

THE HIGH COURT**FAMILY LAW****[2011 No. 12 M]****IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989****AND THE FAMILY LAW ACT 1995****BETWEEN****T.V.C.****APPLICANT****AND****N.P.C.****RESPONDENT****JUDGMENT of Mr. Justice Henry Abbott delivered on the 13th day of July, 2012**

1. The applicant and the respondent (hereinafter referred to as the wife and the husband respectively) were married on the 3rd June, 2007. At the date of the marriage and at all material times, both the wife and the husband have been domiciled in Ireland and have had and continue to have ordinary residence and habitual residence within the meaning of Brussels II *bis* in this jurisdiction. The wife was unmarried at the time of the marriage and the respondent had obtained a divorce in 2006.

2. There are two children of the marriage namely, P. and C., who were born in 2008 and 2010 respectively and both are dependents. The wife is in her early thirties and is an unemployed professional and the husband is in his early forties. They live apart and the family home is currently rented with the parties currently renting separate accommodation for each other and sharing the caring of the two children, to a disputed extent, but with the wife caring for the children for most of the time subject to her taking some time out of the home to keep contact with her professional career pending its further development by employment or full-time engagement therewith as a self employed person. The husband is self employed in his profession.

3. This case has been categorised by a lengthy hearing this year with a number of preliminary hearings regarding interlocutory maintenance and access matters in 2011, by high indebtedness, negative equity, over expenditure by both parties and a singular tendency on the part of both sides to compound the difficulties by failing to reach an accommodation in relation to the simplest of matters of joint parenting and day to day expenditure.

4. This Court is satisfied that the evidence shows that the parties are entitled to a decree of judicial separation pursuant to s. 2(1)(f) of the Judicial Separation and Family Reform Act 1989, subject to the provision to be made as considered under s. 16(2) of the Act of 1995 as follows:-

(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,

The husband's income is by far the greatest financial asset in this case and it was subject to much debate in evidence between Mr. Wise for the husband and Mr. Browne for the wife. The methodologies used between the two accountants consisted of the following approaches. In the first instance, most recent income will be taken in gross terms and extrapolated on the trend of previous years. This approach was refined further by taking into account the non-taxable invoices furnished but unpaid arising at the end of every year and to temper such approaches with a qualitative analysis of the business as it has developed in recent years and most importantly, in the recession. Both accountants agreed that exceptional matters inflated the gross and net income for years 2010 and 2011. The husband's estimate as furnished in a letter to his bank was for €550,000.00 gross income from his business. His accountant considered that he was too optimistic on this and, Mr. Brown for the wife, argued that it was more realistic and he argued that, in fact, his future gross income should be considerably greater by reason of the increasing trend in income even after the onset of recession and by reason of the fact that this litigation would in all likelihood have decreased the husband's personal capacity to generate income in his business, not only by reason of the anticipated strain of family law litigation but also by reason of the frequent periods to be taken off from such business activity by reason of the husband having to give personal attention to the assembling of information, answering of queries and, above all, the attendances associated with court appearances (which were above average in this case). While this Court accepts that there is some chance that the income may very well exceed the gross figure of €550,000.00 per annum, it considers that the sum of €550,000.00 per annum is not only most likely and to be accepted as a working figure for that reason but also by reason of the fact that if there is an excess of income it will have to be accumulated by the husband to compensate for his loss of pension and also to provide for a savings buffer against fluctuations of income in the future, and to provide additional comfort for the husband's bankers who will be very important elements in the provision to be made by the court in this case. While the accountants workings did provide for income from other sources in the region of €6,000.00 for the husband in addition to rental income, these items are to be ignored by the court in calculating provision for the future by reason of the conclusions of this judgment that the rental income (which arose from the family home) is unlikely to accrue beyond October, 2012, as the parties agreed during the course of the hearing that there were overwhelming reasons (among which was the avoidance of a tax wedge) for the wife (who is now renting accommodation) to move back into the family home when the current letting arrangement terminates, and also by reason of the fact that it is anticipated by this judgment that the husband would be required to sell his shares in the item referred to in Mr. Brown's report as "the company" would be sold. The wife's income consists of childrens allowances at approximately €3,380.00 per annum or €280.00 per month. Maintenance for herself and her children has been fixed by the court in the sum of €10,500.00 net per month but this sum is, in my view, unsustainable and will be reduced by further provision of judgment. It is

