

THE HIGH COURT

FAMILY LAW

Record No: [2013 No. 96 CAF]

IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989, AND

IN THE MATTER OF THE FAMILY LAW ACT 1995 AND

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

BETWEEN:

O'C

APPLICANT/RESPONDENT

AND

O'C

RESPONDENT/APELLANT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 24th day of November, 2014.

1. This case comes before the High Court by way of an appeal from the orders of Judge Berkeley dated the 13th November, 2013. The parties accept and this Court finds that their marriage has irretrievably broken down and that there has been no normal marital relationship for at least one year immediately prior to the institution of these proceedings, since approximately 2010, and that there is no reasonable prospect of reconciliation between them. Both parties seek that proper provision be made for them in the context of this case.

2. The central issue in this case is the family home in the west of Ireland which is a property held in the joint names of the parties herein. The Circuit Court ordered that the respondent, now the respondent/appellant, be given liberty to purchase the applicant's, now the applicant/respondent's share in the family home, and in default, directed the sale of the said property with the proceeds to be divided equally between the parties. The respondent/appellant appealed this order. His main submission is that the order would leave him homeless.

3. Both parties are in late middle age and both have had health difficulties, in particular, difficulties associated with mental health. The respondent/appellant has had treatment for cognitive difficulties and he has shown me an appointment made for him in that regard. The respondent/appellant outlined that he had a nervous breakdown and he is deeply concerned about his future.

4. The applicant/respondent is likewise extremely concerned, although she has put her name on a housing list and she is now living in a town in the east of Ireland in rented accommodation. The applicant/respondent hopes that she will be able to obtain public housing in due course.

5. A feature of this case is that the parties have been married for forty three years. They had an extremely challenging start in life in terms of the poverty they both experienced at that time. They were obliged to live in a caravan until they obtained a council house in the east of Ireland. They later managed to purchase the said property. It is accepted by both parties that the respondent/appellant used part of a personal injury claim to discharge the then outstanding mortgage on that property some years later.

6. The respondent/appellant has a disability pension. The applicant/respondent makes the point that while she did not work when the children were very young, things did improve for the family when she was employed and was able to contribute financially. I do not doubt that she did have an extremely hard married life. I observed her demeanour in the witness box and believe that she contributed as best she could to the marriage of the parties' at all material times and did her best.

7. The respondent/appellant takes the view that by virtue of his agreeing to have the applicant/respondent's name appear on the title to the two family homes that they owned, even though she had made, as he set out, "no direct financial contribution", the respondent/appellant felt that he had already made a substantial contribution to the financial resources of the applicant/respondent in this appeal.

8. The respondent/appellant took severe issue with the fact that when the parties bought the present family home, the applicant/respondent was only willing to enter into this agreement if she could keep the balance of the proceeds of the sale of the first family home in her sole name and manage that money as best she could. It is clear from looking at her accounts that she put into that fund any money she had from whatever source to buy whatever was necessary for upgrading the present family home. Both parties are currently in receipt of social welfare. Both parties are incapable of continuing to work. The respondent/appellant takes a very narrow view of the role of the applicant/respondent in terms of her child rearing function and also her function as wife and homemaker to the family, in addition to the direct contribution she made during many years of hard work outside the home. The respondent/appellant seeks to disregard the value of applicant/respondent's contributions in his evidence and submissions.

9. It is clear to this Court that the applicant/respondent did her best to use whatever resources were available to the parties and did this in the best interests of both parties. Difficulties which typify the extent of the difficulty between the parties arose around the funeral expenses for their deceased son. The applicant/respondent wishes that the ownership of the grave or plot be transferred to her so that she can ensure that a headstone is procured for her son's grave. She showed evidence to suggest that a large part of the burial costs had been paid through her endeavours and State support. She makes the submission that the State support given to

the respondent/appellant was, in the main, retained by him. Evidence was given that the respondent/appellant had commenced repayments at the rate of €25 per week in April 2014, regarding an outstanding bill to a funeral undertaker. The applicant/respondent doubted and continues to doubt that he will continue these payments. The applicant/respondent gave examples of insurance payments set up in the past by way of payment plans, and only one or two payments being made before these would be stopped by the respondent/appellant.

10. Another issue is the applicant/respondent's access to her personal possessions, furniture and other items which her late mother owned and had given to her. The respondent/appellant admitted that after the separation, he sold the applicant/respondent's car and retained the proceeds. The respondent/appellant also admitted that following the separation, he set up a direct debit on applicant/respondent's bank account without her consent for the purposes of paying the electricity bills on the family home. In this regard, the respondent/appellant argued that because they were married, they were jointly liable. The respondent/appellant denied that the same principle of joint liability/ownership applied to the family home or to other assets.

11. I find that the applicant/respondent was a truthful witness. She had done her best in this marriage to make it viable and she tried to be organised in terms of financial matters.

12. I find that while the respondent/appellant made allegations about the applicant/respondent that, for example, she had other bank accounts and had misled the Court, he has failed to prove these allegations.

