Neutral Citation Number : [2008] IEHC 116

THE HIGH COURT

Record Number: 2005 No. 225 JR

BETWEEN

PADRAIG MCGRATH

APPLICANT

AND
THE DISTRICT COURT CLERK (DISTRICT COURT AREA OF GALWAY DISTRICT NO 7), AND THE COURTS SERVICE

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 8th day of April 2008

1. On the 13th June 2005, the applicant was given leave by the High Court to apply for certain reliefs by way of Judicial Review, including declaratory reliefs, an order of Mandamus, injunctive relief and damages. Leave to file an Amended Statement of Grounds seeking additional declaratory reliefs was granted by further order of the High Court made on the 6th February 2006.

2. The application arises from the following facts.

3. By order of the District Court dated 7th December 1997 made pursuant to the provisions of s. 5(1)(a) of the Family Law (Maintenance of Spouses and Children) Act, 1976 ("the 1976 Act"), the applicant was ordered to pay the weekly sum of £80 to his wife for her support, and in addition to pay to her the weekly sum of £120, being £40 for the support of each of his three dependent children. Relevantly for the purpose of the issue arising in this application for certain declaratory and other reliefs, including damages, is the fact that the order was prepared in the following terms:

> "*THE COURT HEREBY ORDERS that the Maintenance Debtor pay to the Maintenance Creditor for her support the weekly sum of £80.00 and a further sum of £40 for the support of each dependent child named hereunder until such child shall attain the age of 18 years*". (my emphasis)

4. The names and dates of birth of each such dependent child are set forth immediately below this sentence. It is apparent from those dates of birth that the eldest of these children would reach the age of eighteen about six months after the date of the order, namely on the 28th June 1998; the second would do so some two years after the date of the order, namely on the 10th November 1999; and finally the youngest would reach his majority on the 24th June 2001.

5. The order further directed in its final paragraph that these payments be made to the District Court Clerk "*for transmission to the creditor*".

6. On the 26th March 1998, an Attachment of Earnings Order under s. 10(1)(a)(iii) of the 1976 Act was made in view of the fact that the applicant herein had failed to comply with the order for maintenance dated 17th December 1997. That order was, in the usual way, directed to the applicant's employer at the time, Telecom Eircom, and stated as relevant to the issues herein:

> *"THE COURT HEREBY ORDERS YOU to whom this order is addressed, on the expiration of ten days from the date of service of this order upon you, to deduct the sums set out hereunder from the earnings of the maintenance debtor employed by you, whose staff number is B11796 and transmit the said sum to [wife] of [address].*
>
> *1. The weekly sum of £200 in respect of current payments under the order mentioned.*
>
> *2. …"*

7. It will be noticed that this order is open-ended in the sense that the employer is not provided by this order with any information as to the dates on which each of the dependent children referred to in the underlying maintenance order reaches the age of 18 years, so that as each child reaches that age, the amount deducted from the applicant's salary would be reduced by £40 to reflect the terms of the maintenance order. It can also be noticed that while the maintenance Order had directed the payments to be made by the husband to the District Court Clerk "*for transmission to [the wife]*", the Attachment of Earnings Order ordered the employer to make the deductions and transmit same to the wife, and gave her name and address for that purpose.

8. By letter dated 7th April 1998, the District Court Clerk wrote to Telecom Eireann informing them as follows:

> *"… on the 26th March 1998 the Judge of the District Court directed that you transmit from the earnings of your staff member [the applicant herein] the amount specified in the attached attachment of earnings of (sic) order.*
>
> *The said order directs you to transmit the said amount to [applicant's wife]."*

9. It appears from that letter that only the attachment of earnings order was sent to Telecom Eireann, and not the antecedent maintenance order. It must be presumed therefore that they were never aware of the fact that as each child reached majority, the applicant's obligation under the antecedent maintenance order reduced by £40 per week.

10. In his first grounding affidavit sworn on the 2nd March 2005, the applicant has stated that he was not in fact aware of the making of the maintenance order, as he was working for Telecom Eireann in the United Kingdom at the time of its making, and believes that he was not served with any maintenance summons. He states that in mid-1998 he became aware that regular sums were being deducted from his salary, and having made enquiries of employer he was informed of the making of the Attachment of Earnings Order referred to. He states in that affidavit that being ignorant of the maintenance order having been made when it was, he had been making cash payments to his wife in any event, but that on finding out about these orders he ceased doing so.