anticipated that the wife will return to paid employment prior to 2013 and by reason of her outstanding qualifications and work record, she is likely to earn a sum in the region of €70,000.00 gross per annum. The court does not take this likely sum into account in deciding the maintenance as the court takes the view that the wife, by reason of the actions taken during the marriage regarding retirement from work, is singularly bereft of any financial reserves and she should be allowed to take up employment to provide an incentive for her to resume her career without the penalty of maintenance review for a period of three years at least. This matter is dealt with later in this judgment and the court takes this course in the interest of both husband and wife and the provision to be made by the judgment herein. The properties of the parties consist mainly of the family home, currently rented but intended to be occupied by the wife. This has a market value of €600,000.00. Disposal costs at 3% would amount to €18,000.00 and the capital owing on the mortgage therefore is €1,085,389.00, leaving negative equity of €530,389.00. The question was asked during the hearing whether it would be economical to dispose of the property rather than shoulder the repayments for the loan and it clearly emerged that servicing the amount of the loan left unpaid by reason of the negative equity would be a more costly operation than renting the property or having the benefit in kind of rent for the wife. The family home is, in any event, in a favourable location in the city and, while it is too early to consider any influence of a rise in property prices, it is most likely that this family home will be among the first to get any significant benefit from a rise in property values if such ever materialises in the economy. On balance it is, therefore, best to keep this property in the family.

5. As of the 20th March, 2012, there were negative bank balances of €4,906.00 against the husband and €3,900.00 against the wife, and she also had €8,500.00 liabilities to other persons in respect of personal loans etc. The husband has a small minute shareholding in "the company", the ownership of which has been diluted over the generations over large numbers of his relations. There may be a possibility of having some type of sale of the shareholding which is valued by Mr. Brown at €58,000.00. Mr. Brown noted that the husband had other assets and liabilities with a negative value of €109,760.00, among which would have been items of art with a nominal value in the region of €30,000.00, but allowing for keeping of some sentimental items and disposal of costs, this Court estimates the value on disposal of same would be in the region of €20,000.00. The negative asset position of the parties may be thus summarised as follows following the report of Mr. Brown of the 20th March, 2012:-

Husband: negative (€308,361.00)

Wife: negative (€247,094.00)

The current transfer values of a number of pensions accumulated by the husband amount to €618,123.00. In addition to the foregoing assets the husband has a number of permanent health/income protection policies and life policies which have no transfer value, but are nevertheless very important intangibles assisting the court in providing for a structure of the provision to be made in the case.

6. S. 16(2) of the Act of 1995 continues:-

(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)

