

THE HIGH COURT

FAMILY LAW

[2024] IEHC 628

RECORD NO. 2022 120 M

IN THE MATTER OF THE FAMILY LAW ACT 1995, AS AMENDED,

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996, AS

AMENDED

BETWEEN/

F.

APPLICANT

-AND-

D.

RESPONDENT

JUDGMENT of Mr. Justice Jordan delivered on the 26th of June 2024.

1. This is an application for a decree of divorce and insofar as that is concerned there is a claim and a counterclaim for a decree of divorce, there is no issue between the parties in relation to the grant of the decree as such, save for the dispute that exists and it is not great, although significant to them both insofar as proper provision is concerned.

2. The applicant is 50 years of age and the respondent is 51 years of age. They were married in April 2004 in Dublin. They are both Irish citizens. They are both domiciled in Ireland, but they are both resident and working abroad.

3. There are two teenaged children of the marriage. Both of the children are doing well and there is no issue concerning their parenting on the part of the applicant

or the respondent. They have a good relationship with their children and *vice versa* and they are managing successfully to cooperate and operate in respect of what is in effect a 50/50 shared parenting arrangement. Insofar as that is concerned, I accept the applicant's evidence that the children are over and back to her house, and if you want to count the hours, the probability is that they might spend a little bit more time in their mother's house than their father's house on the evidence. The difference is immaterial - it is a successful shared parenting arrangement.

4. The applicant is a banker and works in banking and she was, for much of her career, working as a mother and home maker and working in her banking job. The respondent is in the finance sector as well. The main asset of the parties in terms of property assets is the family home abroad.

5. There are substantial pension assets, or at least relatively substantial in the context of the value of the family home which has a net value in the region of €900,000. The pensions will be dealt with on another day because it is not possible to deal properly or sensibly with those assets and the adjustments that are required by way of pension adjustment orders or otherwise in circumstances where the evidence in relation to the value of the pensions is not available to the Court.

6. On the evidence it is clear that the marriage had broken down by early 2020. On the evidence I am satisfied in relation to the matters which I require to be satisfied of under s.5 of the Act and in those circumstances I am satisfied that it is appropriate to grant, and I will grant, a decree of divorce pursuant to s.5(1) of the Family Law Divorce Act 1996, as amended.

7. Insofar as the family home is concerned, it is unfortunate that the family home cannot be retained. It would nice if the applicant could remain on in the family home at least until the children cease being dependent but one of the unfortunate

consequences of marriage breakdown is that significant adjustments have to be made insofar as financial issues and homes are concerned because one moves from a situation where two homes as opposed to one are required.

8. In the circumstances, I am satisfied that the family home be sold and that the net proceeds of sale be divided equally between the parties. I am satisfied also that it is appropriate that the sale of the family home should not take place immediately because an immediate sale would involve too much upheaval for the applicant and more particularly for the children.

9. I am satisfied to accept an undertaking which will be retained on the court file and which is signed by the applicant and the respondent earlier today, and which has been provided to the Court by counsel for the applicant and which reads “*the applicant and the respondent hereby give the following undertaking to the Court:*

(1) That they will cooperate in placing the family home for sale at the beginning of March 2025 and the closing of the sale of the property shall not take place prior to 20 June 2025.

(2) The applicant and the respondent agree and undertake to fully cooperate with the sale of the family home.

(3) The respondent undertakes to the Court not to seek the sale of the family home prior to March 2025 and agrees not to enter the property prior to the sale.” (That I assume means not to enter the property between now and the closing of the sale).”

10. In relation to provision, I have to be guided by s.20 of the Family Law Divorce Act 1996 which provides at s.1;

(1) In deciding whether to make an order under section 12, 13, 14, 15 (1) (a), 16, 17, 18 or 22 and in determining the provisions of such an order, the

court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

s.20(2) states ;

“Without prejudice to the generality of subsection (1), in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:”.

I have considered proper provision having regard to the circumstances and will go through the listed considerations:

“(a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future.”

Both the applicant and the respondent are successful in their respective careers. The respondent does earn more than the applicant, but it is also apparent to me that the applicant is highly regarded in her own employment. She has to her credit been promoted twice in her employment and is clearly a valued employee. It might well be that the applicant will catch up on the respondent in terms of her income, I do not know, but I am satisfied that both the applicant and the respondent have significant earning capacity into the future, albeit that I must have regard to the fact that the respondent is at present earning a not insignificant amount more than the applicant.

