeded in negotiating a significant reduction in the indebtedness relating to and secured over to his family home, he then failed to take action in a timely manner to raise finance to buy out the original lender, a main street bank. The result of this delay was the threat of appointment of a receiver over his family home by the new owner of the loan. This was somewhat unclear, but nothing turns on the issue. It seems that the purchaser of the loan may have bought the loan from the original bank and later sold it on. In any case, eventually, and with the assistance of a close friend, Mr. V., who gave evidence, he raised through a company ("the company") the necessary finance to redeem the loan. However, that came at a heavy price, and the transaction did no more than buy the respondent some time. It resulted in the respondent selling his family home at a price of €1.45 million, on the basis that there was put in place at the same time a put/call option agreement whereby the respondent would have the opportunity to buy the house back over the course of the next 20 months, at the same price for which he sold it to the company. In the meantime, however the respondent took a lease back of the premises at a very high rental per month, and his evidence was that he has fallen behind in payment of that rental. The monies that he received from the company were used to pay off the balance of his mortgage, and also other creditors.

59. The respondent also swore in his affidavit of means that he had no pension of any kind, whereas the evidence established that he did have an approved retirement fund pension of modest value. In 2017 he received the maximum amount that he was entitled to from this pension tax free and a further sum subject to tax. The ongoing value of the pension is unclear but it might reasonably have been expected that the respondent would have at least remembered that he had the pension, at the time that he swore his affidavit of means.

60. It was clear from the evidence of the respondent, and also from other witnesses called on his behalf, including his accountant, Mr. U. and his close friend Mr. V., that the respondent has a very good business yielding a good income, but that at the same time he is under significant financial pressure owing to his level of indebtedness.

Evidence of the valuer

61. The Court heard evidence from an experienced valuer, as regards the possible rental value of the respondent's home. This was in the context of the unusually high rental value being paid by the respondent to the company. The valuer said that it was particularly difficult to estimate the rental value of the property. Having discussed it with colleagues, they had concluded it might command a rent of between €5,000 and €6,000 per month. He acknowledged that the property belonged in a specialist market for which there was little evidence available because of where it is located.

62. While no professional evidence was given to the Court in relation to the value of the respondent's residence and grounds, one witness, Mr. V., who provided the respondent with considerable assistance, both financial and otherwise, gave evidence that one valuation of the property, provided at the end of 2017, valued the property at €2.45 million. Prior to that, the property had been for sale for a period of about 12 months with a price tag of €4.5 million, but it had not attracted any interest at that price. Assuming that there was some reality to the valuation of late 2017, this means that the respondent disposed of the property to the company for a value that was €1 million less than its market value. Mr. V. explained that this was simply because the respondent had no choice; the respondent's debt had been sold by his bank to a different financial institution, who had appointed a receiver. Obviously if he did not raise funds to discharge the debt now due to that financial institution urgently, the receiver would have taken control of matters and the respondent would have faced the loss of his home immediately.

Evidence of Mr. V.

63. Mr. V. was called in evidence to prove an item of indebtedness referred to by the respondent in his affidavit if means. He confirmed that he has known the respondent for approximately 10 years and has become very close to the respondent. He had previously lent the respondent €35,000 which had been repaid, although somewhat later than the respondent had promised. About a year and a half ago, the respondent contacted Mr. V. to say he was under very significant financial pressure and in need of an urgent loan. Mr. V. agreed to help him immediately and gave the respondent, the same day, a loan of €200,000. The respondent provided Mr. V. with a promissory note, but has as yet been unable to make any repayments of the loan to Mr. V.. Mr. V. said that he is very familiar with the respondent's finances, and that while his core business was reasonably profitable, his overall financial situation is precarious.

64. Because of his personal relationship with the respondent, Mr. V. was also questioned about his knowledge of the state of the relationship between the applicant and the respondent, in particular in 2015. He recalled a specific event in March, 2015 and he said that this was the first time that he was able to identify a definite break in their relationship. According to his recollection, the parties were separated between February and April, 2015. He went on holidays with the respondent in April and the applicant did not go on that holiday. He recalled discussing the matter with another friend of the respondent, Mr. T. and they both agreed that their relationship seemed to be over and that it was for the better because it was so contentious for so long.

Evidence of Ms. X.

