THE HIGH COURT

FAMILY LAW

Record No: [2014/47 M]

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

BETWEEN/

G.R.

APPLICANT

AND

N.R.

RESPONDENT

JUDGMENT of Ms. Justice Bronagh O'Hanlon dated the 6th day of November, 2015

Background to the Case
1. The applicant wife instituted proceedings for a decree of divorce by special summons dated 26th June, 2014. The applicant sought a transfer to her of the parties' jointly owned family home, as well as a range of ancillary reliefs.

2. The applicant is 56 years of age and gave evidence that she forfeited a promising academic career in order to care for the respondent and their children. She is seeking proper provision for both parties and for the children. The applicant specifically sought that under the terms of a family trust, accommodation could and should be made in the context of proper provision for herself and the children and that any variation of the trust terms necessary to achieve this objective should take place pursuant to s.14(1)(c) of the Family Law (Divorce) Act 1996.

3. In relation to the breakdown of the marriage, the applicant contended that it was not in her nature to break up a marriage but the reason she finally decided to seek a divorce was that she realised that by her staying in the marriage she was hurting the children more than if she separated from the respondent.

4. The uncontested evidence of the applicant is that the parties have lived separate and apart for four out of the last five years immediately preceding the date of the institution of the within proceedings, having separated in or about the month of January, 2009. Similarly uncontested is the fact that there is no prospect of reconciliation between them. Both parties seek proper provision.

The N.R. Trust
5. The N.R trust was established on 5th January, 2000, under which S.R., the respondent's father, as settlor appointed Allied Irish Bank Plc. as the original trustee of the original trust fund (both as defined in the settlement). The current trustees of the settlement are N.R. and G.R., the applicant and the respondent. The settlement creates a discretionary trust and they are both primary and residual beneficiaries. The primary beneficiaries of the N.R. Trust are defined in the settlement as N.R., his wife and his issue. A significant point to note is that G.R. would, therefore, be a potential beneficiary of the settlement only for so long as she is the spouse of N.R.

Evidence adduced by and on behalf of the applicant wife
6. The applicant gave evidence of the respondent running the family business in a way which she described as arbitrary and described her inability to work with him in the said business despite her efforts to do so.

7. Notwithstanding the fact that the parties had lived separate and apart since 2009, the applicant had attempted to continue to work in the family business until it became impossible, in her view, to continue to do so. She felt the respondent thwarted the efforts of a manager who was hired by the respondent in May, 2013, to run the business and bring in new business. The applicant was unhappy with the manner of dealing in terms of how the respondent used monies from the business. She objected to his use over the years of the business account to discharge his petrol, phone, maintenance and mooring fees for his boat. Matters came to a head in terms of the business in May, 2014, when the respondent wished her to sign cheques to discharge debts which he had incurred and her evidence was that he became aggressive and angry with her and threatened to reduce weekly payments to her in terms of maintenance until she agreed to his requests.

8. The applicant gave evidence as to the structure of the family business in that the parties are 50% shareholders in a company, R. Ltd., which owned the property of the retail business, which was purchased in 1986 on foot of a loan of €100,000 from the respondent's father which the parties repaid. The applicant gave evidence of past difficulties in that the respondent failed to meet his obligations with regard to tax returns, insurance, fire safety regulations, planning, rates and litter requirements. She gave further evidence that company, L. Ltd., which was set up to run the retail business in 1986, was subsequently struck off the register of companies for failure to make tax returns.

9. The applicant gave further evidence that company R. Ltd. was also struck off for failing to make tax returns and was reinstated at considerable cost in April, 2013.

10. Given the nature of the business, the respondent gave evidence that he felt the applicant could use a barter system getting goods she might need *in lieu* of cash from people who worked in this business and that this would save money but this was completely unacceptable to the applicant.

11. This Court accepts that the applicant wife through her own efforts had to build her case with very little assistance in terms of

sharing of financial information and other documents, from the respondent who represented himself for the greater portion of this case.

12. Ms. Jane Kingston forensic accountant of Browne Murphy and Hughes, Forensic Accountants, produced a report dated 15th May, 2015. Pages 1 and 2 of that report and Appendix I and Appendix II of same set out a summary of the assets of the parties and Appendix I gives a flowchart summary of the application of the S. trust funds, while Appendix II gives a flowchart summary of the children's inheritance. These figures are not disputed figures and have been of great assistance to this Court, and the Court accepts those figures as the net values in the case.

13. This Court is satisfied to find that the parties were married to one another on or about 9th March, 1999, and it is uncontested in this case that the parties were in a relationship with one another from 1986 and that they commenced living with one another in the late 1980s. The four children of the marriage ranging in age from 18 to 24 years. The youngest child will soon finish his secondary schooling ad will likely continue in third level education for, at least, three to four years and the third child of the family will study for at least three more years.

14. This Court accepts that the family home is a property known as "K", Co. Dublin, has an indicative value of €950,000 and is free of mortgage or other debt. Comprehensive comparators were examined by this Court, given that the respondent held that the family home was worth €1.4m, but, this Court accepts the extensive evidence of Gordon Lennox, Auctioneer and Valuer of Sherry Fitzgerald Auctioneers.

15. The second property is a property in Toronto, Ontario, Canada. This property was bought using monies in the S. Trust from C.R., the respondent's mother, and has an indicative value, which is undisputed, of €416,130. It is free of mortgage or other debt.

16. The third property is an apartment in Co. Dublin which is valued at €415,500. This Court accepts that undisputed valuation. This property is owned by the N.R. Trust. A booklet of property valuations gives valuations of the family home, the Canadian property and the Co. Dublin apartment, and net values are set out at pps.1 and 2 of the forensic accountant's report.

17. There is no dispute as to the fact that the parties are the joint owners of the site upon which the retail business operates together with two adjoining properties. Cumulatively they have an indicative value of approximately €2.5m. The properties are held within a company known as R. Ltd. and the parties hold these properties in equal shares.

18. A document showing a decree lodged with Dublin County Sheriff, Mr. Fergus Gallagher, in the sum of €21,586.31 in respect of unpaid rates addressed to N.R. in his trading capacity in the retail business was produced in the applicant's evidence. The applicant gave evidence that the respondent had failed, refused, and/or neglected to keep public liability insurance in place and that two weeks after an accident had occurred in the market, he cancelled the said public liability insurance. This accident occurred on 18th March, 2012. This exhibit is a letter of claim dated 9th May, 2013. The applicant felt that it was completely irresponsible on the part of the respondent to fail to keep such insurance in place.