I must have regard also to;

“(b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise)”.

In that regard the financial needs, obligations, and responsibilities of the applicant and the respondent centres around the need to have a comfortable and secure place to live and to accommodate themselves and their children. This is the main feature of the case in terms of looking at provision on the evidence presented to the Court.

“(c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be.”

The situation in that regard is that the applicant and the respondent were living abroad, and although there has been little evidence, it is clear from the evidence that I have heard that they had a comfortable lifestyle and a lifestyle which was obviously easier to finance before the breakup than after because the cost of running two homes is substantially in excess of running one.

“(d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another.”

The applicant and the respondent are middle aged people. The issue of the length of time living together is not really a feature in the case - and the marriage was to all intents and purposes a marriage of significant duration. There are now two children who will both shortly attain their age of majority, a successful marriage in all respects having regard to the asset base accumulated by the applicant and the respondent and the fact that they have two bright teenaged children who are doing extremely well.

“(e) any physical or mental disability of either of the spouses”.

Fortunately, this does not arise in this case on the evidence.

“(f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family.”

I will include that along with;

“(g) responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family.”

It is readily apparent that the applicant devoted much of her time and energy to looking after the home and that facilitated the respondent in advancing his career working and studying long hours. The efforts of the applicant and the respondent contributed in their own way to the security of the marriage and to the accumulation of the assets. For example, on the evidence it is apparent that the mortgage was paid by the respondent until he moved and since then his contributions have been in the region of €500 in circumstances where he is renting accommodation and the applicant has been paying €2,000 whilst living in the family home. Both the applicant and the

respondent are successful at their careers. It might be, and probably is, that the applicant's trajectory has been impeded to some extent by the work which she did in the home and in circumstances where it is apparent that she cut her hours back by 20% in order to have more time at home. That in itself has had repercussions in terms of her pension in addition to the obvious repercussions in terms of her pay, but the impressive feature of the case is the progress which the applicant has made through her career which emphasizes in my mind her ability and the value which is placed on her work at present as an employee by the bank for which she works. It is possible if not probable that the applicant will progress further in her career as the children move on with their own lives and become adults.

“(h) any income or benefits to which either of the spouses is entitled by or under statute.”

Again it does not really feature as an issue in the case but insofar as the children's allowance for each child and the back to school allowances are concerned the Court order will reflect the fact that the applicant is to continue to have the benefit of those payments.

“(i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it.”

There is no issue concerning gross and obvious conduct which the Court should have regard to nor has such a case been made, correctly so by either the applicant or the respondent. In fact another feature of the case is the very civil if tenacious approach by both sides in terms of the prosecution and defence of these proceedings.

“(j) the accommodation needs of either of the spouses.”

I have referred to that. Both the applicant and the respondent need a comfortable home to live in. Their chosen city is an expensive place to live in and to buy a house or an apartment, but it is not the only place in which one can reside and it is the position that sacrifices have to be made by parties to a marriage which ends because, as I have said earlier, the cost of two homes is greater than one.

“(k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring.”

I have already touched on that and I will again because I am going to leave that matter over to hear further from the parties and hopefully to have expert opinion in relation to the pension entitlements and in circumstances where I consider, although I have yet to decide finally, that proper provision does require what I am referring to as the equalisation of the pensions for the appropriate duration in the context of the legislation.

“(l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.”

It does not arise in this case.

11. I have dealt with the decree of divorce, and I have dealt with the family home insofar as I can do so by accepting an undertaking from the parties - where they appear to be in agreement sensibly in relation to what should occur in the foreign proceedings concerning the family home.

12. Insofar as the request for maintenance for the children is concerned, this is a situation where there is a shared parenting arrangement. The respondent does earn more than the applicant, but his outgoings are greater at the moment and his asset base is smaller because the applicant has an inheritance coming to her worth in the region of €250,000 and has some savings in terms of share investments worth in the region of €60,000. I have heard evidence in relation to the fact that there is a possibility that the respondent will inherit. The evidence in that regard is speculative. It is not without foundation but is a question which is asked to which an answer is presently not available. The evidence does not go as far as proving that the respondent will inherit as a matter of probability but nonetheless it is a feature of the case that he might get something from his parents' estates after their death.