65. Ms. X. gave evidence that she has known the respondent since 2009 and she also has known the applicant over the same period. She said she had a very good relationship with both parties. She said that she was concerned about the applicant when the relationship broke down and she would call the applicant to see how she was faring.

66. As regards times and dates, she said she had looked at her phone and she knew that there was a break in the relationship of the parties in December in 2012 and another and more serious break in 2013. She said she knew that the respondent had a relationship with somebody else in or about June 2013 and that a picture had been taken of the respondent with another woman. She had a particular recall of events in mid-2013 for two reasons; firstly, her own birthday party and secondly a tragedy she experienced. By reference to these events she was able to identify three events in May and June, 2013, which the applicant did not attend, one of which was a meal held by the respondent in his own home. At this latter event, the respondent was with the third party already mentioned above. Ms. X. took a photograph of the respondent and that third party together.

67. On cross-examination, Ms. X. said that she would have known from both parties that the relationship had broken up in 2012. She agreed that the parties had come back together again subsequently. She described the relationship as being very "fractured" and she was aware that there had been a number of breakups and reconciliations, but the periods they spent apart seemed to her to be getting longer. She said that the applicant did leave the respondent's residence during the periods when there was a split in their relationship.

Evidence of Ms. Y.

68. Ms. Y. gave evidence that she has known the respondent for more than 30 years and considered him to be the brother that she never had. She gave evidence of accompanying the respondent to a number of events during 2015 because of the breakdown in the relationship of the parties. These events stretched over a period between February – April, 2015. She also recalled an event in November, 2014, which the respondent asked her to attend as his companion. She also referred to going on a golfing holiday with the respondent in July, 2013, when the applicant did not accompany the respondent. In the course of cross-examination, Ms. Y. said that she knows that the applicant was not living with the respondent in November/December, 2014 because the respondent told her so. It was put to Ms. Y. that the respondent had not said this himself in his evidence, but she said that she also knew it from her own knowledge because she saw the respondent at a function on 4th December, 2014, and the applicant was not there and she also saw the respondent over Christmas, 2014, and the applicant was not present at that time either.

69. Counsel referred Ms. Y. to a media item in which it was reported that the applicant had "moved back in" in April, 2013. Ms. Y. said that the parties had had "two long breaks" in their relationship. She said that she went so far as to suggest to the respondent that he should change the locks in his house because the applicant was coming back every now and again to gather belongings from the house, as she pleased.

Evidence of respondent's sister, Z.

70. I referred above to evidence given by the respondent's sister, Z., to which the applicant was referred during cross-examination. Z. related how she would speak with the respondent every day. She said that in December, 2012, the respondent told her that his relationship with the applicant was over. She asked the respondent if he would mind if she met with the applicant as she was concerned about the applicant. The respondent did not mind and she met the applicant for lunch. She asked the applicant if there was any possibility of reconciliation. The applicant said there was no possibility because she was very unhappy. In cross-examination, she denied that the applicant was in any way trying to send a message to the respondent through her. She acknowledged that the parties did get back together again after December 2012, but she did not know precisely when.

Evidence of Mr. S.

71. Mr. S. is a friend of the respondent for ten years. He gave evidence of meeting the respondent in mid-2013. He recalled it clearly because at that time he was living in the UK, and was frequently travelling to Ireland to visit his mother. On this occasion the

respondent insisted that he should stay with the respondent at his home. He gave evidence of going out with the respondent that evening. During the course of the evening they were joined by the third party mentioned earlier, who stayed the night at the respondent's home. It was clear to Mr. S. that the respondent was no longer in a relationship with the applicant and considered himself free to date others as he pleased.

Evidence of Mr. T.

72. Mr. T. is a friend of the respondent for almost 20 years. He was asked if he could recall periods during which the relationship of the parties was over. He said he found it difficult to pinpoint exact times but he did remember periods during which the parties were not together. He remembered one specific period by reference to his phone and photographs that were taken. This was March, 2015. He said he has visited the respondent's home many times. He recalled discussing the relationship of the parties with Mr. V. in or about March, 2015. He said that he was in no doubt at all that the relationship was over at this time.

