

THE HIGH COURT**[Record No: 2014/11CAT]****IN THE MATTER OF THE FAMILY LAW ACT 1995****AND****IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996****BETWEEN:****V.M.****APPLICANT/APPELLANT****AND****J.P.****RESPONDENT/RESPONDENT****JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 23rd day of March, 2015.**

1. The parties to these proceedings were married on the 23rd May, 2003. There were two children of this marriage namely "C.M" (born on the 27th July, 2004, and "N.M" born on the 20th November, 2005). The parties resided together in respondent's home until the first week of February 2004. Since that time, the parties have lived apart.

2. Since the separation of the parties, the applicant/appellant has resided on his farm.

3. A civil bill was issued in the Circuit Court on the 8th May, 2008, by the applicant/appellant husband. The respondent's defence and counterclaim was filed on the 1st September, 2008.

4. Both parties sought relief pursuant to the Judicial Separation and Family Law Reform Act 1989, and pursuant to the Family Law Act 1995. There is no dispute as to the fact that both parties are domiciled in the Republic of Ireland, or to the fact that both parties had been, for a period of one year immediately prior to the issue of the proceedings, ordinarily resident in this jurisdiction.

5. Both parties accepted in their pleadings that the appellant had vacated the family home in or about February 2004. The parties had not resided together since that time.

6. A family law civil bill seeking divorce reliefs was issued out of the Circuit Court Office on the 19th January, 2011, with the appellant herein as applicant in those proceedings.

7. The Circuit Court granted orders on the 7th October, 2011, in the context of the divorce proceedings. The Court granting a decree of divorce in accordance with the provisions of s.5 of the Family Law (Divorce) Act 1996 in respect of the marriage contracted on the 23rd May, 2003. Ancillary reliefs were granted. On the 7th October, 2011, a stay was granted on the order of the Circuit Court pending the determination of the appeal.

8. A full appeal was lodged by the applicant/appellant dated on the 10th October, 2011. On the 25th July, 2014, this Court issued an order, on consent of the parties, reducing the maintenance for the two dependent children to €110.00 per week, pending the determination of the appeal. This order was without prejudice to the position of either party.

9. The evidence of the applicant/appellant was that the initial intention of the parties was that they would live on his farm following their marriage. However, it transpired throughout the trial that the respondent continued to reside in a property she owned, which was her home prior to the marriage and remains her current home. Technically, this property would be deemed a family home given that the applicant/appellant resided there for a period. Moreover, this property is where the parties commenced their short married life.

10. The applicant/appellant gave evidence that he worked as a builder's labourer for a three-month period following the marriage. In February 2004, the applicant/appellant claims he was asked to leave his wife's current home.

11. The applicant/appellant gave evidence that he inherited his own lands and property prior to his marriage to the respondent. The applicant/appellant accepted that until the conception of the second child of the relationship, "N", there was some form of relationship between the parties.

12. The first child "C" is now aged ten years of age, and the second child "N" is nine years of age. "C" suffers from dyslexia, and is awaiting a psychological assessment in primary school. In general, the applicant/appellant described himself as having a very good relationship with "C" and "N".

13. The applicant/appellant gave evidence that he has two children from a subsequent relationship. These children are "N" (born on the 11th January, 2009) aged five years and "K" (born on the 10th December, 2009) also aged five years. The applicant/appellant described difficulties in that relationship, and explained that the parties separated because of mental health difficulties on the part of his subsequent partner. The applicant/appellant relayed to the Court that he has extensive access to "N" and "K", with visitations occurring three out of four weekends.

14. The applicant/appellant describes himself as having a relatively low income with a small farm of 55 acres, which he inherited from his maternal grandfather. He outlined that he had lived with his grandparents from the age of eighteen in the capacity of carer, and he never got the opportunity to go to college. He felt that the maintenance order issued by the Circuit Court was too onerous, being originally in the sum of €200.00 per week for "C" and "N", whereas he described paying €69.00 for the two younger children of his subsequent relationship. The applicant/appellant describes how the €200.00 was reduced to €110.00 subsequently.

15. The further basis of the applicant/appellant's appeal is grounded on the direction of the Circuit Court that he pay a lump sum of €120,000.00 (€60,000.00 per child) in maintenance. Furthermore, the Circuit Court directed that this lump sum was to be paid no later than the 7th October, 2012. However, in the event of an appeal to the High Court, this Court had jurisdiction to stay the order until completion of the appeal.