13. I am asked, even though it is a shared parenting arrangement, to make an award of maintenance of €400 per month in respect of each of the children which is €800 per month whilst they are dependent, in favour of the applicant.

14. I am not satisfied that it would be appropriate to do so, but I do think that there should be some maintenance payment or something reflecting maintenance for a period of time. At the moment the respondent is paying €527 towards the mortgage on the family home. What I propose to do in relation to the request for maintenance is not to make a periodical payments order but to direct that a lumpsum of €12,000 be paid by the respondent to the applicant to assist with rent initially. A contribution which the applicant would say is too small, but I consider it appropriate and reasonable. It is a figure formulated by reference to the current contributions of the respondent to the mortgage which works out at something over €6,000 per annum and I am saying €12,000, which is a rounded down figure based on that sum, and I will direct that that sum be deducted from the respondent's share of the proceeds of sale of the family

home and be paid to the applicant along with or on top of her share of the proceeds of sale. So she will get 50% of the net proceeds of sale plus €12,000.

15. In relation to the expenses of the children, having regard to the earnings of the respondent, I will direct that there be a 60/40 division in the applicant's favour of the big ticket expenses of the children by which I mean the college fees including accommodation plus any uninsured medical or dental expenses - and on the basis that the parents are looking after the children otherwise on a 50/50 sharing arrangement.

16. Insofar as the pensions are concerned, I will adjourn the making of appropriate pension adjustment orders in circumstances where further evidence is required and with a request to be sent to the overseas State Pension Administrator for specific information. I will request the parties to put together what is required and thereafter a request will be sent to the overseas State Pension Administrator in the hope that it will result in the provision of information concerning the foreign state pension of both parties. I will list the case for mention on Monday 14 October next with liberty to the parties to mention the matter before then on consent, if the matter can be attended to before then.

17. I note that it is intended to obtain a report from O.D. and that is on the assumption that specific information will be available to provide to her. I will make the point that the Court is yet to decide finally but considers an equalisation of the pensions necessary in terms of proper provision and that is based on the available evidence concerning the pensions which as I have said is inadequate to allow the Court decide finally.

18. I will hear the parties in relation to any other matters arising now and thereafter I will make any further ancillary orders considered necessary or appropriate when dealing with the pension adjustment orders.

19. In relation to the draft letter, it seems to me, and I have seen an initial draft of the letter which is to go to the State Pension Administrator, it seems to me that the parties should have this typed up and provided in advance to O.D. because it may be that she would suggest that some additional information be sought or that she would suggest an alternative wording, because wording is important in terms of pensions. What I propose to do is to request that the parties agree on the draft of the letter to be provided to O.D. and then hopefully agree on the final draft of the letter. Following agreement it should be submitted to the registrar. I will request the registrar to send the letter to the overseas authorities – a member state of the European Union. This request is necessary and appropriate to advance to conclusion these divorce proceedings which are pending here in a Member State - and in circumstances where the information in question would be readily available to the Court if it was a pension administrator in Ireland - private or public - which had the information.

20. I expect that the parties will request some ancillary orders such as mutual blocking orders. It seems to me, in circumstances where I am leaving over the decision in relation to the pensions which is a substantial asset on both sides, that it is best to leave the ancillary orders until those orders are finalised.

21. I will lift the *in camera* rule in order to allow the judgment of the Court to be made available to the overseas Court and to allow a copy of the signed undertaking to be provided along with the judgment of the Court. The judgment of the Court to include the perfected Court order when it is available.

22. I will adjourn matters otherwise to the date I mentioned which is Monday 14th October 2024.

23. In relation to the situation concerning the joint returns, I expect the parties to be able to work out a solution to the issue that exists in relation to the best way

forward because they have an accountant to advise them and if there is an issue in that regard I will hear further evidence, if I need to hear further evidence, and make a decision in that regard. The substance of the issues in dispute has been decided and I do not expect any further hearing in this matter to take any longer than an hour. I should have available to me some evidence in the form of a report from O.D. - and hopefully an agreed position in relation to the ancillary orders including any order required if there is one required insofar as the tax position is concerned but that is something that should be sorted out.

24. I will include a provision in the judgment that by agreement between the parties the *status quo* is to continue pending the sale of the house.