73. It was put to Mr. T. that the relationship was an on/off type of relationship. Mr. T. said he was aware that the parties had many "tiffs" but the breakup in March, 2015 was more than a tiff. He said the respondent had "moved on" and he had personally introduced the respondent to another party who went on a date with the respondent about one month later. This indicated to Mr. T. that the respondent had moved on because in his opinion the respondent was not the type to date third parties while in a relationship.

74. Mr. T. said there were also two other occasions that he was aware of when the relationship was off, although he could not give details of the dates. He said that the respondent had told him at least twice previously that the applicant had left and moved home.

Submissions

Submissions on behalf of Applicant

75. It is submitted on behalf of the applicant that the Court must determine the following issues:-

- (i) were the parties living together for the requisite period?; and
- (ii) were the parties living together in an intimate and committed relationship, having regard to all of the circumstances of the relationship?.

76. It is submitted that the Court must answer these questions having regard to the credibility of the parties. In this regard, it is submitted that while the evidence of the applicant was at all times accurate, the evidence of the respondent was both inconsistent and vague. In particular, it is submitted that the evidence of the respondent was especially inaccurate in relation to his financial circumstances, and that this ought to be taken into account when considering his evidence as to the relationship of the parties.

77. It is submitted on behalf of the applicant that a couple is not living together just because they are not always living together, and that absences from the home are not inconsistent with cohabitation. This is clear from the decision of the Court of Appeal in *M.W.* in which the Court expressly stated that s. 172 of the Act of 2010 does not require two persons to live physically together at all times in the same shared premises. The relationship of the parties in this case commenced in 2006/2007, and did not finally end until 2016. The respondent invites the Court to conclude that the relationship broke down on at least three occasions, and that there were, therefore, three or four different periods of cohabitation. It is submitted that this argument should be rejected.

78. By analogy, counsel for the applicant argues that the concept of "living apart" in the context of the law applicable to applications for divorce includes living apart under the same roof, and the same rationale is transposable to a relationship of cohabitation *i.e.* parties may be living together although not always under the same roof. The applicant relies on the decision of McCracken J. in *M. McA v. X. McA (Divorce)* [2000] 1 I.R. 457 where he stated at p. 463:-

"It must be borne in mind that the right to a divorce in this country is a constitutional right arising under Article 41.3.2 of the Constitution, and that the Act of 1996, sets out the circumstances under which such constitutional right may be exercised. In construing the Act the court must have regard to the context in which words are used, namely the termination of a matrimonial relationship. Marriage is not primarily concerned with where the spouses live or whether they live under the same roof, and indeed there can be a number of circumstances in which the matrimonial relationship continues even though the parties are not living under the same roof as, for example, where one party is in hospital or an institution of some kind, or is obliged to spend a great deal of time away from home in the course of his or her employment. Such separations do not necessarily constitute the persons as living apart from one another. Clearly there must be something more than mere physical separation and the mental or intellectual attitude of the parties is also of considerable relevance. I do not think one can look solely either at where the parties physically reside, or at their mental or intellectual attitude to the marriage. Both of these elements must be considered, and in conjunction with each other.

Applying this test, I have no doubt that, just as parties who are physically separated may in fact maintain their full matrimonial relationship, equally parties who live under the same roof may be living apart from one another. Whether this is so is a matter which can only be determined in the light of the facts of any particular case."

79. It is submitted that in this case, the applicant at all times considered that she was in a relationship with the respondent until April, 2016. While the respondent argues that the relationship between the parties broke down on three occasions, the applicant argues that his conduct towards the applicant would suggest otherwise; he supported her at all times financially and also emotionally in the context of her efforts to have a child, which continued up to 2015. Moreover, throughout the entire period, the applicant did not live anywhere else. All the evidence suggests that while this couple tolerated absences from each other, at all times they continued to have a deep regard for each other, they hoped to become parents together, they hoped to marry and the applicant wore her engagement ring throughout the relationship.

80. Counsel for the applicant also relied on the decision of Lord Neuberger in *Re Watson (Deceased)* [1999] 1 F.L.R. 878 in which he said at p. 883:-

"However, in my judgment, when considering whether two people are living together as husband and wife, it would be wrong to conclude that they do so simply because their relationship is one which a husband and wife could have. If the test were as wide as that, then, bearing in mind the enormous variety of relationships that can exist between husband and wife, virtually every relationship between a man and a woman living in the same household would fall within s 1(1A). It seems to me that, when considering the question, the court should ask itself whether, in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living together as husband and wife; but, when considering that question, one should not ignore the multifarious nature of marital relationships."