19. A further exhibit dated 11th June, 2013, showed suspension of membership of a retail business interest group because of non-payment of a subscription and that letter is dated 11th June, 2013.

20. A further letter dated 11th June, 2013, from Dun Laoghaire Rathdown County Council showed arrears of rates standing as of that date at €12,269.09. The applicant's evidence in this regard was that she wants to be able to sleep at night with matters in order and that it was anathema to her not to have matters in good order. She also felt that the respondent was threatened by the increasing legality of the business, in so much as there was increased regulation pertaining to the area.

21. The applicant's case was that she had done her best to work for the benefit of her husband, the family and the family business. There was a tacit acceptance by the respondent of her contribution and indeed, on his own evidence, he described her contribution at the start of the project, building up the retail business when she used her talents in researching history, her capacity in English and painting and doing calligraphy to get matters underway. Her evidence was to the effect that she suffered increasing frustration in trying to put matters in place to run the business properly and in an efficient and correct way but in the end she had to withdraw, citing frustrating of her efforts by the respondent to contribute in that way.

22. The applicant's preferred solution was that the family home would be transferred to her entirely, the business properties would be transferred to her husband, the Canadian property to be transferred to her and a lump sum to be paid to her out of the trust monies, the balance of same to be held in the trust for the benefit of the children. Following such a resolution, the applicant was willing to resign as trustee and the respondent also expressed a wish not to remain on as trustee of the trust.

The Respondent's Evidence

23. The respondent wanted the applicant to accept 50% of the net value of the family home and 50% of the value of the business, but was completely opposed to her having proper provision made for her out of the trust fund monies.

24. There was a major issue in the case in relation to monies which both signed in respect of which a withdrawal slip and which was kept in a safe in the family home and which were dispersed and there was a dispute as to how this occurred. The respondent's position was that both spent freely from those monies and the applicant's evidence having been that she was not a big spender. The respondent contends that the applicant spent freely from monies in the safe which was an encashed amount from the estate of his mother. The applicant's case in this regard was that she used income mostly from the family business and that while he had a safe full of €500 notes, she considered it to be his inheritance. She did recall, however, an educational tour for the children to Egypt and she said in evidence that it was very likely paid for, with his full compliance, out of the said monies.

25. The respondent accepted the financial evidence given on behalf of the applicant as correct. He did employ a solicitor and counsel at the beginning of this hearing but dispensed with their services after two days at hearing. At the beginning of his evidence, the respondent's counsel indicated that he could not rely on his own client's affidavit of means and agreed that it did not explain to the Court what either his income was or what his debts were. Exhibit 19 in the applicant's evidence showed the detail of the applicant's case against him in terms of her difficulties running the business and this letter is dated 2nd May, 2013. A preliminary information request as set out at Exhibit 3 had been sent to the respondent in order to assist the applicant with the preparation of the case but unfortunately this was not complied with. No letters, correspondence or records were received from the respondent.

26. The respondent praised his wife as a wonderful person and a very good mother. He described the previous family home as a period property which was worth €60,000 at the time when they bought it for €40,000 from his father and he did not recall a loan in the sum of €20,000 being necessary. He agreed that his wife had done it up but he found it dangerous parking on the road with the children,

and the parties lost part of the garden at the back of it which was severely shortened by development. The applicant had given evidence that the respondent's affairs were not in order to borrow €20,000 to purchase a replacement family home and that they rented in Ireland but that some money from the sale of the first family home went into the Canadian property at that time. In relation to the respondent's tax affairs, he says that between 2007 and 2011, he has paid tax. He admits being behind on tax for the year 2012 and notes that his wife resigned last summer from company R Ltd.

27. The respondent gave evidence that the tax bill for arrears of tax might have been €1.5m and that he got it down to over €500,000 which he thought was a good outcome. His view in relation to public liability insurance not being paid on the business was simply that he felt that it was a calculated risk on his part over the years and that he felt overall it was a good business decision not to pay public liability insurance. The respondent declined to give the name of his current accountant. The respondent gave evidence in relation to his own cash flow and indicated that he had lent €60,000 in cash to a gentleman named B.A and that in bits and pieces from time to time, he lent smaller sums of money and that B.A. had paid him back all but €20,000.

28. In general terms, the respondent agreed that he was not easy to get along with but that he contended that he had his own way of doing things that worked. The respondent did cause some difficulty at an early part during these proceedings, in particular when he insisted on attending at the family home and leaving it in an unkempt state while his wife was away. He apologised in court for that.

29. The respondent agreed that he had caused difficulties in relation to how he had handled the case and apologised to the Court and indicated that he was self-representing and appreciated that his intention had been to apologise also to his wife. He acknowledged that he was wrong in the way he had managed matters and must have caused his wife a lot of grief and agreed under cross-examination that it was necessary for his wife to seek to have him committed to prison for non-compliance with the court order for interim maintenance. The respondent's refusal to comply with court orders for maintenance is the subject of a separate judgment by this Court. The respondent said in his evidence that he knew he had reasons on which he based his objections to paying maintenance but he accepted that they were not good reasons. The respondent took the view in his evidence that nobody knows what he earns in a given year, that he does not know himself and that he uses savings, sold his boat and generally cuts his cloth to meet his measure.

30. Regarding the rates issue, the respondent took the view that he should not be paying rates. The respondent's approach in terms of such matters as parking tickets was that he let them run and if cash is not flush that is what he can do and that he pays some parking tickets. He gave evidence that he has a Northern Ireland registered car on an English driving license. He stated that it is taxed by the owner, that it is a 35 year old car, that he parks it and gets parking tickets some of the time for it and that he uses to advertise the market.

31. The respondent gave evidence that as other retail business in the same niche sector grew in the area, things had become much more competitive. He accepted that he did put one sign upside down when there was torrential rain which caused grave havoc in the area. The applicant's contention was that he did this on more than one occasion. The respondent accepts that he had litter offences and he admits that he did make decisions against the law in dire economic circumstances to advertise the business. The respondent denies, however, deliberately trying to create mayhem.