16. The applicant/appellant based his appeal on the fact that he has short-term stocking loans which he is liable for and in turn, payment of the aforementioned sum of maintenance is untenable. The applicant/appellant explained to the Court that he would be able to pay €10,000.00 a year for five years in maintenance for "C" and "N". The applicant/appellant highlighted that his two younger children and subsequent partner rely on disability allowance and council housing.

17. Under cross-examination, the applicant/appellant agreed that the respondent worked in a hospital as an assistant pharmacist, and his view was that there was an agreement between the parties on marriage, that she would seek a transfer to facilitate the marriage. The applicant/appellant agreed that he left the respondent in February 2004, but that he was told by her several times to leave their home, and he left eventually.

18. On the issue of the applicant/appellant's occupation, he outlined that he was a builder's labour for a three-month period, subsequent to his marriage to the respondent but he denied working as a stonemason. The applicant/appellant indicated that his father owned a country public house, which opened for twenty hours per week. He outlined that he had not worked in the public house for ten years, nor was there insurance to cover him working there. The applicant/appellant gave sworn testimony that he received no wage from the income of the aforesaid public house.

19. In relation to the allegation that his wife had purchased a tractor in 2004, the applicant/ appellant gave evidence that himself and his father paid for the tractor over seven years, and that there was a Massey Ferguson agreement in relation to its acquisition.

20. The applicant/appellant described to the Court that he is involved in dry stock farming and that he works seven days a week. He explained that the calf-rearing on the farm was intensive and time-consuming.

21. The applicant/appellant described himself as in receipt of disability benefit and suffering from depression. He described his depression as acute and as medicine resistant, but he has good and bad days. The applicant/appellant was prescribed Lustral for four years but stopped taking the medication, as it was ineffective. Moreover, the applicant/appellant described himself as suffering from a social phobia. He described himself as having no social life and having a drink about twice a year, and not smoking for the past three years.

22. On the issue of the allegation of domestic violence, the applicant/appellant denied imposing any physical violence on the respondent, and denied any interference by his family with her. Moreover, the applicant/appellant denied any assault by any member of his family on the respondent. He stated that he felt the respondent had wrongly alleged that he had injured her shoulder.

23. Under cross-examination, it was put to applicant/appellant that the respondent was not comfortable living on the farm because of the daily interference in their lives by the applicant's mother and sister. However, the applicant/appellant claimed that the respondent had never lived on the farm, but that she had lived fifty miles away in her current residence.

24. Under cross-examination, it was put to the applicant/appellant that his departure from the respondent's current residence was sudden. However, the applicant/appellant outlined that the respondent had requested on numerous occasions that he leave the residence.

25. From the evidence proffered to this Court, the Court finds that the applicant/appellant paid the outgoings and utilities on the farmhouse, while the respondent did likewise with her own property.

26. On the issue of the applicant/appellant's finances, he gave evidence that he received €4,500.00 on the 20th December, 2014, in the form of a REPS grant. However, the REPS grant scheme would not be available to him next year. It was proffered to the Court that the applicant/appellant has a net income of €648.00 per week with €200.00 going to three active loans. The applicant/appellant also described having a stocking loan with the Credit Union until April 2014. Moreover, the applicant/appellant had another stocking loan and a working capital loan from May 2013, but he had not been able to repay it in full. The loan was extended until the end of February 2015, with a balance of €9000.00 left to repay. In summation, the applicant/appellant's evidence was that he was left with €240.00 to live on weekly. The applicant/appellant claims that he has no pension.

27. The applicant/appellant's accountant gave evidence to the effect that the applicant/appellant had €77,000.00 in loans to repay, and he required a year to clear his debts before he could commence paying a lump sum. The proposal was that in three years time, the applicant/appellant would pay €10,000.00 a year for five years. This proposal was by way of an open offer.

28. With regard to the respondent's contention that she had bought a motor vehicle during their marriage, the applicant/appellant indicated that the respondent had purchased his vehicle and he had bought another one at that time. Moreover, the applicant/appellant described giving the respondent €8000.00 during that period, and she later gave him a cheque for €8000.00. The applicant/appellant interpreted the respondent's payment of €8,000.00 as repaying money which was essentially his own.

29. Under cross-examination, the applicant/appellant was asked about a cottage on his land, which his wife believed was rented. The applicant/appellant explained that the cottage was jointly owed with his father. Moreover, the applicant/appellant relayed to the Court that his father refused to allow the property to be valued for these proceedings. He explained that there were tenants currently staying in the property at €50.00 per week.