11. He then avers at paragraph 8:

> *"… neither at that time and indeed not until such time as I consulted my solicitor in 2004 did I become aware as to the specific nature of the Maintenance Order and that a portion of the maintenance related exclusively to my wife and that further portions related exclusively to each of my three children."*

12. In other words, he is stating that as far as he was aware from the information which he had regarding the attachment of earnings

order, the maintenance order was for the single payment of £200 per week without reference to any reduction upon each child reaching the age of 18 years. He says that it was only after he contacted his solicitor in June 2004 that he discovered in July 2004 the precise terms of the orders in question.

13. Following his discovery of the nature of the maintenance order made, his solicitor wrote to the District Court Clerk by letter dated 7th July 2004 as follows:

> *"I refer you to my letter of 30th June 2004 in relation to this matter and wish to thank you for the copies of the two orders which you sent me.*
>
> *I note that the Maintenance Order directs payment of maintenance in relation to the dependent children until such time as they attain the age of 18 years. However the Attachment of Earnings Order addressed to The Secretary, Telecom Eireann, makes no such reference. My client's understanding is that the total amount i.e. £200 per week continues to be deducted despite the fact that none of the children are dependent."*

14. A curiosity about that letter is that it does not say any more, or make any suggestion as to what should now be done, or call on the addressee to take any steps. What I have set forth is the entirety of that letter.

15. By letter of the same date, the applicant's solicitor wrote a much longer letter to the Secretary, Eircom (as the employer was by then known), which set forth the date and terms of the maintenance order dated 17th December 1997, and referred also to the attachment of earnings order dated 26th March 1998. Copies of both orders were enclosed with this letter, which went on to request information as to the amount being paid at that date on foot of the attachment order, and it drew attention to the fact that the maintenance order directs payment in relation to the children until such time as the child attains the age of 18 years. It informed Eircom also of the fact that each child had by then attained the age of 18 years, and concluded by simply stating "*the maintenance order in relation to each of the children would cease as soon as that child attained the age of 18 years*". Again, as with the letter to the District Court Clerk, the solicitor did not call upon Eircom to actually do anything except inform him of how much was being deducted and paid over at that date. It did not call upon Eircom to cease doing so in respect of the children or even state that an application was going to be made to the District Court to regularise the situation.

16. The applicant states that a reply was received from the District Court Clerk indicating that it had not had any dealings in the matter since the making of the orders. That letter has not been exhibited. He states also that no response was received from Eircom in spite of the efforts by his solicitor to obtain a reply, and that eventually his solicitor wrote again on the 19th November 2004. That letter again set out the making of the two orders, and that payments for each child had continued to be deducted and paid over to the applicant's wife, despite the fact that the situation had been brought to their attention by the letter dated 7th July 2004. I have already noted that that letter did not call upon Eircom to do anything. At any rate the letter dated 19th November 2004 included a calculation of how much money had been deducted in respect of the children since each attained the age of 18 years, and indicated a total sum in this respect amounting to €40,022.14 (£31,520). That letter then stated that it was unclear as to whether liability for this sum rested with Eircom or with the Courts Services Board or both, but it called upon Eircom to "*immediately cease the unauthorised and unlawful deductions… and that you compensate him in full for the losses which he has sustained*". The letter concluded by stating that if the so-called unauthorised deductions did not cease immediately proceedings would have to be commenced in order to rectify the situation.

17. That letter produced a response dated 3rd December 2004, stating that the maintenance order required the company to make the payment of £80 to the applicant's wife, and £40 for each of the three children. It then goes on to state:

> "*The sums as outlined in the Maintenance Order are to be paid:*
>
> *1. Until such child reaches the age of 18 years.*
>
> *2. or where such child is under the age of 23 years and is in full time education*
>
> *3. or where such child suffers from mental or physical disablement.*
>
> *Eircom Limited continues to abide by the Maintenance Order. Eircom has no knowledge as to the current position of each child. As such Eircom Limited will continue to abide by the Attachment of Earnings Order issued by the District Court until such time as it is directed to do otherwise."*

18. By letter dated 19th November 2004, Mr Kennedy wrote to the Courts Service referring to the terms of the two orders, and to the fact that the Attachment of Earnings Order served on Eircom made no reference to the dates of birth of the applicant's children and failed to advise Eircom as to the duration of the order. That letter referred to the amount of the deductions made in respect of the children after each reached majority in the sum of €40,022.14, and called upon the Courts Service to take whatever steps were necessary to ensure that no further "unlawful deductions" were made and to make good his client's losses. Injunctive proceedings were threatened.