The parties have set out in their affidavits of means, the last of which were sworn on the 16th January, 2012, and the 26th January, 2012, for the husband and wife respectively. The wife's schedule of monthly costs amounts to €16,696.00 and the equivalent figure for the husband, even taking the double counting item of maintenance is somewhat over €30,000.00. Both parties agree that this level of expenditure is excessive on all sides. While the estimated gross turnover of the husband of €550,000.00 is substantial, it is very significantly eroded by business expenses, mortgage payments, payments on borrowings both actual and potential and items such as income protection and life insurance, so that what is left for the parties to live on is no different than that of the average suburban middle class family. The mother and the children have been delicate in the past and no doubt will need continued medical attention and to some expenditure, but I am satisfied that from now on medical expenditure can be and should be significantly reduced. Equally, over-expenditure on home help, nannies, has to be avoided. A significant element in avoiding excessive expenditure under the foregoing two headings is the proper adherence by the parents to the agreement they made with the assistance of Professor Sheehan in relation to handovers. While there was some controversy during the hearing in relation to the schooling of the eldest boy as he approached primary school age, it has emerged that there will be an appropriate national school in the area with a cultural emphasis to satisfy the particular interests of the husband, which will be satisfactory to the parties without the necessity of private fee paying schools. The wife placed particular emphasis on the dilemma she faces in returning to paid employment insofar as entry into same in the region of wage levels of €30,000.00 per annum, leaves it impossible to pay for child minding – crèche and to have an economic return for the exercise. Thus, this Court considers that if the wife is to return at all to employment, she should endeavour to attain an income in the region of €70,000.00 per annum within a short time to match her considerable experience and talents and also to leave something by way of economic return to her. The current rent which she pays in excess of €2,500.00 per annum will be saved when the current lease on the family home expires in or about October, and she may resume living there with the parties' children. The husband has stated that his current rent of over €2,000.00 per month may be reduced but that he requires a small house with a back and front garden to facilitate play with the children. This Court considers that the husband will have to play it right down to a small house on a rent of €1,500.00 to €1,800.00 to be able to afford such a standard. By far and away the greatest change the husband will have to make is to cease the profligate and conspicuous consumption on luxuries, on holidays, food, clothes and entertainment. Counsel for the wife had no difficulty in highlighting the more spectacular and unjustifiable of the husband's expenditure in this area, and having heard his evidence this Court is satisfied that if given an appropriate framework by the provision and order in this case, he will forebear from a continuation of such excessive expenditure which has been and is totally inconsistent with any conceivable earnings which he may have even above the estimated gross of €550,000.00 per annum. Having regard to the structure of the order and provision herein, the husband has a requirement of accumulating reserves to fund pensions, fluctuations in income and to pay off capital on loans before he can return to the life of luxury which he has enjoyed to date, and the court proposes exceptionally to take a paternalistic approach in making provision for surpluses arising from the not impossible event of the husband's gross income significantly exceeding the estimated €550,000.00 per year. The reason for this course is to enable the court to supervise the radical changes which have to be made by the parties in this case, both in terms of financial discipline and in terms with adherence to the agreement made by them under the supervision of Professor Sheehan regarding handovers and for the purpose of affording the wife the confidence that this separated couple will have a more sustainable future in financial terms than that which could be anticipated without same. Having regarding the foregoing, the best guide the court has in relation to a final consideration under this para. (b) is the amount of net income (€76,849.00) as set out in the table below. A consequence predominantly arising from the profligacy of expenditure of the couple is that it will be necessary for the husband to negotiate a five year term loan to cover existing tax loan and put his tax affairs on the basis that he may proceed on the good practice basis of putting aside tax on income as it is earned. Repayments on this loan are estimated to be €80,057.00 and there will be some small reduction on same in view of ECB interest rate reductions since the hearing. The task the court has in relation to finally weighing the influence of the matters in this para (b) is assisted by a working produced by Mr. Brown to the court which was prepared on the basis that the wife moves back to the family home where the parties do not get the benefit of existing rent for same and on the basis that the husband's

rental expenses are not included so as to give an indication of the range of the net income available to the parties after all payments including anticipated loan repayments. I set out the calculation in the following table for illustrative purposes:-

Estimated Income	Profit €470k No Rental Inc Int €26k €
Anticipated Income y/e 31/07/2012	550,000
Less Business Expenses	(80,000)
Other Income	6,397
Income Received	476,397
Less	
Tax Liability	(242,153)
Mortgage Repayment	(64,344)
Rental Expenses	N/A
Mortgage Interest Relief on Family Home	3,000
Rent Payable	N/A
PHI	(7,200)
Life Insurance Policy	(7,682)
Medical Insurance – net of TRS at source	(5,112)
Net Monies	152,906
Loan Repayments husband	(80,057)
Net Income Available	72,849