30. On the issue of access, the applicant/appellant described the parties' eldest son "C" as wishing to have overnight access. The applicant/appellant described the difficulty he had in obtaining access with regard "C" and "N". He relayed to the Court that he felt restricted in terms of where he could bring the children, and what activities he could plan with them. The applicant/appellant explained to the Court that it was important that his children would see and know his life, as well as the life they had with their mother. The applicant/appellant requested a half-way meeting for handovers of the children where possible.

31. On the respondent's evidence, she indicated that she felt that in the last eight years she had accommodated her husband regarding access. The respondent confirmed that she had no issue with the applicant/appellant having access with the children and that access had improved in the last year. However, the respondent claimed that the applicant/appellant had very diluted access with the children, which amounted to only 108 hours in eight years. In addition, the respondent explained to the Court that there has been no contact between the applicant/appellant and the children between 2008 and 2010. Furthermore, the respondent claimed that the applicant/appellant only had ten hours access with the children in 2013.

32. The respondent/respondent gave evidence that when the parties were in a relationship, she intended to move to the applicant/appellant's residence and that her name was on a panel to move to a job that was located in close proximity to the applicant's residence.

33. The respondent/respondent outlined that the parties' married life was subject to interference from the applicant/appellant's family. Moreover, the respondent alleged to have suffered from a physical assault during her first pregnancy by the applicant/appellant, which resulted in a dislocated shoulder. The respondent outlined that the applicant had pushed her so hard on the shoulder that she broke the wall behind her.

