

**THE HIGH COURT
FAMILY LAW**

2002 No.93 M

IN THE MATTER OF THE FAMILY LAW ACT 1995

BETWEEN

E.G.

APPLICANT

**AND
J.G.**

RESPONDENT

Judgment delivered by Mr. Justice White on the 28th day of July 2005

1. The applicant and the respondent were lawfully married on the 31st July 1993. Thereafter, they resided together, initially for a brief spell with the respondent's family, and then, in their own house up until they separated in and about the month of December 1996, at which stage the applicant moved out of the family home and commenced to reside separate and apart from the respondent.

2. There was no issue of the marriage and on the 21st June, 2001, in proceedings heard before Kinlen J. the respondent was granted a Decree of Nullity.

3. The applicant and the respondent are the registered owners, as Tenants in Common of certain lands whereon they built a substantial dwelling house. They are, in addition, the registered owners, as Tenants in Common of a holding of some 24 hectares. Each parcel of land is contained in a separate Folio, and is subject to a mortgage in favour of the Agricultural Credit Corporation.

4. Further, the applicant is the sole owner, subject to a mortgage, of her own house, and the respondent is the sole owner of other agricultural lands which he acquired by inheritance.

5. The applicant is a primary teacher, and she has pursued her teaching career, prior to, during, and after her marriage.

6. It is the applicant's case that both prior to, and during the course of her marriage, she made certain financial contributions towards the purchase of the lands, towards the construction, decoration and furnishing of the dwelling house, and towards the mortgage repayments thereon.

7. The applicant seeks various reliefs, under the Family Law Act 1995, in respect of the entire assets of the respondent, while the respondent seeks, by way of counterclaim, to have himself registered as sole owner of the lands contained in the relevant Folios.

8. I consider that, in determining the application, the only assets of the parties I should have regard to are the lands held in their joint ownership, and indeed, the applicant did not seek to argue otherwise on the hearing herein.

9. I am satisfied that the two parcels of land were originally contained in the one Folio, that the applicant on the 20th May, 1992, acting on their joint behalf, agreed to purchase the lands for the sum of £45,000, that on that date he paid a deposit of £4,500, and that the purchase was financed in part, by a loan of some £30,000 borrowed from the Agricultural Credit Corporation in June 1992, such loan being taken out in their joint names.

10. I am further satisfied a second loan, in the sum of £25,000, was taken out in their joint names in April 1993, and that these monies were put towards the construction costs of the dwelling house.

11. Having regard to the instructions given by the respondent to his then solicitors, I am satisfied that the parties intended to finance the costs of construction of the dwelling house, and the repayment of the loan in relation thereto, through or from the resources of the applicant, and that the financing of the purchase of the lands, and the repayment of the loan in respect of such purchase, was intended to be the responsibility of the respondent.

12. I consider that, in determining the financial contribution made by the applicant towards the marriage, I should give effect to the intentions of the parties, and should consider them as going towards the provision of the dwelling house.

13. Neither party chose to call an accountant to give evidence herein. Thus, I have not had the assistance of an expert witness to help me in unravelling the complex financial arrangements of the parties, and I have found it difficult, if not almost impossible to resolve and/or reconcile their respective financial contributions towards the purchase of the lands, or towards the construction costs of the dwelling house. Thus, my calculations can only amount to a reasonable estimate rather than a precise figure.

14. The parties seem to agree that the dwelling house costs some £45,000 in total. The building contractor appears to have been paid the sum of £40,300 and it may well be that the difference between the two sums was accounted for by the expenditure on decoration, furnishings, fitting out and the like.

15. The applicant contends that she contributed in the region of £21,000 towards the purchase of the lands and the construction of the dwelling house. She breaks this figure down as being £2,000 towards the deposit paid on the lands, £14,380 withdrawn from her account and given to the respondent, a grant of £3,000 again given over to the respondent and a figure of £1,358. This figure of £21,000 is disputed by the respondent.