32. The respondent contends that the Canadian property should be sold to reduce family outgoings and that a debt which both parties agree exist to the children be repaid out of the sale of the said property. The applicant's position in this regard was that the money came from the children's grandmother, was given directly to her, their mother, with the understanding that the grandmother wished to see the children have a holiday home and that her understanding was that she could do what she saw fit for the children with that money. The house is on a campus in Canada and it earns CAD$16,800 every year and CAD$10,000 is paid in property tax in Canada each year and the balance covers flights and a good holiday for the family. This property has been used for years in that manner.

33. The respondent contended in his defence that the N.R. trust was a stand alone trust although he did accept it was a discretionary trust. The respondent contended that both parties dispossessed themselves of any entitlement to receiving benefits when they became trustees in 2006 pursuant to the deed of appointment of the new trustees dated the 18th May, 2006, and argued that this was in keeping with the letter of wishes of the 4th January, 2000. The respondent case was that in 2006, prior to becoming trustees, the parties had appointed to them the present family home by A.I.B. who were then trustees. The respondent says that in order to maximise the benefit for the children by reducing the cost of professional trustee fees, he and his wife became trustees themselves and he argued that this disentitled them to any further benefit save and except when acting as a parent of the beneficiaries pursuant to clause 5 of the N.R. Trust document of 2000. The respondent further contended that the S Trust was in fact settled by the respondent's aunt and that it was the respondent's understanding that the applicant was not named as a beneficiary not withstanding being married to him and that any benefit would be solely to his benefit.

34. His proposal was that the family home should be sold back into the trust until the youngest child is 23 years old in five years time. He proposed that on that basis there would be a 1% annual levy to Revenue for five years and that thereafter each party would be able to take 50% of the value of the family home. The respondent suggested giving the Canadian property to the applicant as joint tenant between her and her children.

Expert Evidence on Trusts

35. The respondent's evidence must however be assessed in the light of expert evidence was given on behalf of the applicant by Mr. Cormac Brennan of O'Connell Brennan who specialises in the area of trusts, estates and tax who described himself as having a particular expertise in the law of trusts. For the benefit of this Court, a report in the form of a letter has been prepared on the N.R. trust by Mr. Brennan, dated the 8th May, 2015. The aim of this letter was to provide advices confirming the legal and tax consequences of a possible restructuring of the N.R. trust into separate trust funds. The Court heard evidence that the current trustees of the settlement (dated the 5th January, 2000) are N.R. and G.R.. As Trustees, they are both precluded from being beneficiaries of the Trust. The Court heard the settlement described as a discretionary trust and the potential beneficiaries defined in the settlement as the "beneficiaries", meaning both the primary beneficiaries and the residual beneficiaries or any one or more of either of them in so far as the context shall admit. In particular the primary beneficiaries of the N.R. trust are defined in this settlement as N.R., his wife and his issue. Mr. Brennan described there as being nothing unusual in terms of the structure of the trust and there was reasonably standard language used to set it up. There was a power given to create sub-trusts. The substantive trust provisions in Clause 2 of the settlement were set out:-

> "the trustees shall stand possessed of the trust fund and the income thereof upon such trusts for the benefit of the beneficiaries of any one or more of them exclusive of the others or other of them in such shares and proportions and subject to such trusts, powers, terms, limitations and provisions as the trustees shall from time to time by deed or deeds revocable or irrevocable to before the vesting day but without infringing the rule against perpetuities appoint and so that the trustees shall be empowered to make any partial or incomplete appointment or to appoint income without necessarily

appointing the capital from which some income may arise save that the trustees shall not make any appointment in favour of the residual beneficiaries save in exceptional circumstances and at the discretion of the trustees".

36. Clause 3 of the settlement provides that in default of any such appointment or application of the trust fund, the trustees shall have absolute discretion as to the application of the income of the trust fund for the benefit of all or such one or more exclusive of the others or other of the primary beneficiaries or, in exceptional circumstances only residual beneficiaries in such proportions and manner and subject to such terms, trusts, powers and limitations and provisions as the trustees shall think fit with the proviso that the trustees shall not apply such income in favour of the residual beneficiaries save in exceptional circumstances and at their discretion. Subject to that provision, the trustees have a power to accumulate the income of the trust fund as an accretion to the trust fund. The substantive trust provision comprise standard discretionary trust language, to provide that the trustees hold the trust fund on trust for a class of beneficiaries and there is no beneficial entitlement in possession or interest in possession created for or as between the beneficiaries.

37. Mr. Brennan gave evidence that the effect of divorce would mean that the applicant wife (no longer being a wife) could not benefit and that she would drop out of the class of beneficiaries. He referred to two letters of wishes dated the 14th January, 2000, and a similar letter in May, 2000, setting up a discretionary trust and described them as not binding letters of wishes, but they could however be taken into account.

38. Mr. Brennan confirmed under cross-examination in relation to the question as to whether a sub trust could be established for the applicant. His professional opinion was that that could not be done at the point when she ceases to be a spouse. He described himself as a solicitor practising in trust law and that he was not an expert in family law. Mr. Brennan described the trust deed of the 5th January, 2000, as establishing the trust and governing all assets of the N.R. Trust including the appointment of assets. He said that they were collective rights and that the trustees have obligations to administer the trust and they can not exercise their rights unless they both agree. Mr. Brennan was asked to give options that the trustees may have to establish discretionary sub trusts of the settlement to divide the trust fund and separate the potential interests of the beneficiaries in the trust fund as follows:

> a. to create two separate discretionary sub trusts, so that a portion of the existing assets comprising the trust fund would be held by the trustees on trust with discretion to appoint the income or capital from the sub trust among certain of the beneficiaries who would include N.R. and his children and that a separate sub trust would be created in respect of the remaining assets comprising the trust fund to be held on discretionary trust or similar terms for certain other of the beneficiaries to include G.R. and the children of N.R.
>
> or
>
> b. to create three separate discretionary sub trusts including the two sub trusts mentioned at (a) above with the addition of a third sub trust, the beneficiaries of which might be limited to the children of N R (but excluding N.R. and G.R. as beneficiaries).