34. The respondent/respondent described that when she was pregnant with her second child, she signed as guarantor for the applicant/appellant for the sum of €20,000.00. However, the respondent claimed that the applicant/appellant never visited her during the last seven weeks of the pregnancy with the second child. The respondent explained to the Court that she felt that she tried to do everything to make the marriage work.
35. The respondent described her previous working history as encompassing time spent working in numerous countries. In 1997, she returned to Ireland and began working in a hospital in 1998. She had sold a site and had purchased her present house before she met the applicant/appellant.
36. The respondent highlighted that she had considerable investments, which are now depleted and reduced to a Bank of Ireland investment in the sum of €153,000.00 as well as a Davy's Fund, which included Friends First in the sum of €3,900.00. The respondent outlined that she has to use about €1000.00 every six months from this fund to make up the shortfall in her income. The respondent outlined that this depletion to the aforementioned fund is attributable to the applicant/appellant's failure to pay adequate maintenance. In addition, the respondent described having €90,000.00 in the ICS Building Society. On the date of the marriage, the balance of the account was in or around €63,000.00. The respondent outlined that there are no funds in that bank account at present.
37. The respondent also alleges to have given €3,000.00 to the applicant/appellant for the purchase of cattle. Furthermore, the respondent claims to have paid €8,000.00 to the applicant/appellant for a motor vehicle. In addition, the respondent gave further evidence that she had paid the entire wedding costs of the parties, which amounted to €20,000.00, and paid a further sum of €9,000.00 to applicant/appellant to assist with the purchase of a tractor.
38. The respondent described having large legal bills, which account for €31,000.00 for costs in the Circuit Court in July 2011. She described these proceedings as her 14th court appearance.
39. The respondent set out that she had spent €130,000.00 on child-care to date. She outlined that she was working full time since 2007, but because she had used 150 parental leave days when only 70 days per child were permitted (giving a total of 140 days allowable), her salary was reduced to €26,000.00. In turn, this arrangement affects her lump sum and pension.
40. The respondent described having flexible working hours and that she did complete a thirty-seven hours week, but she is currently working twenty seven hours per week. Her commute to work is one hour each way. The respondent describes herself as now being forty-seven years of age and to buy back years for pension purposes would be a costly endeavour.
41. The respondent claims to have a net income of €500.00 per week but if she worked a thirty-five hour week, her weekly wage would increase to €600.00. The respondent described her current working pattern as working two long days, generally Monday and Friday.
42. The respondent explained to the Court that she required yearly outgoings such as child care and educational costs to be guaranteed. She described the children as having a keen interest in sport and they are members of a competitive soccer team. In addition, the respondent highlighted that the children play soccer in winter and hurling in summer. She expressed a desire that her children are not to be introduced to any future partners of the applicant/appellant.
43. The respondent was cross-examined on her affidavit of means, which reflects weekly outgoings of €1,318.05. She highlighted that a significant portion of this sum was spent on childcare with approximately €12,000.00 spent on childcare per annum. Furthermore, the respondent outlined that she had spent €130,000.00 to date on child care and that the crèche fees were €250.00 per week. The daily pattern of the children was to attend the crèche from 7.30am to 9.30am, and from 2.30pm to 6.00pm. The respondent also explained that she hired a cleaner who cleaned the house once a week at €10.00 per hour.
44. The respondent was very critical of the applicant/appellant in that in 2013/2014, he made no contribution to the Holy Communion of either child. The respondent claims that the applicant/appellant did not attend "C's" Holy Communion but turned up in the middle of "N's" Holy Communion, handed the child a card and disappeared. The respondent claimed that the applicant/appellant had given ten euro to the children in the last ten years and he never recognised birthdays. She criticised him for only giving the children ten euro each at Christmas. However, the respondent claims that this Christmas, the applicant/appellant gave "N" a card with twenty euro.
45. Regarding access and custody, the respondent expressed a desire of having all bank holidays with the children.
46. With regard to the properties of the parties, the Court heard evidence from two auctioneers.
47. Mr "W.M.", an auctioneer, was obtained by "V.M" to value lands owned/held by the applicant/appellant. Similarly, Mr. "J.C", an auctioneer was obtained by "J.P" for the purposes of valuing lands owned by the applicant/appellant. Both auctioneers testified to this Court on their valuations of the aforementioned properties and concluded:
- (a). With regard to folio no: "A", the applicant/appellant's family home, Mr "W.M" valued the property at €100,000. The auctioneers described the property as a two-story house (three-bedroom house) with a walled garden which stood on four acres approximately. Mr. "J.C" valued the property at €250,000.00
- (b). The second property, folio no: "B", comprises of a forty-nine acre non-residential holding with farm buildings and approximately 200 yards of road frontage with a stonewall entrance leading from the property from the public road. The land is divided into a number of fields. Mr. "W.M" valued the lands at €343,000.00(€7,000.00 per acre). Mr "W.M" arrived at this valuation as half of lands are in a good location while the other half of the lands are low-lying and are subject to flooding. Mr "J.C" valued the aforesaid lands at €637,000.00 (€13,000.00 per acre). Moreover, Mr. "J.C" explained that the value of the lands were enhanced by the presence of "state of the art" farm buildings.
- (c). The third property, folio no: "C", comprises of 27.580 acres(approximately) with laneway access to the public road. At trial, there was an issue concerning whether the applicant/appellant owned this land. It is submitted by the applicant/appellant that although he is a register owner of the property, his right to recover the aforesaid lands is extinguished as his aunt had occupied the lands since 1985 approximately. In turn, his aunt is entitled to be registered as the owner of the aforementioned lands due to adverse possession of the property. This position was confirmed in a letter dated the 15th January, 2015, from P.P Ryan & Co Solicitors to MW Keller & Sons. Thus, Mr. "W.M" did not provide a valuation of the lands to this Court. However, Mr "J.C" did value the lands at €275,888.00.

(d). The fourth property, folio number "D", comprises of a 2.3 acre field (approximately) with road frontage, access to the public road and is adjacent to a river. Mr "W.M" valued the land at €13,000.00. Mr "J.C" valued the land at €34,500.00 and based this valuation on comparable lands in Leinster.

(e). The fifth and sixth property, folio no's: "E" and "F" comprises of two turf banks. The collective value of these lands where agreed by both auctioneers at €4,000.00.

(f). The sixth property, folio no: "G" comprises of a single storey cottage. The applicant/appellant holds a fifty percent interest in the property. Mr "W.M" valued the applicant/appellant's interest in the property at €15,000.00. Mr. "J.C" valued the total property at €82,000.00. This valuation was predicated on the assumption that the applicant/appellant owned an out office directly behind the residence. Mr. "J.C" informed the Court that the applicant/appellant outlined that the out office was not part of the property.

(g). The seventh property, folio no: "H", comprises of a 1.79-acre field (approximately) with water supply and an old stone building with a galvanized roof. Mr. "W.M" valued the property at €10,000.00. He outlined that planning permission on the land would be difficult to obtain. Mr. "J.C" valued the property at €45,000.00 and outlined that the presence of the old stone building would buttress any prospective planning permission application, and that the location of the aforementioned property complements the applicant/appellant's family home.