The figure of €72,849.00 net, even allowing for any improvement through separate tax assessment of the parties, is very greatly less than what the parties have been spending insofar as their current expenditure might be taken as an indication of their needs under para. (b), there is no possible way of meeting them. The requirements of para. (b) may only be met by the court leaving it to the parties themselves to effect savage and painful cuts in their expenditure and take such steps as to independently improve their income ameliorate the effects of such cuts subject to the court having regard to the main items of expenditure such as rent. Once the fixed high financial parameters involved in the overheads in this case are dealt with, determining maintenance for the wife and calculating what is left for the husband to eke out a daily existence is tragically to be determined on a pure "need" basis. The approach which should be taken is as follows:-

1. Maintenance for the children should be €300 per month each totalling €7,200 per annum.
2. Maintenance for the wife on the basis of same being paid gross of tax should be such sum gross as will enable the wife to obtain a net payment of €30,000.00.
3. The foregoing is calculated on the basis of roughly dividing the overall net income by one half and allowing for the fact there might be some benefit towards the couple from separate tax assessment (but this benefit even in the diminished scheme of things on the maintenance side is likely to be small). The balance of the sum of €36,424.50, being 50% of the €72,849.00, will remain a guiding net figure of income for the husband. When the husband takes the necessary step of getting a very small house or even a two bedroom flat, it is very difficult to see him succeed within the area concerned at a rent less than €15,000.00 per annum. That leaves him €21,000.00 to feed and clothe himself.

It might be argued that the husband may work harder or somehow otherwise improve his earnings and, therefore, will not be in such straightened circumstances compared with his previous lifestyle in the same way as the wife has the opportunity to take up employment or, perhaps, to have the good fortune to get business breaks to improve her income likewise to effect some modest improvement in what will be a disastrous reduction in income in relative terms. However, in view of the anxiety of the court to provide a provision which will not succumb to the instability already exhibited in this place through unrealistic demands being made by both parties on the budget of the family, the court proposes a constraint which I shall describe at this stage as "the sinking fund" to be operated at least for a period of eleven months to incentivise the parties to develop a rational approach towards their very difficult and challenging financial future. The effect of this sinking fund will be to curtail the husband from being profligate as of old and thereby engendering anger and insecurity on the part of the wife, which will inevitably lead her back to court for relief through wasteful and expensive litigation. It is not proposed to establish a sinking fund for the wife in similar fashion as the wife's income is unlikely to be improved to such an extent by any earnings in the future as it will be tempered by childminding expenses and is unlikely to be of a scale experienced by the husband on the more optimistic scenarios which were urged by the wife as being likely to be faced by the husband but which have been held to be unlikely insofar as they are somewhat unrealistic, if not impossible. It might also be argued on behalf of the husband that when the rent free occupation of the family home is taken into account, that the wife is also likely to receive the benefit of rent in the region of €2,500.00 to €2,750.00 per month. This difference is not such a significant indicator of inequality between the parties for the following reasons:-

1. The notional rent being saved ought to be €1,500.00 per month (€18,000.00 per annum), the same rent as the husband may be expected to pay.
2. Family home cannot be economically disposed of by reason of the negative equity, leaving a significant debt with no return even after disposal, and

3. The husband may have the benefit of avoiding the tax wedge which he now suffers by being able to claim again the benefit of tax relief on mortgage interest payments on the family home. (I am satisfied that this saving on the tax wedge was not factored into the taxation workings of the accountants in the papers presented by them in evidence but was worked out between themselves during the course of the case).

7. S. 16(2) of the Act of 1995 continues:-

(c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses separated, as the case may be

As should be abundantly clear from the foregoing discussions, the standard of living enjoyed by the family has little or no bearing on what can be decided by the court by reason of the necessary slump in such standard – the only influence it has is as a factor explaining how the family have by profligate expenditure on both sides landed themselves in a state where they are almost unable to cope with the current recession and even would be little better off if they were free of the burden of negative equity brought on by such recession. Neither would better employment prospects associated with non-recessionary times necessarily improve the position of the parties to a significant extent above the standard of living regrettably proposed by this judgment.