39. It was deemed to be legally possible in Mr. Brennan's opinion for them to create sub trusts in the options set out at (a) or (b) by way of the appointments by the trustees of certain designated assets comprised in the trust fund to each of the discretionary sub trusts to be created from the existing trust fund. Because of the fact that G.R. would cease to be a beneficiary of any sub trust when she ceased to be the spouse of N.R. he did not feel this would provide a practical solution. Mr. Brennan gave evidence that his understanding was that the assets have been derived from the S.R. trust and that it would appear to have created a sub settlement by the solicitor who drafted the deed of appointment. Therefore in conclusion he indicated under re-examination in answer to the question of what document controls the rights of the parties he indicated that it was the trust deed of the 5th January, 2000, which established the trust and governed the assets of the N.R. trust including the appointment of assets and that the trust deed of the N.R. trust dealt with the collective rights in January 2000 and under para. 28 of that document he felt that they can act by the majority of the trustees. Mr. Brennan referred to paragraph 25 dealt with the power to appoint trustees and that there was a reasonable standard in the creation of a power for an outside power.

40. It is clear from the evidence of the parties and from the expert evidence of Mr. Brennan that the S.R. trust was created on the 21st January, 1966 by the respondent's father and that the N.R. trust was created by SR, the respondent's father on the 5th January, 2000. The Court accepts the evidence of Mr. Brennan that the applicant is a potential beneficiary of this trust only so long as she retains her status as a spouse of the respondent.

41. It is clear from the expert evidence and from the evidence of the applicant and submissions on her behalf that the N.R. trust is not a sub trust of the S.R. trust but is a stand alone trust. It is clear also from the evidence that a quarter of the assets of the S.R. trust were appointed to the N.R. trust (exhibits 3, 13 and 14 apply). Both the applicant and the respondent accept the N.R. trust provided the capital monies which enabled the parties to purchase a family home. Both parties accept that there was a pre-payment of tax to Revenue in 2008 of €500,000.00 because it was anticipated at that time that the trust should be wound up and tax was paid at 20% but the winding up of the trust did not occur. Page ten of the report of Browne Murphy and Hughes forensic accountants set the gross assets of the trust at €3,138.956.00, the net assets of the trust at €2,103,100.00 (after C.A.T. on wind up) and among the assets of the trust is the Co. Dublin apartment. Both parties accept that in May, 2006, they were appointed as trustees of the N.R. Trust.

The children

42. The eldest daughter, K, aged 24, has one further year to obtain her Master's qualification. K owes €12,000 on fees and got €9,100 out of the trust. She needs that funding for one year and will live in the family home while she completes her Master's course. The second daughter F, although she has reached her majority is seeking an internship in Brussels with a view to further study. H, the third child, while in Trinity College, has decided this year to change course to one in costume and acting and to re-enter college again after this year for another 4 years in college. N, the youngest child, is in his sixth year in second level and hopes to study for a degree in engineering which will take four years in university.

43. This Court notes that for a long period of time the children did not take up the opportunity afforded to them to make representations or submissions on the trust to the Court concerning their contiguity interest in the assets of the N.R. Trust. Eventually, by letter dated 5th April, 2015, FR wrote to the Court claiming that she was doing her degree in NUI Galway and writing her thesis and apologised for not writing sooner. She was anxious that there would be an avoidance of tens of thousands of legal fees and therefore had not at that point engaged lawyers. She explained that she wanted both parents to be fairly assessed and not judged by how they acted in other areas of their life. She stated that they were both, and still are wonderful, caring and responsible parents and she thanked the Court for the work it had done so far. She expressed the desire that the wishes of S.R. should be abided by. She understood that it was not legally binding but her view at that time was that it was his money to do with as he sought fit

and that in her eyes it meant a lot.

44. At the end of the hearing the children sought to be represented and on foot of that, they and the applicant made certain proposals subject to these agreements being approved by the Court to be appropriate in terms of resolution of this case. The respondent was invited to take part in those negotiations leading to this agreement but he complained to the Court that he was left standing and that no one engaged with him at that time and he was not agreeable in any event to the joint proposals of the applicant and the children.

45. The applicant and the respondent are deemed by their children to be jointly and severally liable to each of the four children in the sum of €110,000.00 per child arising out of inheritances received from their grandmother C.R. in terms of the fact that certain sums had been used by the parties, although the dispute remained as to who used what amount of those funds. Part of those funds went towards the purchase of the Canadian property. On the balance of probabilities, this Court finds that the respondent used the majority of those funds but the exact amount is not possible to quantify. Although initially the applicant sought to have part of this loan repaid from a fund presently held in the N.R. Trust, the children and the applicant have agreed, subject to the Court, to the joint and several nature of that liability being split equally between each of them on the basis that each would acknowledge a liability to each of the four children in the sum of €55,000.00 and that each of the parties would provide specific security to each child in respect of that liability.

46. This Court notes that it is quite clear from the evidence that in 2001, C.R., grandmother of the children of the parties, left the children the sum of €572,820.70. This Court accepts that €152,368.00 was invested the Canadian property, €131,452.40 has been paid to the children in equal shares and €274,589.00 remains owing to the children.

47. The applicant has agreed that she will not seek to have any part of her liability discharged by a payment from the trust and has agreed to secure each of the amounts of €55,000.00 to each child on her interest in the family home known as "K". She is further agreeable that the respondent's liability on his loans be secured on his interest in the shareholding in R Ltd. and has sought by letter dated 14th October, 2015, to him, his agreement to that course of action.

48. Secondly, if the Court considers that it has power to vary or interfere with the N.R. Trust, neither the applicant nor any of the children would object to the payment out of the trust of a maximum sum of €800,000.00, which amount would then fall to be dealt with by the Court in the context of these proceedings. It is further agreed by the applicant that the trust would not be varied or interfered with under any circumstances for the payment out of any more than the amount of €800,000.00 (including in the event of any appeal of any decision to the divorce proceedings). The applicant wishes to cease to be a trustee, and wishes to have independent trustees appointed.

49. If the Court finds that it cannot vary the trust then the children will apply to the new independent trustees for a payment out of a sum of up to a maximum €800,000.00 to enable the Court to deal with the parties matrimonial proceedings. The respondent's agreement was sought but he made clear to the Court that he was not in agreement with this proposal and he did not want any money to be paid to his wife out of the trust. The respondent also indicated that he did not wish to continue as a trustee of the trust.

50. It is clear from the evidence that both parties were direct beneficiaries of the S Trust and monies from this trust were used to defray family expenses which would otherwise have been had to be funded from monies drawn from the N.R. trust. Appendix 1 in the report of Ms. Kingston, forensic accountant, was proven in Court and showed that €72,500.00 of those monies was applied directly in the discharge of school fees, children's expenses and holidays.

