

## THE HIGH COURT

[2004 No. 79M]

**FAMILY LAW**  
**IN THE MATTER OF THE FAMILY LAW (DIVORCE ACT) 1996**  
**C. E. D.**

APPLICANT

**AND**  
**A. D.**

RESPONDENT

**Judgment of de Valera J. delivered on 13th day of December 2005.**

1. The parties in this action were married on the 18th October, 1984.
2. Since the marriage the applicant and respondent have lived in Co. Meath. The lands constitute a farm which the respondent brought into the marriage.
3. There are three children, L. and A., twins born on the 28th April, 1986, and I. born on 14th March, 1989.
4. These proceedings were initiated by special summons dated the 2nd November, 2004. Previously relief had been sought by the applicant pursuant to the Judicial Separation and Family Law Reform Act 1989 and the Partition Act 1868 as amended by the Partition Act 1876. These proceedings were subsequently abandoned by the parties without hearing or settlement.
5. The relationship between the parties has deteriorated over the years of their marriage and the salient facts are not in dispute. The applicant and respondent now coexist on civilised and reasonably amicable terms and there is no evidence of serious acrimony or hostility between them. In particular they appear to be agreed on the best course of looking after and maintaining their only dependant child I.
6. On the basis of the evidence adduced before me, and consideration of the affidavits sworn in the course of these proceedings, I am satisfied
  - A. That the applicant and the respondent have lived separate and apart from one another within a meaning of a s. 5 (1) of the Family Law Divorce Act 1996 and as interpreted by McCracken J. in the matter of McA. v. McA. [2000] 1 I.R.
  - B. Again on the basis of the evidence given before me on the affidavits filed in the course of the proceedings there is no reasonable prospect of reconciliation.
  - C. It therefore remains for me to consider the financial aspects of this matter in the light of the existing circumstances to ensure that a proper provision is made, or will be made for the spouses and the remaining, dependent child.
7. The applicant is involved in the bloodstock industry as a breeder and livery operator. She was so involved for about two years before her marriage and has continued since until the time of the action and, I understand, intends to continue and develop this activity into the future. It was never sufficient to provide an independent source of income for her, but it did allow her to contribute to household expenses and outgoings; albeit in a relatively minor way. The applicant also carried on and continues to carry on a business from her home.
8. The respondent owns a farm which consists of two separate parcels of land: 57 acres at B. and 168 acres at A. There is no residential property at the B. lands but the family home, and the old farm house, A. H. form part of the lands at A. Until recently A. H. was occupied by the respondent's mother but it is now empty, though in habitable condition subject to some renovation and repair.
9. Mr. Carey, a valuer on behalf of the applicant, has valued the properties already described as follows:
  - B. € 875,000.00
  - A. H. and lands €3,500,000.00
 (which figure includes C. L. valued at €550,000).
10. On behalf of the respondent, Mr. Philip Byrne of the firm of Raymond Potterton, values the lands as follows:
  - B. € 600,000.00
  - A. H. and lands €2,062,000.00
  - C. L. € 700,000.00.
11. There are substantial differences between these figures and it is difficult to determine which are the more accurate – valuation is not an exact science and the value of any property on a given day depends largely on who might want it and how much they are prepared to pay.
12. Insofar as I must decide which figures are more accurate I believe that Mr. Carey did not inspect the B. lands sufficiently closely and did not allow sufficiently for drainage and pollution difficulties. I also believe his valuation for C. L. to be somewhat low although Mr. Byrne's figure may err the other way. Again and finally having heard both Mr. Carey and Mr. Byrne's views of the value of the A. H. and lands I feel the true value comes somewhere between the two suggested figures though closer to Mr. Byrne's than to Mr. Carey.
13. It appears to me that the appropriate valuations for the property under the three headings would be:
  - B. € 650,000.00
  - A. H. and lands €2,500,000.00

C. L. € 600,000.00

14. However these lands have been in the respondent's family for generations and the applicant has made no contribution either to their acquirement or improvement. However in the light of proposals made by the respondent the value of these lands is now of secondary importance.

15. The respondent has proposed, subject to the applicant succeeding in her divorce proceedings, to provide for the applicant as follows:

A. C. L. will be given to the applicant and the remaining mortgage payment paid off by the respondent.

B. The 10 acre field immediately behind C. L. will be given to the applicant – the correct valuation for this field is I believe €200,000 which figure allows for the possibility of some development potential in the future.

C. The applicant will be given the sum of €150,000 of which sum €80,000 will go to paying off the mortgage as aforesaid and the remaining €70,000 will be paid at the rate of €10,000 per annum for 7 years.

16. I must decide, in the circumstances of this action and allowing for the parties prior earning activities and potential earning capacity into the future, what would be proper provision for the spouses.

17. The applicant in her evidence said that a further amount of land, in the region of about 10 acres, would suffice to enable her to carry on her bloodstock activities which, together with her other income generating proposals (such as Japanese Therapy) would give her the capacity to lead an independent and fulfilling life and generate sufficient income to support such a lifestyle.

18. Therefore I am of the view that I should order, in addition to the proposals already outlined by the respondent, the transfer of the field marked 007 on the ordinance survey map submitted to me during the course of the proceedings (this field is immediately across the laneway from the 10 acre field immediately behind C. L. which the respondent has agreed to transfer to the applicant) and thus make proper provision for the applicant ensuring also proper provision for the respondent. I have no direct evidence of the value of this field but it appears to me given its particular position that the arguments in relation to field 007 also apply to this field and that is therefore worth €200,000.

19. The parties have agreed that they will have joint custody of I. while he remains a minor and I am satisfied that the arrangements provided for already will ensure that proper provision is made for him also while he remains a minor and for any subsequent period of dependency such as, for example, third level education.