8. S. 16(2) of the Act of 1995 continues:-

(d) the age of each of the spouses and the length of time during which the spouses lived together

The husband is in early middle age and the wife is ten years younger. The age of both parties is such that they have a long working life ahead of them, if their health is maintained. The parties lived together for a short term and it has been argued on behalf of the husband that the combined effect of the greater age of the husband and the shortness of the marriage should indicate that any pension adjustment order should greatly favour him. Similar arguments may be made in relation to any positive equity in the family home, should it ever arise, although this matter is too speculative at this stage. While I accept the strength of the arguments in relation to modulating the pension adjustment order in favour of the husband by reason of his age, there are other factors considered below which might actually point the conclusion in the opposite direction, although I do not propose to absolutely finalise the pension adjustment order pending observing the operation of the sinking fund for a period close to a year after this judgment.

9. S. 16(2) of the Act of 1995 continues:-

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

The husband's physical and mental health is rudely robust and it is a considerable strength to this case that he has been able to proceed with his business which requires not only great skill but energy and vitality, notwithstanding the vicissitudes of litigation which has been more bitter and challenging than many of its kind. The health of the wife deteriorated around the time of the birth of the youngest child and she had considerable challenges at that time. However, through her own efforts and medical treatment she has improved considerably to the point that she can take up employment or proceed in her business if she is determined to do that without physical or mental disability in the future. Concurrently, I accept the husband's criticism that she over medicalises her problems both for herself and her children leading to excessive expenditure in that area. For instance, there is a sum of €400 per month for counselling and other significant sums for alternative medicine, vitamins *etc.* My view is that if these items of treatment have not worked by this stage, they will never work and they should cease as regular items of expenditure except when specifically indicated by medical advisers in relation to specific challenges.

10. S. 16(2) of the Act of 1995 continues:-

(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

While the husband was a substantial earner in his business prior to the marriage, during the course of the marriage he upgraded it and as a result of a change by the wife to employment she was in a position to significantly influence the direction and quality of business to the husband. These complimentary actions themselves were a significant contribution to the earning capacity of the family. Unfortunately, by reason of the recession and the profligate factors listed above, this did not contribute greatly to the property and financial resources of the parties apart from the pension and financial intangibles listed above. A dramatic change occurred in the style of contributions to be made by the parties after the birth of the first child, and especially when the parties decided that it was in the interests of the first child that they would have a second child with the wife eventually giving up her well paid employment. This sacrifice of well paid employment with now a speculative chance of retaining that level of employment leaves the wife in a situation where, notwithstanding the age considerations mentioned above, she should be favourably considered for a greater share than 50/50 in the pension adjustment order. Any penalty suffered by the husband in this regard may be made up by him possibly by future higher earning capacity. It may well be that the wife may look after the children more than the husband, although the husband has a very legitimate interest in having shared parenting on the basis of 50/50 in terms of time and other inputs. However, I think that the husband has excellent fathering capacities and relationships with the two children which will be fostered by a lesser share with some catch up time at vacation and less active periods for his business. The acceptance by the father of this somewhat skewed position should be dictated by the necessity for his attention to his business on as close to a fulltime basis as possible so as to meet the tremendous challenge of maintaining, if not improving income.

11. S. 16(2) of the Act of 1995 continues:-

(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 together 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

As discussed above, the wife's earning capacity has been severely impaired in the short to medium term at least in a dramatic way in a manner envisaged to be given weight by this paragraph.

12. S. 16(2) of the Act of 1995 continues:-

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

Neither of the parties are entitled to any income or benefits to which they are entitled by or under statute, save that in the fullness of time they may be entitled to statutory contributory pension at some age approaching seventy, depending on evolving legislation.

13. S. 16(2) of the Act of 1995 continues:-

(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

Notwithstanding much angst suffered by the parties, this does not arise.