51. The applicant gave evidence that in 2008 she and the respondent received personally €1,251,34.00 from a trust known as the S. Trust. The respondent disagrees with this interpretation and says that he received €1 million and then a separate sum of €250,000.00 from his aunt MO'S in relation to the S. Trust and that in the spirit of equality in marriage he put it into joint names as he had always done. The evidence of the applicant was that the monies received from the respondent's mother in 2001 was specifically entrusted to her alone, rather than to both parties herein because the respondent's mother did not trust him to be responsible with that money. This is an echo of the letter of wishes of S.R. (which is exhibit 3) which cautions against any money being given directly to the respondent. The applicant's evidence made the distinction between expenditure made possible from interest earned on trust monies as opposed to the use of trust monies themselves. This Court finds the applicant to have correctly stated the position to the Court in this regard. Both parties accept in their evidence in different ways that there were difficulties in marshalling these monies.

52. The applicant gave evidence that the parties received €1,251,034.00 from the S. Trust. Appendix 1 of the Browne, Hughes and Murphy forensic accountant report sets out that €574,000.00 from those funds were used to pay outstanding taxes, interest and penalties on income from the retail business and this has been acknowledged by the respondent as his personal liability. This Court finds as fact that €155,000.00 comprised of direct payments to the respondent and that €232,000.00 comprised payments by the applicant to the respondent and to the retail business. The financial evidence in this case adduced on behalf of the applicant was largely undisputed by the respondent.

53. The respondent, at this stage in the case, was willing to step down from the trust as trustee and felt that new trustees should be appointed. His own view was that the N.R. trust was a sub trust and not a stand alone trust nor a post nuptial settlement. The respondent contended that he paid €150,000.00 of his own inheritance from his mother which was to pay the children's gift taxes in the early 2000s on their grandmother's request. This Court notes however the analysis in the forensic accountant's report which provided an appendix with an analysis of the inheritance and expenditure and this was unchallenged by the respondent. This is attached to the judgment. In accordance with the forensic accountants evidence the total inheritance was €677,923.29 since capital acquisitions tax accounted for €105,101.00 this left a balance for the children in terms of a net inheritance of €572,817.00. The applicant's proposal for resolving the monies due to the children is acceptable to the applicant and to the four dependant children but is not acceptable to the respondent. Were the respondent to accede to this agreement, and subject to this Court, it would mean that he would have to allow four separate mortgages in favour of each of his children of €55,000.00 per mortgage to be registered against his interest in the properties comprising the retail business properties in favour of each child. The respondent has not given his consent to this but simply contends that trust monies should not be given to the applicant.

54. The applicant's evidence was that when she came to this country she had the insecurity that went with being a Canadian living in Ireland and devoted herself very much to being a full time mother and wife. She did also make direct and indirect contributions for as long as she could until a point arrived when she could no longer work with the respondent. This Court notes the agreement of the children in this regard, all of whom are now adults and who have had the benefit of legal advice, and who have had submissions filed on their behalf and who have entered into negotiations through their legal advisors, and who have reached agreement with their mother, subject to the Court. It appears fair and just in the context of any entitlement the children may hope or expect to enjoy

under the terms of the trust that it should accommodate the making of such provision as the Court deems appropriate for their mother and that any variation of such terms necessary to achieve this objective should take place pursuant to s.14 of the Act of 1996. The advantage of the proposal put by letter dated the 14th of October, 2015, would mean that the respondent would have the retail business and stream of income with an undisputed value of €2.5 million gross and the applicant would have the family home plus €800,000.00 subject to the Court and the children would have the potential benefit of the balance of a minimum of €2.2 million within the trust fund.

55. The further advantage of this proposal is that the children would be repaid money owing to them in the manner suggested in the letter of the 14th October, 2015, addressed to the respondent from McGowan and Co. Solicitors for the children, whereby both parents would pay back €55,000.00 to each child arising out of the inheritance from their grandmother C.R. as proposed. This Court accepts that these monies then owed to the children out of what they have left from their grandmother C.R. the initial sum being €572,820.70, the sum of €152,368.00 was invested in the Canadian property and €131,452.40 having been paid to the children in equal shares left at that time €274,589.00 owing to the children. The mortgage on the Canadian property was redeemed in Canada.

Legal considerations of particular note in this case

56. This Court must take into account the relevant statutory provision pursuant to s.20 of the Act of 1996 and refers to the relevant subsections there under. In this case this must be looked at in the context of a particular application pursuant to s.14(1)(c) where the Court is asked to vary for the benefit of either of the spouses and of any dependant member of the family or of any or all of those persons of an ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made by the spouses.

57. The Court is also required to take account of both the generality of s.20(1) of the Family Law (Divorce) Act 1996:-

> 20.—(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.

and the specific requirements set out in s.20(2) of the same Act:-

> (2) 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:
>
> (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,
>
> (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),
>
> (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,
>
> 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,
>
> (e) any physical or mental disability of either of the spouses,
>
> (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 contribution 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,
>
> (g) the effect on the earning capacity of each of the spouses of the marital 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,
>
> (h) any income or benefits to which either of the spouses is entitled by or under statute,
>
> (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,
>
> (j) the accommodation needs of either of the spouses,
>
> (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,
>
> (l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.

58. The Court is satisfied that, given the facts outlined in this judgment, there is no requirement to consider the provisions of s.20(2) (e) or (h).

59. The applicant requires a lump sum to be paid to her from the trust in circumstances where she is now 56 years of age, and where according to her evidence that she did forego undertaking a Ph.D because of her obligations as spouse and mother of four children. The applicant further gave evidence that it was impossible for her to continue to work in the family business and thereby earn an income going forward because of the difficulties in trying to work with the respondent. This has implications for her because she is a joint owner of the properties held in the company R. Ltd. which houses the retail business. In the applicant's efforts to obtain interim maintenance, this Court found itself in a situation where it was obliged to commit the respondent to prison by virtue of his failure to comply with court orders for maintenance. The resolution of this issue came from the applicant who, after a number of weeks, sought to apply a receiver by way of equitable execution over the rents and profits in the retail business out of which she could then obtain her maintenance. The applicant felt this was the only reasonable way in which she could resolve the problem where there was a resolute failure, refusal, and neglect to pay her proper maintenance. This Court accepts that the parties undoubtedly enjoyed a very high standard of living throughout their married life prior to the breakdown of their marriage.