19. The Chief Executive of the Courts Service replied by letter dated 23rd December 2004 following the making of appropriate enquiries about the case. He refers to the terms of the two orders in question, and to the fact that the ages of the children are not set forth in the Attachment of Earnings order, and that it had been prepared in the form prescribed by the District Court Rules 1997 – Form 56.4. He concludes as follows:

> *"Whether or not a child is a dependent child within the meaning of the Family Law (Maintenance of Spouses and Children) Act, 1976 depends not only on the child's age, but also on whether or not he/she is in full time education after attaining the age of 18 years and further depends on whether or not the child has disability as set forth in the Act. These are facts which would be within the knowledge of the parties, not the court or the court clerk.*
>
> *The Attachment of Earnings Order remains in force until an order is made varying or discharging same. An application to vary or discharge the Order, in this case, can be made by either of the parties involved. If the dependent children are over 18, no longer in education and are not under disability, it is open to your client make an application for the variation/discharge of the Attachment of Earnings Order and/or the Maintenance Order, in accordance with Orders 54 and 56 of the District Court Rules, 1997.*

I am satisfied that the Attachment of Earnings Order is in compliance with the Rules of the District Court and that the Courts Service has acted properly in this matter at all times."

20. By letter dated 10th January 2005, the applicant's solicitor, William Kennedy, replied to that letter by referring to the terms of the Maintenance Order and to the Attachment of Earnings Order, and stating that the latter order "*as regards maintenance for the children could not survive for longer than the Maintenance Order itself*". Mr Kennedy went on to call upon the Courts Service "to take whatever steps are necessary to ensure that Telecom Eireann or its successors deduct no further sums from our client's pension on foot of the purported Maintenance Order in relation to our client's children", and stated that in default of it doing so he would take whatever steps were necessary to protect his client's position and issue the appropriate proceedings against both the Courts Service and Eircom. He also stated that it was not open to his client to make an application to the District Court to vary the Maintenance Order in circumstances where that order had "lapsed".

21. In a follow-up letter dated 21st February 2005, Mr Kennedy referred to Section 18(2) of the Family Law (Maintenance of Spouses and Children) Act 1976, and stated that pursuant to that section "*the Clerk or Registrar of the Court that made the Attachment of Earnings Order is obliged to give notice of cesser of the order to the employer*", and called upon the Courts Service to do so.

22. Section 18(2) of that Act provides:

"(2) Where the attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer."

23. On 18th March 2005 the applicant's solicitor issued a Notice of Application in the District Court in which declarations were sought that the Maintenance Order dated 17th December 1997 stood discharged in respect of each child as each child reached the age of 18 years.

24. In his affidavit sworn on the 27th April 2005, Mr Kennedy states that on the return date for that application he attended at the District Court, and that the applicant's wife was represented also. He states that he set out the history of events to the District Judge, including that when he had called upon the applicant's employer to cease making deductions in respect of the children under the Attachment of Earnings Order, the latter had refused to do so and that they had indicated that they were not aware of the contents of the antecedent Maintenance Order and were obliged to comply with the Attachment of Earnings Order. He also advised the Court of his request to the Courts Service to take steps to rectify the situation, and that they had refused suggesting, instead, that the applicant should apply to the Court to vary the Maintenance Order. He concludes his affidavit by stating that the District Judge indicated that she did not feel that a Variation Order was appropriate since the Maintenance Order in respect of each child had ceased to have effect as of the eighteenth birthday of each child, and that consequently she had no jurisdiction to vary an order which had expired, or grant the declarations being sought in the Notice of Application. No order was made on that application.

25. These judicial review proceedings were commenced by the applicant on the 22nd June 2005.

26. Before setting out the nature of the declaratory reliefs sought by the applicant and the other reliefs, such as the injunctive relief and the damages claim, and before summarising the legal submissions made by the parties, it would be helpful to set out the some statutory provisions which are relevant to the case, and which were applicable when the antecedent maintenance order was made in this case on the 17th December 1997.