It is submitted that the Court should adopt this approach in considering whether or not the parties were living together in an intimate and committed relationship.

Submissions of the Respondent

81. On behalf of the respondent, it is submitted that the applicant is required to meet a statutory test, which is entirely different to the concept of marriage. It is clear from the decision of the Court of Appeal in *M.W.* that the applicant must establish that the parties were living together for the period of five years prior to the end of the relationship. While it is accepted that this does not mean that the parties were at all times living together *i.e.* as Finlay Geoghegan J. acknowledged in *M.W.*, the parties may be required to spend periods apart by reason, for example, of demands of work or illness, in this case, it is submitted, there were very significant breaks in the relationship of the parties. Moreover, this is supported by diary entries made by the applicant herself. So, for example, on 12th June, 2013, the diary indicates that the applicant knew that the respondent was entertaining in his home, while in the company of another woman. On 20th June, 2013, there is an entry that notes that it is six weeks since the applicant left (the residence of the respondent).

82. In 2013, the applicant gave an interview in the course of which she confirmed that the parties had broken up, although at the time of the interview they were now back together again. Similarly, the applicant gave a television interview in the course of which she said the parties' relationship was over, and they would not be getting back together. It was submitted that the evidence established that there was a break in the relationship of the parties from early November, 2012 until March, 2013, and a further break from 9th April, 2013 to 15th July, 2013. While this was the submission, the evidence was that the second break during 2013 was between 9th May 2013 and 27th June 2013. In the latter period, the respondent had a relationship with another person.

83. In 2014, the respondent gave evidence that the relationship was over for a period of four months, approximately between January and April, 2014, during the course of which he had a relationship with another woman (not the same person as in 2013). In 2015, there was a four to six months break in the relationship, following upon a row, and the evidence of this was corroborated by three witnesses called to give evidence on behalf of the respondent.

84. It is submitted that no significance should be attached to the fact that the respondent supported the applicant in any way after the end of the relationship on any of these occasions. This is so not least because the respondent had continued to pay for certain outgoings of the applicant even after the agreed final end of the relationship in April, 2016.

85. Finally, it is submitted that the Court should have regard to the fact that the applicant did not call any corroborating evidence from any of the people that she mentioned in her own evidence, who might have been able to support her case that the relationship between the parties continued throughout the ten year period.

Conclusion

86. Before dealing with the relationship of the parties, I will address, briefly his finances and business affairs. There was a very considerable amount of time devoted to these issues, and the respondent was subjected to robust cross-examination regarding the same. I have not attempted to summarise this evidence in any great detail, because I believe the evidence established beyond the slightest doubt that the respondent is in a very challenging situation financially, although his core business remains healthy. There was no evidence that the respondent attempted to conceal any information, although there were some inaccuracies which I would ascribe to carelessness rather than any attempt to mislead. If the treatment of his family home latterly has been surprising, and perhaps not the most financially advantageous to him, I think it reflects the threat of appointment of a receiver hanging over him at the time. He is clearly paying considerably more than a market rental for the property, but more likely than not, this is intended to reflect the cost of providing funds to buy out the owner of his loan, and not a market rental. That, admittedly, is speculative, but the important point from all of this is that there was no evidence regarding the respondent's finances such as to undermine his credibility.

87. I turn now to the relationship of the parties. It is not in dispute that the parties commenced a relationship some time from the end of 2006/early 2007, and that this relationship continued, on and off until it finally ran its course in April, 2016. It is the applicant's case that the relationship was never "off" and that between 2007 and 2016, the parties lived together in an intimate and committed relationship. While she acknowledges that there were periods during which she did not stay in the respondent's house, because the parties "needed space", it is her case that their relationship did not end during these periods, and that all times she continued to wear her engagement ring. Moreover, the parties continued to have contact with each other and the respondent continued to support the applicant financially during such periods.

88. However, it is the respondent's case that in the five year period prior to the end of the relationship in April, 2016, the parties were not always in an intimate and committed relationship and did not always live together. In particular, the respondent claims that there were three periods during which the relationship was "off", and during which the applicant left the residence of the respondent, and the parties had no intention of resuming their relationship, even though they did so subsequently.