60. With reference to D.T. v. C.T. [2002] 3 I.R. 334 where Murray J. states at p. 409 of that judgment: -

> *"each spouse has a continuing obligation to make proper provision for the other and the resources that are available to each of them may be taken into account in so far as it is necessary to achieve the objective. Each case will necessarily depend on its own particular circumstances".*

Notwithstanding that in the judgment in this case the assessment of proper provision is made with regard to the assets owned by the parties at the time of the hearing, this Court is obliged to have regard to assets that they are "likely to have in the foreseeable future". With reference to the judgment of Fennelly J. in D.T. v. C.T. [2002] I.R. 334, p.20

> *"a starting point in this regard must be, on the one hand to the resources and on the other hand to the needs, obligations and responsibilities of the parties. There is no stated limitation on financial resources or on 'financial needs, obligations and responsibilities… to be considered by the Court and which may be available for the purposes of making provision. They may extend to resources or to needs, obligations or responsibilities which either spouse "is likely to have in the future" (sub. paras. (a) and (b) respectively)".*

61. It is quite clear to this Court that the applicant is most likely going to be dependant on the respondent for income in the future. This can be done by an allocation of resources available to the Court out of which an income can be derived or she may need a mix of both lump sum and periodic maintenance provision. The latter applies in this case in the view of this Court. This Court views the applicant as being in a somewhat precarious position given the difficulties she has had in terms of obtaining a periodic payment from the respondent in this case.

62. A number of long term problems arise with regard to the manner in which the respondent insists on conducting his business affairs. The respondent can not be relied upon to voluntarily return his income tax each year, it is highly probable that the respondent will fail to keep his affairs in order in this regard from the evidence that this Court has heard. In addition his legal team through counsel (for the short period for which he engaged them during this trial) fairly set out at the outset of the respondent's case, that the Court could not rely on his affidavit of means and that the financial information was incomplete.

63. This Court takes into account the fact that the applicant had to build her application entirely through her own efforts and with the assistance of forensic accountants due to the unwillingness of the respondent to cooperate in relation to the sharing of financial information. The financial history of the parties is quite complex and involved an analysis of the allocation and apportionment of monies received and spent over the years. The respondent accepted that he had caused the applicant directly to incur legal fees of €40,000.00 in respect of the interim application and her overall costs are in the region of €220,000.00 while the respondent's are in the region of €50,000.00.

64. Although the children have reached their majority they are in the course of their third level education for the greater part which includes post-graduate work for some of them. None of the children are in a position to fully finance themselves at this point. A situation is envisaged whereby the children will require accommodation to be provided for them by the applicant for the foreseeable future. She requires secure and settled accommodation for herself. With reference to the standard of living enjoyed by the family this is dealt with in the case of Y.G. v. N.G. [2011] 3 I.R. 717. Denham J. (as she then was) sets out the general applicable principles: -

> *"the standard of living of a dependant spouse should be commensurate with that enjoyed when the marriage ended. The Act of 1996 specifically refers to matters to which the court should have regard and those include the standard of living enjoyed by the family before the proceedings were instituted or before the spouses commenced to live apart as the case may be".*

65. Murray J. (as he then was) in D.T. v. C.T. at p. 399 sets out that: -

> *"it is unlikely, on the breakdown of a marriage, that both parties will continue to enjoy the standard of living which they had achieved together but it would not seem to me proper to invite either party to accept less if that is available".*

With reference to the application of s.20(2)(c) to this case the reality is that the parties and their children enjoyed an extremely comfortable lifestyle which involved them having a strong income from the retail business and the advance of large amounts of capital in the form of the purchase of the property "K" in the family home, by the N.R. Trust, the children's inheritance and the monies received from the S. Trust.

66. This Court notes that the applicant does not wish to invite the court to punish the respondent with regard to any aspect of his conduct towards her or the Court. However in terms of his elongation of the time required to hear this case by virtue of his conduct, by virtue of his manner of dealing as was clearly set out and proven by the applicant, setting the nature and extent of proper provision which should be made for the applicant and dependant children, is a real feature of the case. The Court proposes a solution to continue to enable the applicant give security to the children while they complete their education and allows for proper provision for both parties and their children.

67. Section 22(j) deals with the accommodation needs of either of the spouses and it is the view of this Court that the family home "K" does satisfy the accommodation needs of the applicant and children, although over 18 years of age, who are still, in full time education and who will be so occupied for a considerable number of years going forward. At the moment the respondent has chosen to have the benefit of a caretaker's agreement living in the house of an associate or friend. This Court considers that the transfer to him of the family business constitutes proper provision for him out of which he can provide for his own upkeep. The respondent will thereby enjoy the full use of his property and business interests and continuing income stream.

68. With regard to s.22(k) the applicant will cease to be a spouse of the respondent and will thereby cease to be among the class of primary beneficiaries under the N.R. Trust on divorce. In England the power of the court to vary post nuptial settlements was first conferred by s.45 of the Matrimonial Causes Act, 1857 and subsequently extended by s.5 of the Matrimonial Causes Act 1859 at a time when marriage settlements were more common than they are today. This Court notes that a similar provision in the English divorce legislation for example s.24(1)(c) of the Matrimonial Causes Act 1973 gives power to a court to make *"an order varying for the benefit of the parties of the marriage and of the children of the marriage… any ante nuptial or post nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage…"* In Brooks v. Brooks [1996] 1 A.C. 375 concerning the Matrimonial Causes Act, 1973 (Eng) s.24 *"financial provision that is appropriate so long as the parties are married will often cease to be appropriate when the marriage ends. In order to promote the best interests of the parties and their children in a fundamentally changed situation, it is desirable that the court should have power to alter the terms of settlement. The purpose of this section is to give the court this power. This object does not dictate that settlement should be given a narrow meaning. On the*

contrary the purpose of the section would be impeded, rather than advanced, by confining its scope".

69. This Court notes the submission that there is English authority for the proposition that a settlement can be a post nuptial settlement for the purposes of variation under divorce legislation even though the spouses are not actual or potential beneficiaries under the settlement with reference to *Compton v. Compton* [1962] All E.R 70 and *Charalambous v. Charalambous* [2004] 2 F.L.R. 1093.