13. I find as a fact that the applicant/respondent spent whatever monies that remained from the proceeds of the sale of the former family home to benefit in equal degree the parties in terms of standard of living and accommodation comfort. In addition, I find that the applicant/respondent put other monies into that fund, including her income and the Redress Board claim monies which he received, whereas the respondent/appellant retained a portion of his own income for his own use throughout the marriage. It is accepted by this Court that he did make some provision. It seems appropriate, in the view of this Court, that the applicant/respondent should raise €3,000.00 so that rental accommodation can be procured for the respondent/appellant by way of a deposit on same and a couple of months rent. It is the view of this Court that the family home should be vacated forthwith by the respondent/appellant and that he should take up the accommodation provided for him on a temporary basis as a result of the foregoing. This is so that the applicant/respondent can prepare the family home for sale in the normal manner. This Court holds that it is appropriate in this case that the applicant/respondent takes responsibility for placing this property on the market for sale and that she, through her solicitor, employs an auctioneer for that purpose. If a reserve cannot be agreed, liberty to apply is granted.

14. This Court having considered the statutory requirements of the Judicial Separation and Family Law Reform Act and in particular, the statutory requirements of the Family Law Act and s.16 thereof, makes the following further orders and directions:

(i) An order affirming, pursuant to s. 3 of the Judicial Separation and Family Law Reform Act 1989, and pursuant to s. 2(1) (f) of the said Act of 1989, the order made granting a decree of judicial separation to the parties herein on the 13th November, 2013.

(ii) An order placing the family home situate in the west of Ireland on the market for sale forthwith and directing the sale of the said family home and the proceeds to be divided equally between the parties. The respondent/appellant is directed to take up accommodation forthwith and prior to the said sale, said accommodation to be afforded to him by virtue of an advance of €3000.00 from the proceeds of sale as set out herein.

(iii) An order directing that the County Registrar or any official nominated by them, shall do all such acts and execute all such documents on behalf of either party herein to give effect to such sale in the event that either party fails to sign the necessary documents to give effect to such sale when requested to do so. Said order to take effect within seven days of either party failing to sign such necessary documents in respect of the said sale.

(iv) An order appointing "EB" real estate agents as auctioneers. The parties to abide by all reasonable advices of "EB" concerning the method of sale and sale price with liberty to apply in relation to the sale of the family home. It is the applicant/respondent who is to have all dealings with the said auctioneers and the respondent/appellant shall be kept informed by letter by solicitors for the applicant/respondent in respect of the progress of the said sale. The respondent/appellant is restrained from interfering with the said sale in any respect.

(v) The sum of €3,000.00 is to be raised and advanced by the applicant/respondent for the purposes of temporary accommodation for the respondent/appellant and shall be recouped by her out of the respondent/appellant's 50% net proceeds of sale before said monies are transferred to him.

(vi) The applicant/respondent shall furnish a list of contents she wishes to take from the family home prior to the closing of the said sale with liberty to apply in default of agreement.

(vii) An order that the respective shares that the parties herein would be entitled to in the estate of the other as a legal right or an intestacy under the Succession Act 1965 and are hereby extinguished pursuant to s.14 of the Family Law Act 1995. This Courts puts a stay on the said order pending receipt by each parties share of the net proceeds of sale of the family home as set out herein. Once the monies are dispersed, the said section shall apply.

(viii) An order that the parties be and are hereby further precluded from making applications for provision under s.15A(10) of the Family Law Act 1995, as inserted by s.52(g) of the Family Law (Divorce) Act 1996. A stay is placed on the said order pending dispersal of each parties share of the net proceeds of sale of the family home as set out herein.

(ix) An order affirming the appointment of "EB" real estate agents as auctioneers. The parties shall abide by all reasonable advices of "EB" in relation to the sale, price and method of sale with liberty to apply in relation to the sale of the said family home.

(x) An order directing that any auctioneer costs to be paid out of the net proceeds of sale of the family home prior to the equal dispersal of the remaining proceeds to the applicant/respondent and the respondent/appellant.

(xi) An order directing that any conveyancing and solicitors costs to be paid out of the net proceeds of sale of the family home prior to the equal dispersal of the remaining proceeds to the applicant/respondent and the respondent/appellant, said solicitor/s to be chosen by the applicant/respondent.

(xii) An order directing that any outstanding debt owing to the aforementioned funeral director to be paid out of the net proceeds of sale of the family home prior to the equal dispersal of the remaining proceeds to the applicant/respondent and the respondent/appellant, as set out above.

(xiii) An order directing, pursuant to s.9 of the Family Law Act 1995, a transfer by the respondent/appellant of the entire of his legal and beneficial interest in grave plot number RX at Fingal Cemetery Balgriffen, Co. Dublin to the applicant/respondent forthwith.

(xiv) An order directing the respondent/appellant to vacate the family home by the 2nd January, 2015.

(xv) No Order as to costs.

(xvi) Liberty to apply.