

## THE HIGH COURT

## CIRCUIT APPEAL

[2017 No. 37 CAF]

## IN THE MATTER OF THE JUDICIAL SEPARATION AND LAW REFORM ACT 1988 AND THE FAMILY LAW ACT 1995

## BETWEEN:

P.

APPLICANT

-AND-

P.

RESPONDENT

## EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on 11th day of October 2017

1. This is an appeal by the applicant of the order of Ryan J. in the Circuit Court regarding an order of judicial separation. The respondent is not appealing any aspect of the order.

2. Based on the closing submissions of counsel for the applicant:

- The applicant regards the access order made by the Circuit Court regarding their two children, to be as good as can be agreed by the parties, save for such further or other access as can be agreed between the parties. This does not require an amendment to the Circuit Court Order, since it is subject to both parties agreement. As such this Court would simply express the hope that the parties can reach agreement in the future regarding further or other access in the interests of the children since it is clear to this Court that both provide a loving and caring atmosphere for their two children.

- The applicant also would like both parties to be advised on all medical and educational matters concerning the children. Since this would apply to both parties and is in the best interests of the children, this Court is happy to make an amendment to the Circuit Court Order to this effect.

The key argument of the applicant in this appeal is in regard to his understandable desire to remain in the family home. As a preliminary point, this Court heard no evidence which would lead it to reach a different conclusion from the Circuit Court that the two parties have joint custody of their two sons with primary care and control granted to the respondent. Accordingly, this Court concludes that it is in the best interests of the two children that they reside in what has been the family home with their mother, the respondent, as the primary carer until they are no longer dependant. Accordingly, this Court would reach the same conclusion as the Circuit Court regarding the family home.

3. During the hearing, the applicant relied on the P60 for the respondent for 2016 as evidence of her having a weekly net income of approximately €490 per week, after the payment of her pension. This figure is however approximately €60 greater than the amount specified in her affidavit of means which was provided to this Court. Counsel for the applicant submitted that this weekly income is also more than the affidavit of means provided to the Circuit Court. For this reason, this Court will remove the obligation imposed upon the applicant by the Circuit Court Order to pay maintenance of €60 per week to the respondent, on the grounds that this change makes adequate and proper provision for the parties and the two dependant children, having regard to the respective means of the parties. This also has the advantage of the applicant having €60 extra towards his rental of a property in light of the evidence produced by the respondent regarding rental levels in the vicinity of the family home. This amendment has the further advantage of ensuring that the parties have less contact with one another, as it eliminates any future disputes regarding maintenance, and so reduces the prospect of any further disagreements to which the children might be exposed. This amendment will also hopefully leave the applicant in the future with greater funds to pay the children's unanticipated costs when the children are with him. He has, it must be said, met these costs to date, although not required to do so under the terms of the Order and hopefully he will be in a financial position to do so in the future.

4. For all these reasons, this Court will affirm the Circuit Court Order, save for the changes thereto regarding both parties being advised by the other party on all medical and educational matters concerning the children and the elimination of the maintenance payment.

5. Finally, while this Court heard this appeal as a de novo hearing, it is perhaps no surprise that it has affirmed the order of the Circuit Court. That was the order of a very experienced family law judge who spent three days hearing the matter and spent considerable time producing a most comprehensive three page order regarding access and other matters, with the input of counsel for both parties.