Neutral Citation [2016] IEHC 492

THE HIGH COURT

[RECORD NO. 2013/50M]

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

BETWEEN

C.Q.

APPLICANT

AND

N.Q.

RESPONDENT

JUDGMENT of Mr. Justice Henry Abbott delivered on the 1st day of June, 2016.

1. This judgment deals with the issue of costs following judgment in the above delivered on the 22nd day of April, 2016 as follows. The submission of counsel for the respondent was that as the respondent could only look forward to an unusually small percentage of the assets distributed to him in the provision in the judgment, he should not have this imbalance exacerbated by having to bear an undue burden in costs. This would be especially so if the family home is to be disposed within the incentivised framework provided for in the judgment whereby the applicant could look forward to another €75,000 from the top of the net proceeds of sale.

2. Specifically, she submitted that the respondent should not have to bear the costs of U.D. as he never opposed the question of U.D. being compensated in the manner described in the judgment. Also, she submitted that a considerable amount of time was lost in dealing with issues surrounding the voice of the child in relation to the disposal of the family home, an issue in respect of which the applicant had clearly lost in the face of warnings by the court during the course of the hearing that there was a risk of costs if the issue were decided against her.

3. Counsel for U.D. submitted that U.D. was entitled to his costs, as the court upheld the claim to the settlement made with him in 2006. She submitted in response to the suggestions of counsel for the applicant that senior counsel for U.D. never indicated at the commencement of proceedings (and before departing to allow the other issues in the case to be heard in-camera) that his client would take a discount as was suggested by counsel for the applicant.

4. Counsel for the applicant submitted that from the outset of the 2006 settlement, the case was not "just about percentages" and that while counsel for the respondent might argue in respect of a certain conclusion about the low percentage distribution of assets to the respondent based on an examination of the *D. v. D.* Schedule, there are other aspects to be considered in relation to the result which showed that the respondent had fared quite favourably, especially when it is considered that he has fallen down on his significant maintenance payments, and, has obtained the benefit of a significant stay in the judgment of the court in relation to maintenance.

Conclusion

5. While the general rule is that parties to proceedings where the assets are significantly divided on both sides is that both parties would pay their own costs, this outcome is to be examined in the light of the judgment of Clarke J. in the case *D. v. D* [2015] IESC 16 where he stated the judgment in *Veola* should be considered if there were particular issues in respect of which the general rule that costs follow the event should be applied.

6. One such issue arises in this case relating to the additional costs arising from submissions in relation to whether the court should hear the voice of the child regarding the prospect of sale of the family home. The applicant clearly lost on this issue, and hence, in the interest of the proper ordering of the court's business, case management and in the interest of justice, I consider that the applicant should pay a measured sum of costs in respect of the loss on the issue of the voice of the child of €2,000 including VAT, to be taken from the share she takes in any event from the disposal of the family home in accordance with the judgment.

7. As regards the claim made on behalf of U. D. for costs, I consider that the submissions made on behalf of the applicant that counsel for U.D. indicated that they were prepared to consider a discount are not borne out by the record and run of the case. It is true that the court invited senior counsel for U.D. to absent his legal team from the proceedings to enable other, strictly family law matters, to be dealt with in his absence, and to stand by in the event that proposal for settlement arose. While senior counsel for U.D. accepted this suggestion, there is nothing to indicate that he had made an open offer to allow the court to discount his client's share proportionate with the fall in property prices.

8. I consider that the costs of U.D. in making submissions at the end of the case to assert his rights, which had been clearly set out in the 2006 settlement, should be borne by the applicant not because (on the basis of a *D. v. D.* Schedule analyses), she appears to be getting larger percentage of the assets, but on the basis that she clearly lost on the issue, having had an opportunity from the outset of the case to quickly agree to the payment of U.D.'s claim, without incurring the cost of submissions and standby commitments.

9. I accept the submissions of counsel for the applicant that an isolated analysis of the percentage distribution based on the *D. v. D.* Schedule does not paint the full picture of the case, as such an analysis must be undertaken against the background of the unfortunate inability of the respondent to keep up with his significant maintenance payments (an outcome which was sincerely regretted by him), and of the significant stay in respect of maintenance payments granted to him by the court.

10. As the parties asked me to do so, I can clarify that the meaning of this stay. Consistent with the respondent's assertion during the course of the proceedings that he would gladly pay maintenance if his income improved to the levels experienced by him before the economic recession, the court granted such stay until such time as conditions clearly improve and he has the resources to pay

same, as he did before.

11. I therefore hold that the applicant should be responsible for the costs of U.D. which I measure at €15,000 inclusive of VAT on the basis of the *Veola* principle rather than on the basis of an analysis of the percentage outcome based on an examination of the *D. v. D.* Schedule. This sum of €15,000 for costs should be paid by the applicant out of her share in the net proceeds in the same manner as provided for in the costs upon the voice of the child issue.