70. There are few Irish authorities in this area when faced with an application to vary a post nuptial settlement. In *M.R. v. N.R* (unreported, 5th July, 2005), Quirke J. heard an application on behalf of a divorced former spouse for relief after divorce in another jurisdiction (Spain) pursuant to Part III of the Family Law Act, 1995. The instant case mirrors to a great extent the facts of *M.R. v. N.R.* where Quirke J. described *"a sub trust created in 1999 for the benefit of the respondent, his wife and issue"*. The Court was persuaded to embark on a further consideration of provision for the applicant and noted that in *T.M. v. T.M.* (unreported, 22nd June, 2004), McKechnie J. held that *"an instrument of trust comprised "a settlement" within the meaning of s.9(1)(c) of the Family Law Act, 1995 and was susceptible to a property adjustment order under that section"*. In T.M. the Court was asked to consider the issue whether a particular trust was a settlement which was amenable to a property adjustment order pursuant to s.9 (1)(c) of the Family Law Act, 1995. The Court concluded at p. 337: -

> *"in my view, therefore, these cases over a lengthy period of time demonstrate the courts approach to statutory provisions which is almost identical, for present purposes to s.9(1)(c) of the 1995 Act. That approach leads to a result that once arrangements confer a benefit on the spouses or either of them in their capacity as husband or wife and was provided for, with and by reference to their marriage status, then same should be treated as a settlement within the said statutory provisions".*

71. It seems to this Court that the extent of which the discretion of the court is exercised pursuant to s.14(1)(c) of the Act of 1996 in this statutory context must be done with great caution and can only be done if it is in the interests of the children to do so and to the minimum extent possible. With reference to the decision of McKechnie J. in T.M. v. T.M. and T.S. Ltd. NP 1 I.R. [2004] which concerned a judicial separation and the issue of proper provision in the context of a post nuptial settlement with certain aspects subject to a discretionary trust created during the currency of the marriage. McKechnie J. (then in the High Court) held that the trust concerned was in fact a post nuptial settlement made on the spouses and came with the provisions of s.9(1)(c) of the Act of 1995 and that although the trust instrument referred to the "widow" of the respondent such person would have to have been the respondents wife at the time of creation of the trust. This was to be taken as referring to the wife qua wife and at a time within the continuance of their marriage. He found that it was irrelevant that the applicant had only a contingent interest there under and further that the husband was also a potential beneficiary under that trust. It was decided that the correct date for applying the relevant statutory provisions was not the date of the trust or the date of the institution of proceedings, but the date upon which the court must decide in favour of or against the grant of a decree of judicial separation.

72. Having reviewed principles in English legislation at para.22 p.337 the Court formed the view therefore that these cases over a lengthy period of time demonstrate an approach of the court to statutory provision which is almost identical, for present purposed to s.9(1)(c) of the Act of 1995. That approach leads to a result that once an arrangement for the benefit on the spouses or either of them in their capacity as husband or wife was provided for with and by reference to their married status, then same should be treated as a settlement within the statutory provisions.

73. With reference to the judgement of Lord Nicholls in the case of Brooks v. Brooks [1996] 1 A.C. 375 where commenting on the equivalent English section s.24(1)(c) of the Matrimonial Causes Act, 1973 he says at p. 392: -

> *"one feature of the power of the court under the section is to be noted. This section gives the court power to vary a settlement. Inherent in this provision is the notion that the courts jurisdiction extends to all the property comprised in the settlement. Thus it includes any interest the settlor himself henceforth may have in the settled property by virtue of his own settlement. Further the courts power is not confined to vary the interests of the parties to the marriage under the settlement. The power includes, for instance, the interests in the settled property of the children or, more widely, of others under an old fashioned protective trust. Blood v. Blood [1902] p.78 is an example of the former, and Marsh v. Marsh [1878] 39 LT 107, 545, of the latter. Conversely, it is also implicit in this section that the courts power does not extend to property which is not part of the settled property. In some cases, of which Dormer v. Ward [1901] p.20 is an example, nice questions may arise over whether property is or is not property brought into the settlement".*

74. This Court notes its mandatory obligation under s.14 of the act and s.14(1)(c) in particular *"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 or any dependant member of the family concerned".* The Court must have regard to the factors as set out in s.20(2) of the Act. As is in the case of other orders for ancillary relief, unless it is in the interest of justice to do so, the Court should not make an order under s.14(1)(c) of the 1996 Act. This Court notes the approach identified in the following passage from *Cartwight v. Cartwright* where Sheldon J. pointed out at p.470: -

> *"it is clear also from those cases that in deciding whether anything that the children may be called upon to give up under the terms of a proposed variation is compensated for in some other way, the court is not limited to monetary considerations but is entitled to take into account some intangible factors as the benefits likely to accrue to the children from (Purnell) the maintenance of equality in the family between themselves and an adopted child, or as in Garforth-Bless v. Garforth-Bless [1951] P218 the preservation of a satisfactory relationship with their father. In my judgment moreover, it is upon that basis that in this case any proposed variation of the marriage settlement should be weighed; namely that if and in so far as it would effect the interests of the child, it should be permitted only if, after taking into account all the terms of the intended order, all monetary considerations and any other relevant considerations however intangible, it can be said, on the while, to be for their benefit or, at least, not to their disadvantage".*

This passage was cited in *Ben Hashem v. Al Shayif* [2009] 1 F.L.R. at 115.

Preliminary Conclusions on the Trust

75. In the short and medium term, looking at what has happened in the past in this family and looking into the future it is highly probable the children will have their home with the applicant for a number of years going forward. The applicant has to be placed, therefore, in a financial position to provide a secure home for the children and to continue to meet their daily needs.

76. The Court acknowledges that on her divorce the applicant will cease to be a beneficiary of the trust and, in respecting the trust, seeks to vary it to the least extent necessary to make proper provision. This Court therefore directs the trustees appoint

€800,000.00 to the applicant forthwith.

77. This Court notes the agreement of the applicant and respondent that they both wish to resign as trustees. In that regard, therefore, this Court makes no order now to appoint new trustees pending the implementation of the Court's decision herein but notes the consent of the parties to so resign. The parties have liberty to apply regarding the resignation of the trustees.

78. This Court notes that the power of the Court is wide, but it considers that a proportionate approach will have the effect that after the appointment of €800,000 to the applicant, the balance of the trust remains intact.

79. In taking this decision this Court has had to balance respect for the trust with the need to make proper provision for the parties and their dependant children. This Court finds that due to its wide discretion pursuant to the family law divorce legislation and in particular pursuant to s.14(1)(c) of the Act of 1996 that it is not bound therefore by the internal rules of the trust but that the family law statutory provisions give the power to this Court to vary the trust.