(h). The eighth property, folio no: "I" comprises of 1.56 acre field (approximately) with 80 yards of road frontage (approximately). Mr. "W.M" valued the land at €8,000.00 on basis that there was minimal prospect of planning permission being granted and that the lands were in effect, wetlands. Mr. "J.C" valued the aforesaid lands at €40,000.00. This valuation was based on comparable lands in Leinster.

(i). Mr "J.C" valued the applicant/appellants livestock as of November 2012 at €33,775.00. However, this Court notes that the varying nature of livestock and its value. Moreover, Mr. "J.C" valued the applicant/appellant's machinery at €24,250.00.

48. Mr. "W.M" did not carry out any valuation to the respondent assets. Mr. "J.C" did carry out a valuation of the respondent's current family home, which comprises of a two storey semi detached house near a provincial town in Leinster. Mr. "J.C." valued the property at €112,000.00.

49. This Court adopts a mid-way valuation in respect of contested valuation evidence and accepts the respondent's valuation of her property.

50. It is clear from the evidence that there has been a poor relationship between the parties at all times. It is essential that efforts be made by both parties to improve their communication with one another so that there can be civil interaction in the presence of the children. A civil interaction is required during handover times for access and on other special occasions. This means that both parties must ensure that there is real and meaningful civil communication between them.

Conclusions taking into account the factors set out in s. 20 of the Family Law (Divorce) Act 1996.

51. This marriage between the parties was particularly short and unfortunately, did not work in any meaningful way for the parties. The Court takes the view that there was a clash of personalities between the parties as opposed to one party being solely or primarily responsible for the breakdown of the marriage. It is the view of this Court that the marriage never really worked for anything other than a very minimal period of time, in excess of a little over one year from the date of the marriage. By that stage, the respondent/respondent was pregnant with her second child when the applicant/appellant left the family home having been asked to leave on many occasions. I accept the applicant/appellant's evidence in this regard.

52. Regarding s. 20(2)(a) of the Act of 1996 concerning the income/earning capacity, property and other financial resources which each of the parties concerned has or is likely to have in the foreseeable future, this Court accepts the accountancy evidence given on behalf of the applicant/appellant to the effect that his income is a modest one, and that he is, at present, entitled to a disability allowance due to depression from which he suffers. The applicant/appellant is not currently taking medication for his condition, but this Court accepts that he ceased taking previously prescribed medication because he did not find it effective. This Court accepts that he is in receipt of the single farm payment. This Court further accepts that the rural environmental protection scheme (REPS) is no longer available to farmers including the applicant/appellant. This Court accepts the evidence given on his behalf by his accountant that his 2013 accounts reveal that he was entitled to €39,520.00 in Revenue subsidies before tax, consisting of the single farm payment and rural environmental protection scheme, but that this sum would be reduced to €28,781.86 before tax in 2015 due to the abolition of the REPS scheme and a reduction in the single farm payment. This Court further accepts this will be reduced further on an annual basis to €21,609.49 by 2019.

53. The respondent/respondent is a senior pharmaceutical technician with the HSE, and she has a permanent pensionable employment regarding same. At the moment, she is working less than full hours due to stress and family commitments, and the Court accepts her evidence in this regard.

54. Regarding the respondent/respondent's evidence, it is clear that she was quite wealthy at the point at which she married her husband. While she does claim to have completely depleted her resources in terms of monies available to her, she was able to give a loan of €25,000.00 without security to a friend, and that sum was repaid in cash. In large measure, the Court does accept her evidence regarding her finances, but does not believe that she requires maintenance for herself from her husband and vice versa. Rather, the Court is concerned to provide for her a lump sum going forward in terms of the orders herein, reflecting her contributions in the past (although these were disputed), and by way of buy out of whatever interest she may have or have had in the assets of the applicant/appellant.

55. The children have a reasonably good standard of living and are well cared for by the respondent. She is finding it difficult at a point in her life where she has carried the substantial burden of rearing the children. She has indicated a willingness to share the care of the children, and the manner in which the Court proposes to ensure that this care is shared, is an arrangement that should alleviate her financial burden to a significant degree on a monthly basis. If the applicant/appellant is to take up the duty of minding the children for a significant period on two days a week, this should reduce the respondent's childcare bill. Moreover, with increased maintenance and proper provision for the children as set out in the order, any gap in income, needs and resources is hereby bridged.