14. S. 16(2) of the Act of 1995 continues:-

(j) the accommodation needs of either of the spouses

The wife's accommodation, although not perfect, will be satisfactory by reason of her falling into this position having regard to the futility of disposal of family home which having regard to the budget is objectively too valuable for her to afford in other circumstances. The husband on the other hand will have to rent on the comparatively modest basis suggested above. The accommodation needs of the parties will be dictated by the schooling requirements of the children and while there was some debate about the choice between public and private primary schools, the agreed view of the parties during the course of the case was that national primary schools would suffice and that the wife, with some reluctance, was prepared to exceed to the husband's cultural preferences in relation to same, all of which would be available within striking distance of the family home as an anchor.

15. S. 16(2) of the Act of 1995 continues:-

(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 judicial separation concerned that spouse will forfeit the opportunity or possibility of acquiring

The husband will lose on any outcome a significant part of his pension and unless his income improves significantly in line with an accumulation in the sinking fund or any continued existence (at least notionally) of same. By reason of the lack of continuity of earning capacity the wife also has lost some possibility to acquire a pension and in view of her lower income, she will have limited capacity to accumulate pension compared with the rate which she shared in her husband's pension accumulation prior to recession and separation.

16. S. 16(2) of the Act of 1995 continues:-

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

I have considered the needs of the children during the course of the hearing and consideration of this judgment. They all each have their own special requirements, but they are not special needs children. The current parenting arrangements, as advised by Dr. Byrne, are skewed time wise in favour of the wife although it is not contested that the husband and the children are well capable of any time arrangement or any flexibility approaching a 50/50 arrangement. I do not propose to deal with the existing parenting arrangements by way of alteration, although that may be considered when the case comes back to the court in some months if the parties do not agree. The one exception I would make to this forbearance is to direct that the arrangements, carefully worked out by Professor Sheehan and agreed between the parties for handover, would be adhered to by both parents especially the mother, not later than the 1st September this year. There have been serious difficulties surrounding handovers in the past and I can think of no greater cause of a continuance of the children's difficulties and tension than the failure to abide by the sensible deal advised by such an expert as Professor Sheehan. I can readily understand that a challenge to satisfactory handovers would be the continuous arguments arising from the uncertainty of provision and disagreement in relation to the availability of resources. At least in relation to these financial matters there will be certainty provided by the judgement in this case and the parties may not have the same tendency to blame each other about it as a result. The continued lack of adherence to Professor Sheehan's recommendations at handover will have a devastating effect on the emotional welfare of the children and may produce complicated arrangements which themselves will tax the very scarce resources of the parties.

Sinking Fund and Incentives

17. As indicated during the course of the hearing it is appropriate that the husband would not apply for a review of the maintenance provisions herein by reason only of the wife taking up employment or reviving her business for a period of three years from the date hereof. This is to incentivise the wife to take up employment without the threat of knee jerk court applications to have maintenance revised "at the minute" if she takes up employment or has such improvement in her financial fortunes. Equally, there should be some incentive to the husband to improve his gross earnings by ring fencing them in a loose way through the mechanism of the sinking fund as follows:-

1. Within two months of the date of this judgment the husband shall set up a separate sinking fund account in which he should lodge each calendar month such income (gross) as exceeds one twelfth of the gross annual income of €550,000.00, out of which he should discharge VAT and estimated income tax, out of the balance of which he should allocate four sub accounts to be allocated and keep allocated as follows:-

- i. 25% for future pension contributions.
- ii. 25% for building a reserve cash fund for contingencies such as income averaging.
- iii. 25% as a reserve for maintenance.
- iv. 25% for own personal expenditure, not to be expended until one year of accumulation.

2. The sinking fund should be evidenced by a separate bank account linked in with the very transparent electronically formatted of the husband which are understood by the wife. The husband should deliver a written account to the wife of the working of the sinking fund and the underlying income causing accretions thereof or the lack of same.

3. This written report may be substituted by an appropriate electronic link which may be devised and agreed by the parties. The husband should not change his bank account profile or accounting system without leave of the court.