80. It is quite clear on a true reading of the trust documents that it is the intention of the trust that the applicant shall cease to be a beneficiary upon divorce. In the application by the court of its discretion by applying the statutory provisions of the Family Law (Divorce) Act, 1996 the applicant shall cease to be a beneficiary of the trust on implementation of the terms of this judgment and on her receipt from the trust of the sum of €800,000.00 and on the transfer to her into the sole name for her sole use and benefit entirely, of the Canadian property and on transfer to her of the family home.

81. The Court will hear the parties on the most tax efficient way of implementing these orders.

The Position of the Children

82. This Court notes that the parties and their children had the joy of living in a very luxurious house and the children were given a privileged education and attractive foreign holidays and indeed, by virtue of the inheritance from their grandmother, the children were able to enjoy long summer holidays in Canada which is the home of the applicant's birth. The parties and their children would not have had this lifestyle had they been relying on the retail business alone. They have indeed enjoyed many privileges beyond the norm.

83. The report of Browne Murphy and Hughes provided an analysis of the inheritance and its expenditure at appendix 2. This analysis went unchallenged by the respondent. The total inheritance was €677,929.00. Capital Acquisitions Tax accounted for €105,112.00 leaving a balance of €572,817.00. It is this sum that represents the net inheritance of the children.

84. In the context of the agreement between the children and the applicant in relation to the N.R. trust which has already been set our herein, it is clear that the children are agreeable, as beneficiaries, to have the sum of €800,000 made available to the Court for disposal as the Court sees fit.

85. In the context of what is agreed between the applicant and dependant children albeit subject to this Court, the children will gain a repayment to them of monies due to them in the sum of €55,000.00 to each child from each parent, each parent being joint and severally liable to each child in the sum of €110,000.00 per child. This is to repay monies given to the children by their grandmother C.R. and used for the purpose, *inter alia,* of the purchase of the Canadian property. The applicant proposes and agrees with her children, subject to the Court, to have her liability discharged by each of the debts due by her to each of the four children to be secured by way of a separate mortgage in favour of each child against her interest in the family home known as "K". The children propose, and their mother is agreeable, that the liability of the respondent be secured on his interest in the shareholding in R. Ltd. and that separate mortgages would be set up against the property held by R. Ltd. to secure those debts.

86. In the manner of resolution proposed by the applicant and the dependant children subject to this Court, it seems that the children - who have already benefited greatly because of the trust in the level of comfortable lifestyle and excellent education they have received - would have the repayments due to them recognised in terms of how monies given by their grandmother C.R. was dealt with by their parents.

87. The proposed lump sum gives security together with the family home to the applicant and the existing maintenance order ought to continue and to be paid in the form as is paid at present under the interim order of this Court.

Conclusion

88. Proper provision is made for the respondent in all circumstances of this case not withstanding that he has not made proper disclosure to this Court and has failed to file a proper affidavit of means. The respondent shall enjoy a transfer to him of the properties in which the retail business is housed, the applicant thereby relinquishing any interest in the said business and/or business premises and property. He will also have the freedom to run his business as he sees fit in order to provide for himself. The respondent is living rent free at the present time by his own choice. He has sufficient assets given the valuation on the retail business to provide for his own short, and medium and long term security in terms of his accommodation needs and financial needs including covering his own short, medium, and long-term maintenance necessities. The respondent remains as a beneficiary of the N.R. trust, though he will no longer be a trustee.

89. This Court considers it appropriate that the applicant therefore be directed to transfer to the respondent her legal and beneficial interest in each of the properties comprising the retail business together with her shareholding in R. Ltd. being the company of the retail business, to the respondent pursuant to s.14 of the Family Law Divorce Act 1996.

90. In coming to this conclusions in respect of the respondent, the Court has taken account of s.20(2)(a),(b),(c), (f), (g), (h), and (j) of the Act of 1996.

91. This Court shall grant a property adjustment order transferring the family home, the house known as "K" in Co. Dublin, with its contents to the applicant for her sole use and benefit. An exclusive right of residence for her life in favour of the applicant to the exclusion of the respondent is deemed necessary by this Court. The Court has been guided by the provision of s.20(2)(b), (c), (f), and (j) of the Act of 1996 in this regard.

92. Maintenance in terms of periodic maintenance pursuant to s.13(1) of the Family Law Act, 1996 in the sum of €1,200.00 per week for a period of at least six years from the date of this decision herein with an apportionment being €300.00 per week for each of the children H and N and €600.00 in respect of the applicant's own maintenance needs. The said total sum of €1,200.00 per week is to be payable to the applicant as set out above and to be paid in the manner paid heretofore as directed by this Court in the interim order. This is not to prejudice the applicant in having liberty to apply to the Court in respect of maintenance. In coming to this conclusion, the Court has considered the requirements of s. 20(2)(b),(c),(d), (f), and (g).

93. This Court considers it appropriate to direct the respondent to transfer his legal interest in the Canadian property to the applicant for her sole use and benefit entirely. The Court dispenses with the consent of the respondent should he fail to sign all necessary documents within 21 days of being asked to sign said documents. The Court takes into account the use made by the family of this property over the years for holidays and the desire of the applicant to hold onto the base they have in Canada given her origins and notes the impossibility which would arise of dealing with the property should it be left as suggested by the respondent. The Court is satisfied that the applicant's ownership of the Canadian property will be of continued benefit to the children, and therefore it is unnecessary for the children to have joint ownership given the arrangement to have their loan repaid as set out above.

94. This Court directs that the P.T.S.B. account should be the sole property of the applicant taking into account that interim arrears in the sum of €19,200.00 are owed to her by the respondent. On foot of all transfers being effected and monies paid as directed on foot of this order this Court then directs that mutual blocking orders pursuant to s.18(10) of the Family Law Divorce Act 1996, be made, save respect of the applicant's maintenance requirements.

95. This Court therefore shall grant a Decree of Divorce to the parties in respect of their marriage and note that concerning the ages and circumstances of the children no orders are necessary concerning their future custody arrangements.

96. The Court will hear from the parties on the most efficacious manner in which an order might be drawn up to give full effect to the rulings in this judgment, and in particular the order and nature of steps that need to be taken in relation to the trust.