56. It is the view of this Court that the applicant/appellant is more than happy to have a meaningful relationship with his children, but

he has stressed his limited earning capacity. This Court believes that the order as varied is one that the applicant/appellant can and will meet. There should be no question of any default on same.

57. This Court has taken into account the fact that the father has two further children as a result of another relationship. In the initial eight-month period following this order, the applicant/appellant's access with the children of this marriage should be exclusive between him and them, and at a later date, their half siblings may be introduced in a gradual way. The applicant/appellant must note that "N" and "K" are younger than "C" and "N" and will have different needs as time progresses.

58. The Court having considered all of the evidence, including extensive accountancy evidence from the applicant/appellant's accountant and from both parties' valuers, has come to the following conclusion:

59. The parties are entitled to a decree of divorce from one another in respect of their marriage contracted on the 23rd May, 2003, on the basis that both parties are of Irish domicile and are habitually resident within the jurisdiction of this Honourable Court, and have been so habitually resident throughout their marriage in fact. Moreover, this decree of divorce is granted on the basis that the marriage has irretrievably broken down, that there is no prospect of reconciliation between the parties, and on the basis that proper provision can be made for both parties and for their dependent children in the context of the within proceedings, and on the basis that the parties have lived separate and apart from one another since the conception of the parties' second child in February 2004.

60. This Court considers 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 re-marriage [or registration in a civil partnership] of the spouse of otherwise) pursuant to s.20(2)(b) of the Act of 1996. The structure of the orders herein take note of the needs of both parties in that this Court has structured two lump sum payments to be paid by the applicant/appellant in accordance with his own wish annually by way of maintenance for the children, and this is structured to be paid at times when he has more money rather than on a weekly basis throughout the year as has been the case heretofore. This is to facilitate the applicant/appellant's request in that regard, and it is also the view of this Court that the respondent is a good manager and will be well able to manage these lump sums, and indeed that they will be of more benefit to her when paid in this manner. Therefore, a lump sum is to be paid each year in two instalments collectively for the infants. One lump sum payment in the month of October in the sum of €5,000.00 (to cover both children) to be paid on or before the 30th day of October 2015, and a further lump sum payment of maintenance of €3,320.00 is to be paid by the 15th December, 2015, and on the same date in subsequent years during the dependency of the children. These two lump sum payments represent what is in effect a payment calculated on the basis of €160.00 per week were it to be paid weekly, which is in effect therefore calculated on the basis of €80.00 per child per week, although now to be paid in two lump sums as aforesaid. These lump sums are to be paid in October and December 2015. The same structure and pattern of the order will continue yearly by way of lump sums on these dates during the dependency of the two children up to the age of 18 years, and subsequently, should either child remain in full time education and/or training. Between the date of this order and the first lump sum payment to be paid by the 30th October, 2015, the applicant/appellant shall pay the weekly sum of €160.00 for the two children to his wife instead of the previous maintenance order which is hereby vacated, and this represents an apportionment of €80.00 per child per week pending the lump sum payments as aforesaid. This order gives effect to the wishes of the father in terms of assisting his capacity to pay maintenance, and gives him some reduction on the previous order on the basis that he is willing to collect the children from school two days a week, and has commenced doing this. Moreover, the applicant/appellant is going to mind the children in their own home, cook them a meal, and assist them with their homework, until the respondent/respondent returns from her employment at about 7pm in the evening. In this way, the applicant/appellant has the opportunity of spending more time with the children and alleviating the burden of the respondent/respondent. In addition, such an arrangement can ensure that proper provision can be made to fulfil the applicant/appellant's financial obligation to the children in respect of their needs.

61. This Court varies the terms of the Circuit Court Order set out at para. 3 in relation to custody, and makes an order pursuant to s. 15 (1)(f) of the Family Law (Divorce) Act 1996 and pursuant to s. 11 of the Guardianship of Infants Act 1964 granting joint custody of "C" and "N" to both parties herein with access on the following terms:

1) Week one: Friday 3pm to Sunday 7pm.

2) Week two: Saturday 10am to 6pm.

3) Week three: Friday 3pm to Sunday 7pm.

4) Week four: no access.

5) Twice a week after school till 7pm.