89. The first of these periods is from in or about mid-November 2012 to 27th June, 2013. The second is from January to April, 2014, and the third is the period between February and April, 2015. In relation to the first of these periods, the applicant acknowledged that she was not, at all times, living with the respondent and said that she may have stayed elsewhere for a period of up to two months. The applicant acknowledged that in or about mid-November 2012, she filled her car with belongings and went to stay with a friend.

90. The applicant had lunch with the respondent's sister, Z., at this time. Z. said in her evidence that the lunch was in December, 2012, but nothing turns on that, not least because the applicant agrees she met Z. for lunch around this time. While the applicant recalled the lunch, she had no recall of the conversation, but Z. was very clear that, during the course of this conversation, the applicant confirmed unambiguously that there was no prospect at all of a reconciliation between the parties. She also recalled the applicant saying that she hoped to establish a new business at the time.

91. On 19th December, 2012, the respondent sent a letter to the applicant at her parents' address. While the applicant maintained in her evidence that the respondent always wrote to her at her parents' address, for reasons that she never understood, the fact is that on this occasion, in this letter, he requested the return of some personal items and concluded the letter with the words "yours in friendship".

92. While the applicant, in response to a question put in cross-examination, agreed that between November, 2012 and the end of June, 2013, she stayed for the vast majority of the period with persons other than the respondent, it is clear from her evidence that in fact she resumed residing with the respondent from early March until 9th May, 2013. This is clear also from the evidence of the respondent, although he thought she did so from April. Upon the applicant's return in March, the respondent again proposed marriage, the parties discussed having a child, and they went on holidays to Portugal together.

93. However, relations again deteriorated, and the applicant again left the respondent's residence on 9th May, 2013. Following upon that, and for the remainder of May and most of June, 2013, the respondent considered that he was free to have relationships with third parties. It was his evidence, corroborated by two other parties, Ms. X. and Mr. S., that he had a relationship with a third party at around this time. The respondent did so openly. Ms. X. had particular reason to recall events around this time owing to certain events that occurred in her own life. There were also interviews given by the applicant during this period. In the course of one of these interviews, she said that the parties would not be getting back together again. In the course of another, she affirmed that there had been a break-up in the relationship, although it had since re-established (in late June, 2013).

94. Apart from 23rd December, 2012, when they shared intimacy, and a few days at the end of December, 2012, when the parties were clearly not getting on, there is no evidence that the applicant lived again at the respondent's residence between mid-November, 2012 and early March, 2013. During this period the applicant gave one of the interviews referred to above in which she confirmed that the relationship between the parties was over and they would not be getting back together again. The parties did reside together again for approximately two months from early March, but the applicant again left on 9th May, until the until 27th June, 2013. There was no evidence to suggest that during either of the periods (*i.e.* from mid-November, 2012 until early March, 2013, and 9th May, 2013 until 27th June, 2013) that the parties had any significant contact with each other, let alone that they shared an intimate and committed relationship under the one roof. All of the evidence points very much to the opposite; I think it is very clear from the evidence that the parties' relationship had broken down during each of these periods and that they had no intention of resuming their relationship, even though they did so subsequently. Nor did they live with one another during these periods. The reason for this had nothing to do with illness, holidays or the requirements of work. It was entirely due to the breakdown in the relationship of the parties, notwithstanding that they subsequently reunited.

95. Since each of these periods is within the period of five years from the time at which the relationship of the parties finally ended (April, 2016) it follows that, even if the relationship of the parties is considered, in colloquial terms, to be a single relationship over a ten/eleven year period, there were, for the purposes of s. 172(5) of the Act of 2010, two breaks in the relationship in the period November, 2012 – May, 2013, the effect of which can only be that the duration of these breaks cannot be reckoned for the purposes of calculating the five year period referred to in s. 172(5) of the Act of 2010. Any other conclusion would both fly in the face of the evidence heard by the Court and do violence to the meaning of s. 172(5) of the Act of 2010. Simply put, this means that the parties were not living together for the period of five years immediately before the relationship ended, and they were not therefore qualified cohabitants within the meaning of s. 172(5) of the Act of 2010.

