

**THE HIGH COURT  
CIRCUIT APPEAL**

**[2011 No.134 CAF]**

**CIRCUIT COURT RECORD NO. 6191F AND 1013F  
IN THE MATTER OF AN APPEAL FROM THE CIRCUIT COURT TO  
THE HIGH COURT BEFORE THE HON MR JUSTICE KEVIN O'HIGGINS,  
JUDGE OF THE HIGH COURT AT THE COURTHOUSE, ENNIS,  
CO. CLARE ON THE 8TH MARCH, 2007  
AND IN THE MATTER OF THE JUDICIAL SEPARATION  
AND FAMILY LAW REFORM ACT 1989  
AND IN THE MATTER OF THE FAMILY LAW ACT 1995**

**BETWEEN**

**M.D.**

**APPLICANT**

**AND**

**E. H. D.**

**RESPONDENT**

**Judgment delivered by Mr Justice Michael White on the 20th of April 2012**

1. The High Court on appeal from the Circuit Family Court by order of the 8th of March 2007, affirmed a decree of judicial separation and ancillary orders.
2. The respondent has applied by notice of motion of the 7th December, 2011, seeking enforcement of certain provisions of the order.
3. The appellant who was the respondent in the original proceedings has issued a motion dated the 11th January, 2012, seeking to review portions of the order. The part of the order which he wishes to have reviewed is para. 5 which states:

"Make a financial adjustment order in favour of the respondent directing the appellant to pay the sum of €75,000 to the respondent within a period of 9 months of this date".
4. There is no such order as a financial adjustment order pursuant to the provisions of the Family Law Act 1995.
5. The order made by the learned judge was an order pursuant to s. 8(1)(c)(i) that is:

"An order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be specified".
6. Pursuant to the provisions of s.18 of the Family Law Act 1995, certain orders made in family law proceedings can be reviewed having regard to any change in the circumstances of the case and to any new evidence.
7. For a lump sum order to be reviewed the order has to be an instalment order.
8. The relevant provision is s.18(1)(d) which states:

"A lump sum order if and in so far as it provides for the payment of the lump sum concerned by instalments or requires the payment of any such instalments to be secured".
9. This interpretation of the law has been approved by the Supreme Court in a judgment D.T. v. C.T. [2002] 3 I.R. 334 at 372 when Keane C.J. stated:

"It has not been suggested that the trial judge erred in principle in deciding to approach this case on the basis of the payment of a lump sum to the respondent without any provision for periodic payments by way of maintenance. In this context, it would appear that, having regard to the provisions of s. 22 of the Act of 1996, neither party will be entitled to a variation of the amount of the lump sum itself, even should circumstances change: the extent of the permitted variation under s. 22(1)(d) would appear to be as to the payment of the sum by instalments. Similarly, it will not be possible for the court on the application of the respondent to provide for a periodic sum by way of maintenance, since the power of the court under s. 22(2) is confined to varying or discharging an order for periodic payments already made".

10. The provisions of s.18 of the Family Law Act 1995 are similar to the provisions of s.22 of the Family Law Divorce Act 1996.

11. The appellant is not entitled to review the lump sum payment order of €75,000.

**The jurisdiction of the court to hear the motions**

12. Appeals from the Circuit Court to the High Court are governed by Order 61 of the Rules of the Superior Courts. The rules are silent as to the court to which a motion to review or enforce should be brought.

13. Order 61, rule 20 states:

“Every judgement or order of the High Court on Circuit and of the High Court sitting in Dublin may (unless the Court shall otherwise direct) be enforced by execution order issued by the Circuit Court in accordance with the Rules of the Circuit Court for the time being in force as if it were a judgement or order of the Circuit Court”.

14. The court is of the view that where family law proceedings are initiated in the Circuit Family Court, and appealed to the High Court, and that court varies the order of the Circuit Court, any motion to enforce the relevant order, can be brought to either the Circuit Court in the original county, which heard the application, or the High Court sitting in Dublin or on circuit.

15. A motion to review or vary the order pursuant to the provisions of s.18 of the Family Law Act 1995 or s.22 of the Family Law (Divorce) Act 1996 must be brought to the court of first instance, to ensure the right of appeal is maintained.

16. The court of first instance in this case is the Circuit Court.