

**THE HIGH COURT**

**FAMILY LAW**

**[2011/50 M]**

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 AND IN THE MATTER OF THE FAMILY LAW ACT 1995.**

**BETWEEN**

**KL**

**APPLICANT**

**AND**

**CL**

**RESPONDENT**

**JUDGMENT delivered this 10th day of December, 2013, by White, Michael J.**

1. The applicant issued proceedings on the 29th August, 2011 seeking a judicial separation and ancillary orders. The substantive action was at hearing on the 29th and 30th April; 1st and 2nd May; and 15th, 16th and 31st July 2013. Written submissions were finalised by the end of September 2013.

2. The parties married on the 15th April, 1988 and have three children, Ro aged 23; R aged 21; and E aged 16. Marital relations deteriorated over a number of years and ceased in or about December 2009. The applicant left the family home in April 2011 and moved to rented property.

3. The applicant is 48 and has worked in the home during their marriage, having worked as a hairdresser prior to marriage. The respondent is 50 a farmer, who operates an extensive dairy farm.

4. In the course of the evidence of the applicant and the respondent, a number of disputes have arisen about their behaviour to each other. The applicant and respondent are both very decent people. Their marriage sadly broke down due to irretrievable differences and incompatibility. The court does not take any issue with the decision of the applicant to move out of the family home in April 2011.

5. I am satisfied the applicant suffers from chronic migraine which affects her ability to procure full time employment and also makes part time employment difficult.

6. Ro has been living abroad. E lives with the Applicant, as does R when at home. The Respondent wishes to continue to have a good relationship with his children which have been under strain during the litigation. There is consent to a joint custody order in respect of E with access to be negotiated directly between the Respondent and E. The applicant has a good relationship with the children.

7. The parties are joint owners of agricultural lands and a residence near N The property is divided into different parcels,

- Folio R Co. T containing 102.5 acres, marked red on the map attached.
- Lands at S containing 41.34 acres marked blue on the map. The residence is located on these lands, which are unregistered.
- Lands at U containing 6.25 acres marked green on the map.
- A small parcel of land at S of 1.25 acres marked purple on the attached map.

8. The parties hold substantial investments but also have significant liabilities.

9. Both parties accept their marriage has irretrievably broken down, but unfortunately cannot agree ancillary orders which is most unfortunate considering the expense of litigation and the limited net assets. The court has to make proper provision for the parties in the context of a particularly difficult financial situation.

10. The applicant trusted the respondent to address financial matters and should have been consulted, when the respondent and his financial advisor were discussing entering into negotiations with the loan providers. The court is satisfied the respondent his servants or agents did not enter into negotiations with the loan providers, and was not involved in a plan to do so to the detriment of the applicant.

**The valuation of the properties**

11. The valuation of the properties is not agreed. Eoin Dillon, Auctioneer, gave evidence on behalf of the applicant having previously prepared a written report. Tom Crosse gave evidence on behalf of the respondent, having also prepared a written report. Mr Dillon valued the farm and lands as follows

- Folio R, containing 102.5 acres at €1.6m.
- The house and lands at S comprising 41.34 acres at €1m

- He valued the lands at U containing 6.25 acres at €155,000

- The small parcel of land at S comprising 1.25 acres at €12,500. Mr. Crosse in his report did not break down the lands into individual parcels. He valued the entire property including the dwelling house at €2,250,000. In his evidence on 1st May he valued the lands on the Folio at €10,000 per acre. He did not dispute Mr. Dillon's valuation of €1m for the house and lands at S. He disputed Mr. Dillon's valuation of the parcel plans at U of 6.25 acres, being of the opinion that it was not development land. There was no dispute about the valuation of the small parcel of land at S.

12. The dispute between the valuers in respect of the registered land was the existence on that farm of a derelict dwelling house and some land together with a right of way through the lands to that dwelling house, which property was not in the ownership of the parties. Mr. Crosse was of the opinion that it would have an impact on the valuation of the farm while Mr. Dillon disagreed. Both accepted that the farm land was very good quality. The court values these lands at €14,000 per acre, a total valuation of €1,435,000. The court agrees with the valuation of €1m for the dwelling house and lands comprising 41.34 acres. The court values the lands containing 6.25 acres at €14,000 per acre being a total valuation of €87,500. The court accepts the valuation of €12,500 for the parcel of land at S containing 1.25 acres.

13. The valuation of the registered and unregistered property together with the dwelling house is €2,535,000

14. The parties hold a number of bank accounts either jointly or individually. I have taken the bank account balances at the 1st of May 2013 as indicated by the respondent's expert financial witness in the sum of €701,596.

15. The parties hold certain investments in funds which have been financed by Irish Bank Resolution Corporation formerly Anglo Irish Bank. These investments are subject to debt. The value of the investments assigned to IRBC is €344,183. the debt to IRBC is €677,438. There is no specific maturity date.

16. There are unassigned property funds of € 81,273 and medium term investments of €302,899, which also have no specific maturity date. There is a share portfolio of €207,383 which can be liquidated.

17. The court values the livestock at €133,750, farm equipment at €12,000 and the milk quota and single farm payment at €60,500. The total valuation of these items is €206,250.