96. All of that being the case it is, strictly speaking, unnecessary to consider whether there were other periods subsequently during which the parties were not living together in an intimate and committed relationship. Having heard all of the evidence for the period, however, it is desirable that I should form such conclusions as are appropriate in relation to that evidence. The evidence established that the parties resumed their relationship, living together, at the end of June, 2013. I have little doubt but that in doing so, they resumed an intimate and committed relationship for the purposes of the Act of 2010. The respondent gave evidence, however, that there was a further break in the relationship in January – April, 2014. He said that he had a relationship with a third party during this period. For her part, the applicant said that she had no recall of a break in the relationship during this period, and she had no diary available for 2014. Since the respondent himself said that he has a poor memory for dates and that he would have been unable to remember the periods during which the relationship was off without the assistance of the evidence of others, and since there was no evidence given to corroborate the evidence of the respondent as regards this period, I have decided against making any finding as to a break in the relationship of the parties during this period.

97. However, as regards the third period relied upon by the respondent, *i.e.* February – April, 2015, I am satisfied from the evidence of the respondent and other witnesses that there was a further significant break in the relationship of the parties during this period. Ms. Y. gave evidence that she accompanied the respondent to a number of events during this period, because of the breakdown in the relationship of the parties. In fact, it was her evidence that the break in the relationship on this occasion went back as far as November, 2014. Mr. V. and Mr. T. also gave evidence as to the breakdown of the relationship of the parties during this period. Mr. T. said that he was aware that the parties had had many "tiffs", but as far as he was concerned, the breakup of the relationship in early 2015 was more than a tiff and he believed that the respondent had "moved on", and he had personally introduced the respondent to another party at around this time. Mr. V. also said in his evidence that as far as he was concerned, the parties had separated between February and April, 2015.

98. All of these witnesses presented as credible witnesses, corroborating the evidence of the respondent himself. Each of them also expressly confirmed that the applicant was not living with the respondent during this period. While there is no doubt that the relationship resumed again afterwards, until April, 2016, I am in no doubt that the evidence clearly established that there was a further break in the relationship of the parties between February and April, 2015 and that the parties were not living together during this period.

99. It also has to be said that the evidence of the applicant herself in relation to this period was somewhat unconvincing. When it was put to her in cross-examination that they lived separately during this period, she said simply that "I don't recall". It was put to her that the respondent was at a number of events by himself during this period, and that he went to Portugal (without the applicant) during this period, and the applicant did not disagree. She said simply that "we were obviously arguing again". The respondent wrote a further letter to the applicant at her parents' address on 13th March, 2015. In this letter, he stated, *inter alia*:-

"I am sure you understand why I am struggling to support you following our recent breakup."

He again concluded this letter with the words "yours in friendship".

100. Moreover, it is of some significance that the applicant did not call any evidence to support her contention that the relationship of the parties continued during the periods in dispute. On her own case, she spent significant periods of time staying with three other parties during these periods, and not one of them was called upon to corroborate her evidence. While different reasons were given in relation to the non-attendance of two of these parties, no reason at all was given as regards the third, and it is difficult to believe that none of these parties could have been available to support the applicant's case.

101. If the relationship were viewed through the lens suggested by Lord Neuberger in *Re Watson*, I think it would best be described as a ten/eleven year relationship with intermittent breaks. For most of the period, the parties were indeed in an intimate and committed relationship, and lived together. But to qualify for relief under the Act of 2010, it is an essential requirement that they must have lived together continuously in such an intimate and committed relationship for the period of five years prior to the date on which the relationship ended. While it is clear from *M.W.* that it is not necessary for the parties to a relationship to spend every day and night during this five year period under the same roof in order to qualify as cohabitants and to be eligible to obtain relief under the Act of 2010, it is equally clear that the relationship itself must endure throughout that period, and that if the parties are apart during the

period, the reason or reasons that they are apart should not flow from a breakdown in the relationship, but from other factors unconnected to the relationship, such as work or ill health. In this case, the evidence overwhelmingly established that the relationship which the parties enjoyed for much of a ten or eleven year period broke down, at least three times, in the five years before it came to its final conclusion, and that it broke down to such an extent that the applicant left the respondent's residence and ceased living with him during these periods, even though she had no alternative residence of her own. For all of these reasons, the relief sought by the applicant must be refused.