18. As indicated and outlined above the court will make an indicative order that a pension adjustment order of 60/40 in favour of the wife would be made in eleven months time but not finalised, and that the matter would be re-entered for further consideration of the court in eleven months time for the purpose of the finalisation of the pensions adjustment order and in the event of the court not being satisfied that the sinking fund has been set up or that it is not produces net results, then the court may consider altering the 60/40 division of the pension adjustment order more in the wife's favour.

Order

19. The court will make an order in consultation with counsel in relation to the exact wording thereof along the following lines:-

1. A decree of judicial separation pursuant to the provisions of s. 21(f) and s. 3 of the Judicial Separation and Family Law Reform Act 1989.
2. An order pursuant to the provisions of s. 6 of the Family Law Act 1995, and under s. 11 of the Guardianship of Infants Act 1964, granting the applicant and the respondent joint custody of the dependent children of the marriage, and accepting current access arrangements to be finalised when the matter is re-entered as described above provided, however, that the parties adhere strictly to the agreement and handovers advised by Professor Sheehan on or before the 1st day of September, 2012.
3. An order for the periodical payments referred to above by the husband to the wife and the children pursuant to s. 7 of the Family Law Act 1995.
4. An order pursuant to the provisions of s. 8(1)(a) of the Family Law Act 1995, that the husband make to the wife such periodical payments in the amounts specified above.
5. An order pursuant to s. 8(1)(e) that the periodical payments for wife and children be secured by assignment of life insurance policies subject to any assignment for the security of the mortgage on the family home, and any further debt secured thereon.
6. The court does not make any property adjustment orders in relation to the family home and directs that the husband shall pay the mortgage in respect thereof.
7. An order pursuant to the provisions of s. 10(A)(1) of the Family Law Act 1995, granting the applicant herein the sole right of residence in the family home to the exclusion of the respondent for her life.
8. An order pursuant to the provisions of s. 11 of the Family Law Act 1995, granting the applicant herein a financial compensation order as may be appropriate and requisite to fully effect the security and confirmed by existing life insurance policies and, in the event of same being inadequate by reason of debt that, the said order shall direct the husband to make inquiries in relation to the obtaining of further life insurance policy for a fixed term of not less than ten years. Such steps to be considered by the court with the option of making an order when the matter is brought before the court in eleven months time.
9. No pension adjustment order save that the court has given an indicative order of 60/40 of all pension policies in favour of the wife subject to review in eleven months time. The parties shall have before the court in eleven months time draft pension adjustment order together with all papers proving notice on trustees and administrators/managers to facilitate immediate finalisation of indicative pension adjustment order or any alteration thereof.
10. The court shall not make an order extinguishing the share of either party in the estate of the other as a legal right or intestacy on the Succession Act 1965.
11. An order that the husband takes steps to have valued and liquidate his shares in "the company" and the proceeds transferred to the sinking fund on or before the date for review of this order in eleven months time.
12. The husband shall be directed to sell all items of art save for three items which he shall retain for family and sentimental reasons. The proceeds of such sale to be credited to the sinking fund account (contingency fund) awaiting order of the order.
13. The court makes no order as to costs pending the review of sale of share of the husband in the share of the company and disposal of art items.
14. Adjourn for the consideration of the provision in accordance with this judgment to a date to be agreed by the parties in eleven months time.

Consideration of S. 16(3)(a)

20. I consider that while the parties hereto have in the provision of this judgment suffered a savage diminution in the spending money which they have enjoyed hitherto, the provision in my opinion is fair and just having regard to the fact that it meets the reality of the situation and provides a sustainable opportunity for the parties and their children to find their feet financially and to survive the recession. Above all, it provides a framework whereby the husband may be in a position to acquire the much needed medium term finance to put his tax on a sustainable basis. The court lifts the in camera rule for the disclosure of such parts of the judgment as will fully appraise any lender which may be approached by the husband of the framework and strictures of the judgment which set out the discipline by which he is bound in the future and his commitments thereunder.

21. Both husband and wife have the consolation that under the judgment the pension insurance income protection and earning structures are left intact and may be improved to provide a background of security which many families do not or do not aspire to have.