18. The liabilities to the Bank of Ireland are loan no 47842977 €133,750 and loan no 62418728 €1,518,700. The applicant also owes her parents €4,000.

19. Taking into account the court's valuation of the properties at €2,535,000 the amount due to Permanent TSB of €216,015 and the amount in respect of disposal costs and Capital Gains Tax, with the house and one acre valued at €375,000 for capital gains purposes, the court places a net valuation on the property of €1,452,712.

20. The court has come to the conclusion that the net assets of the parties is approximately €962,408

21. The court heard evidence from two agricultural advisers, who gave expert evidence. Peadar Moynihan on behalf of the applicant and Ned Nagle on behalf of the respondent. The court preferred the evidence of Mr. Nagle. The documentation provided by V Co-op and W County Council supports Mr. Nagle's evidence rather than Mr. Moynihan's. However, the court has some concern about the low income return from the farm, as highlighted by Mr. Moynihan, although this has improved for the financial year ending 2012. This could cause difficulties for the future viability of the farm. The respondent is restricted by the milk quota for the farm, which comes to an end in 2015, and based on Mr Nagle's evidence the respondents income from the farm should increase. On balance the court considers the respondent a progressive farmer. The evidence of Mr Moynihan was unfair to him.

22. It would not be in the best interests of either party to liquidate all the assets of the parties including the farm, as the respondent has no obvious alternative employment and there will be no realistic opportunity for the applicant to be paid maintenance. The court has to try its best to apply the provisions of s. 16 of the Family Law Act 1995, while taking all relevant factors into account. Due to a combination of unfortunate events the parties are in a very precarious financial situation.

23. In order to put in place a combination of orders to try and do justice between the parties, the court will require certain clarifications from the financial institutions.

24. The court would prefer if releases are procured for the benefit of the applicant, and that is feasible given the nature of the security held by the Bank of Ireland and Permanent TSB. Portion of the joint liability to IRBC is unsecured. In the event of a failure to procure a full release for the applicant, the court will have to direct that portion of the lands marked blue will have to be retained in joint ownership until IRBC are paid. In the event of liquidation of the assets, the applicant may not necessarily derive any direct financial benefit as the retention of lands marked blue in joint ownership is for the purposes only of protecting the applicant from liabilities.

25. The broad scheme which the court wants to put into place is,

- Provision for the applicant and the youngest child, E, by way of periodic payment of €3,000 per month apportioned €2,000 a month for the applicant and €1,000 per month for the maintenance of E. The applicant to be responsible for E's school expenses
- The court will also direct the respondent to pay health insurance for the applicant, R and E. The court directs the continuation of the VHI policy for the applicant and an insurance provider at the discretion of the respondent for R and E
- The court will also direct the respondent to discharge R's educational expenses until he reaches the age of 23, and arrange for an appropriate direct contribution to him.
- Ro is non-dependent within the meaning of the Act.
- The court will direct that a capital sum be paid to the applicant by the respondent of €481,204, €381,204 to be paid forthwith and a balance of €100,000 to be paid on or before 1st January, 2016.
- The court will direct that the bank accounts and investments set out in the schedule hereto are vested in the

respondent subject to the following conditions; that the lands comprised in Folio R, Co. T will be transferred from the applicant to the respondent on condition that the respondent takes over her responsibilities for loans No. 47842977 and No. 62418782 from the Bank of Ireland and procures the release of the applicant from the provisions of those loans. In addition that the respondent procures the release of the applicant from the IRBC loan.

- That the applicant transfers to the respondent the lands marked blue on the map together with the dwelling house provided the respondent procures the release of the applicant from the Permanent TSB mortgage and subject also to the release of the Applicant from the IRBC loan.
- The respondent at all times to indemnify the applicant in respect of the loans to Bank of Ireland, IRBC and Permanent TSB.
- the lands marked green and the lands marked purple to remain in the joint names of the parties free from encumbrances, in order to provide security for the applicant for the future payment of the capital amount of €100,000 due on or before 1st January, 2016. On payment of this sum the applicant to transfer those lands to the respondent.
- The court will also grant a declaration that the livestock, equipment and entitlement to the single farm payment and the milk quota be vested in the respondent, on the release of the applicant from the relevant charges and mortgages.
- In respect of the lands still held in joint names, the respondent shall be entitled to profits there from.
- If the releases are forthcoming, the court will make orders pursuant to s. 14 of the Act in respect of the succession rights of the parties,
- If there are any other orders required as a consequence of the court's intentions, the court will hear submissions on that issue.
- In the event of the respondent failing to procure the release of the applicant from the loans, the lands marked blue with the exception of the dwelling house and ancillary acreage to be agreed or determined by the court is to remain in the joint names of the parties. In addition there will be directions that the balance of the property funds and medium term investments are used to reduce the IRBC loan, if an indemnity is only available. The court will still proceed with the transfer of the agricultural lands on the folio and the dwelling house and ancillary lands.

The court will permit relaxation of the in camera rule for the purpose of correspondence with Bank of Ireland, IRBC and Permanent TSB.