16. I am not satisfied that the applicant contributed the sum of £2,000 towards the deposit paid on the lands, from a consideration of the applicant's bank statements, it does appear that a sum of £2,000 was withdrawn from her bank account on the 21st May, 1992. However, the previous day a sum of £1,560 was paid into her account from the respondent's bank account. Thus it seems to me that any contribution made by the applicant towards the deposit paid on the lands did not exceed £440.

17. I cannot find any record of the applicant having received a £3,000 grant, or of her having paid over any such grant to any other person.

18. Undoubtedly, the applicant's bank account was debited the sum of £14,328.50 on the 26th June, 1992. This debit is described as being a draft in the applicant's bank statements. However, the bank draft lodged by the respondent to his solicitors account on the

same date was in the lesser amount of £13,607.

19. From a consideration of the payments made to the building contractor, it does appear that on the 9th March, 1993, they received a payment of £3,000. On the same date, the applicant's bank statements show a withdrawal of £4,000. Apart from this payment of £3,000 the remainder of the payments made to the building contractor came from either the respondent's bank account or through his solicitors.

20. From a consideration of the Client Account Records furnished by the respondent's solicitors, I am satisfied that a sum totalling £6,422.58 by way of two separate cheques was returned to the parties jointly. These monies do not appear to have been accounted for either by the applicant or by the respondent. In the circumstances, I consider that each party should be credited with a moiety thereof.

21. I am satisfied on the balance of probabilities, that monies were withdrawn by the applicant from her bank account and were given by her to the respondent to be applied for their joint benefit. I am unable to ascertain the precise amount of such withdrawals or the precise manner in which they were applied. I consider it probable that they did not amount to less than £16,000, when credit is given for a moiety of the monies returned by the respondent's solicitors.

22. Having regard to the fact that the loan from the Agricultural Credit Corporation is repayable with interest and that the rate of such interest is variable, the total sum (i.e. principal and interest) payable over the loan period of fifteen years, clearly, far exceeds the £25,000 borrowed. At the commencement of the loan the interest rates was as high as 10¾%. Interest rates have varied downwards and will presumably remain at a relatively low level through the remainder of the term of the loan.

23. Having regard to the evidence given by the representative of the Agricultural Credit Corporation, I have concluded that the total interest payable over the term of the loan is probably the equivalent of £20,000. Thus, the total expenditure on the dwelling house is in the region of £65,000.

24. The applicant's contribution towards the total cost of the dwelling house would appear to be, and I so find it to be, the sum of £16,000 together with some two years loan repayments amounting to £6,450, making in total the sum of £22,450, or slightly more than one third of the total expenditure. Thus, it would seem just and equitable and proper that the applicant should recover from the respondent in excess of one third of the value of the dwelling house.

25. Evidence has been given by the applicant's valuer who has put a valuation of €300,000 on the dwelling house. This valuation is disputed by the respondent, however, no evidence in this regard was called by the respondent. Property valuation is a notoriously difficult science, it is not an exact science, and valuers are often over optimistic, though they can also err on the side of pessimism.

26. I consider that there is some merit in the respondent's contention that the dwelling house ought not be valued or considered in isolation, and that a sale of the dwelling house separate from the adjoining lands might prove difficult, and would not command the same type of money that it might be expected to achieve if sold as part of the entire holding. Further, this is a gross figure that makes no allowance for outstanding loan repayments, it makes no allowance for, and it does not give any credit for the value of the respondent's maintenance and upkeep of the premises.

27. Therefore I consider it is not unreasonable to conclude, notwithstanding that the sole evidence of valuation before me places a valuation of €300,000 on the dwelling house, that, taking all matters into account, the true net value of the dwelling house is closer to €250,000. Accordingly, I consider the applicant's interest therein to be in excess of €83,333. I propose to round this figure upwards to €85,000.

28. Accordingly, I order payment of the sum of €85,000 by the respondent to the applicant, and I further direct that on payment thereof the applicant sign all necessary documentation to enable the respondent be registered as sole owner of the lands contained in the relevant Folios.