6) Holiday access to take place for a continuous two-week period between July and the start of the following school year in September, said access is to be agreed six weeks in advance. In addition, the applicant/appellant is to have a total of twenty eight days including twenty seven overnights of access with the children during the summer holidays, which is to comprise two continuous weeks of access as set out herein, with the balance to be divided around the children's sporting interests. All bank holidays are to be spent by the children with the respondent. The children are to enjoy five days continuously during the Christmas holidays with the applicant/appellant, as well as five continuous days at Easter with the applicant/appellant. In addition, to ensure that the applicant/appellant has a firm input into his sons' lives from this point on, and to alleviate the financial pressure on the respondent/respondent concerning childcare issues and general pressure on her, the applicant/appellant shall collect the children after school on two set days per week as aforesaid, and shall take the children to the respondent's property. The gardens of the house can be used during the access period, as well as the kitchen and toilet facilities.

The parties are agreed that they will undergo three sessions of post-separation counselling so that they can work through any issues which may arise in the initial period going forward with access. During access periods, when the respondent is working, the applicant/appellant shall collect the children either from school or from their house (out of school term) and the parties shall meet on Saturdays or Sundays at "K" for the exchange of children at the end of access periods. The same shall apply during vacation, if the respondent/respondent is not working and is in a position to deliver the children to "K".

62. This Court is minded to vary the terms of para. 4 of the Circuit Court Order and directs that in accordance with s. 13 (c)(ii) and s. 13(3) of the Act of 1996 that the applicant/appellant shall pay to the respondent/respondent, in addition to the periodic maintenance, a lump sum of €72,000.00, in order to buy out any interest the respondent/respondent may have had in the husband's assets. Said sum to be paid in six equal instalments of €12,000.00 per instalment, with the first instalment to be paid on the 15th

October, 2016, and the remaining five instalments to be paid on the 15th October on each subsequent year for a five year period until the total of €72,000.00 has been discharged. In addition, this Court vacates para. 5 of the Circuit Court Order of the 7th October, 2011. This Court vacates the order as set out at para. 6 of the Circuit Court Order of the 7th October, 2011.

63. In accordance with s.15 (1)(b) of the Act of 1996, the Court grants a declaration pursuant to the provisions of s.36 of the Family Law Act 1995 that the respondent has no claim on any of the lands set out in the applicant/appellant's affidavit of means including;

- (a). Folio "A".
- (b). Folio "D".
- (c). Folio "H".
- (d). Folio "B".
- (e). Folios "F" and "E".
- (f). Folio "C".
- (g). Folio "G" comprising dwelling house and ancillary lands.
- (h). Folio "I".

64. In accordance with s.15(1)(b) of the Act of 1996, the Court grants a declaration pursuant to the provisions of s.36 of the Family Law Act 1995 that the applicant/appellant has no claim, right or interest in the respondent's property, and declares the respondent to be entitled to the entire legal and beneficial interest in the said property.

65. In light of the above, this Court varies para. 14 of the order of the Circuit Court.

66. In accordance with s.15(1)(b) of the Act of 1996, the Court grants a declaration pursuant to the provisions of s.36 of the Family Law Act 1995 that the respondent/respondent has no claim on the stock, machinery and farm buildings on the applicant/appellant's farm.

67. The Court grants an order pursuant to s.17(3) of the 1996 Act in respect of the widowers periodic pension but not lump sum, being a contingent benefit arising under the HSE pension entitlements of the respondent/respondent in favour of the applicant/appellant should the respondent /respondent pre-decease him. A separate order approved by the HSE Pensions Department should be drawn up.

68. This Court directs that Folio No: "G", Folio No: "H" and Folio No: "I", as owned by the applicant/appellant shall be held in trust by him for the dependent children as set out hereunder, not to be alienated or pledged as credit during their minority. In particular, the applicant/appellant is to hold his fifty percent interest in Folio No: "G" in trust for "C". Moreover, the applicant/appellant is to hold his interest in Folio No: "H" in trust for "C". With regard to Folio No: "I", the applicant/appellant is to hold Folio No: "I" in trust for "N". As stated above, none of the above trust properties are to be alienated or pledged as credit during "C's" or "N's" minority.

69. This Court grants an order pursuant to s.18(10) of the Act of 1996, blocking any application by either party to the estate of the other on death.

70. This Court contends that the above variations set out in line with the text of the Circuit Court Order, make proper provision set out above for both parties herein and for their dependent children.

71. This Court notes the submissions made on behalf of the applicant/appellant in terms of the interpretation of s. 20 of the Act of 1996 when the scope of this section was considered by O'Neill J. in K. v. K [2003] 1 IR 326 and O'Neill J. set out as follows(at pg.352-353):-

"Section 20(2)(a) in no way delimits the property or the financial resources which should be taken into account nor does it limit in any way a time period outside of which assets are to be ignored. On the contrary, the subsection explicitly provides that the court must have regard to income, earning capacity, property and other financial resources which each spouse has, "or is likely to have in the foreseeable future". Thus, it seems clear that all property to which a spouse is beneficially entitled and all income and other financial resources which are currently enjoyed or which are likely to become available must be considered and taken into account."

O'Neill J. went on to state that the depth of incursion into the property, income and other financial resources would vary in accordance with the many other factors of s. 20(2) of the Act of 2006 and the length of disconnect between the parties.

72. It is submitted on behalf of the respondent/respondent that where proper provision is made specifically for dependent children, the length of disconnect consideration has no relevance, and the manner in which the various assets/resources are required is equally less relevant than it would be between spouses particularly, as in the instant case, of where the level of financial support afforded the dependent children by the parents to date has been unequal. In applying this to the instant case, this Court takes the view that it has made specific provision in terms of lump sum payments for the respondent/respondent, taking into account a number of direct payments she said she made during the marriage. However, it is not accepted by this Court that she can lay the depletion of her savings entirely on the applicant/appellant, nor is her approach in calculating the cost to her of having reared the children accepted as entirely balanced in this case, in circumstances where it is quite clear from the evidence, that the father of the children would have liked to have had a greater involvement with the children over the years. The applicant/appellant now has that opportunity, and has responsibility accordingly. It is in order to compensate the respondent/respondent that the lump sum orders made herein are made in her favour in terms of the amounts to be paid over the next five years as set out herein. It is also to buy out such interest she may have had, albeit very small, in the assets of the applicant/appellant. It is for this reason that this Court has varied the provision for the children in awarding property to be held in trust by their father for them. This provides extra security for the children as they grow up.

73. This Court deems that pursuant to s. 20 (c), (d), (e), (f) that the above terms make proper provision for each of the parties and their dependent children. The children and both parties have a reasonable standard of living and have had same throughout their

lives. Pursuant to s. 20(d) of the Act of 1996, this Court takes the view that the marriage was particularly short but did result in the birth of two children. This means that proper provision has to be made for them in particular as well as for both spouses. However, this Court notes that both spouses are able to earn their own income and have always done so in effect.

74. Pursuant to s.20(e) of the Act of 1996, this Court notes that the applicant/appellant has depression.

75. Pursuant to s. 20(f) of the Act of 1996, in relation to the contributions which each of the spouses has made or is likely to 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, this Court feels that the structure of the orders, allowing the father to care for the children two days a week, in accordance with his wishes, alleviates the childcare costs for the respondent/respondent greatly, but also allows the applicant/appellant and the children enjoy quality time with one another. In relation to the fact that the applicant/appellant has two children of a subsequent relationship, this Court believes that the structure of the order herein take account of the fact that he has two other dependent children in terms of his obligations to his family herein.

76. Pursuant to s.20(g) of the Act of 1996, this Court takes the view that the structure of the orders herein, in particular the payment of €72,000.00 in the lump sums as set out herein, permit the respondent/respondent to buy back some of the pension entitlements she has foregone in order to ease the burden on herself as main care giver to the children. It is also granted to her to ensure that such interest as she may have had in the applicant/appellant's, albeit in an extremely short marriage, has been well compensated.

77. This Court takes into account pursuant to s. 20(h) of the Act of 1996, the income or benefit to which either of the spouses is entitled by and under statute in assessing the levels of maintenance payable.

78. Pursuant to s.20(i) of the Act of 1996 covering the conduct of each of the spouses, it is the opinion of this Court that neither party behaved in a way other than consistent with a marriage, which was totally unsuccessful from the start and in circumstances where both parties appear to have been completely incompatible with one another from the very beginning.

79. Pursuant to s.20(j) of the Act of the 1996, the accommodation needs of both spouses are met by the orders herein.

80. Pursuant to s.20(k) of the Act of 1996, the structure of the orders herein ensure that the respondent/respondent enjoys the full benefit of her pension, while the applicant/appellant has a farm and will be in a position to work perhaps for longer than the normal pensionable age.

81. Liberty to apply.

82. No order as to costs.