27. The antecedent maintenance order made in this case in the District Court on the 17th December 1997 was made pursuant to the provisions of s. 5(1)(a) of the Family Law (Maintenance of Spouses and Children) Act, 1976 which, as by then amended, provides:

"(a) Subjection (4) of this section, where it appears to the Court, on application to it by a spouse, that the other spouse has failed to provide such maintenance to the applicant spouse and any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that the other spouse make to the applicant spouse periodical payments, for the support of the applicant spouse and of each of the dependent children of the family, for such period during the lifetime of the applicant spouse, of such amount and at such times, as the Court may consider appropriate."

28. It will be recalled that in the present case, the Court ordered that the wife be paid a weekly sum of £80, and a sum of £40 for each of three named dependent children until each reaches the age of eighteen years. The dates of birth of each such child is recited in the order.

29. Section 3(1) of the 1976 Act (as by then amended) defines the phrase "dependent child" as:

"…any child …who is under the age of 18 years, or if he has attained that age –

(a) is or will be or, if an order were made under this Act providing for periodical payments for his support, would be receiving full-time education or instruction at any university, college, school or other educational establishment and, is under the age of 23 years, or

(b) is suffering from mental or physical disability to such extent that it is not reasonably possible for him to maintain himself fully."

30. Relevant to the submissions in this case then are the provisions of s. 6 (3) of the 1976 Act which provides (as by then amended):

"That part of a maintenance order which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child by reason of his attainment of the age of 18 or 23 years as the case may be, and shall be discharged by the Court, on application to it under subsection (1) of this section, if it is satisfied that the child has for any reason ceased to be a dependent child for the purposes of the order."

31. Section 6(1) of the Act, regarding the application for discharge of the order, provides:

"The Court may—

(a) discharge the maintenance order at any time after one year from the making thereof, on the application of the maintenance debtor, where it appears to the Court that, having regard to the maintenance debtor's record of

payments pursuant to the order and to the other circumstances of the case, the persons for whose support it provides will not be prejudiced by the discharge thereof, or

(b) discharge or vary a maintenance order at any time, on the application of either party, if it thinks it proper to do so having regard to any circumstances not existing when the order was made 9including 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 be repugnant to justice to disregard it), or, if it has been varied, when it was last varied, when it was last varied, or to any evidence not available to that party when the maintenance order was made or, if it has been varied, when it was last so varied."

32. Also relevant to the submissions in this case are the provisions of s. 10 of the 1976 Act. Those provisions empower, *inter alia*, the District Court which made the antecedent maintenance order, to subsequently make what is referred to as an attachment of earnings order. As relevant to this case, section 10 provides:

"10. – (1) (a) On application

(i) to the High Court …

(ii) to the Circuit Court …

(iii) to the District Court

(I) by a person on whose application the District Court has made an antecedent order, or

(II) by a District Court clerk to whom payments under an antecedent order are required to be made,

the Court to which the application is made (subsequently referred to in this section as "the Court") may, to secure payments under the antecedent order, if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid, make an attachment of earnings order.

(b) …

(1A) (a) Where a court has made an antecedent order, it shall in the same proceedings, subject to subsection (3), make an attachment of earnings order in order to secure payments under the antecedent order if it is satisfied that the maintenance debtor is a person to whom earnings fall to be paid.

(b) …

(2) An attachment of earnings order shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the maintenance debtor in his employment ……, and shall operate as a direction to that person to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate, having regard to the normal deduction rate and the protected earnings rate, from the maintenance debtor's earnings and to pay the amounts, at such times as the Court may order –

(a) in case the relevant antecedent order is an enforceable maintenance order, to the District Court clerk specified by the attachment of earnings order for transmission to the person entitled to receive payments under the relevant antecedent order, or, where appropriate, the competent authority,

(b) in any other case, to the person referred to in paragraph (a) of this subsection or, if the Court considers proper, to the District Court clerk specified in the attachment of earnings order for transmission to that person or, where appropriate, to the competent authority.

(3) …

(4) An attachment of earnings order shall –

(a) …

(b) …

(5) … "

33. Section 17 of the Act makes provision for the Court which made the attachment of earnings order making an order either discharging same, or varying that order. Section 17(1) provides in that regard:

"(1) The Court that made an attachment of earnings order may, if it thinks fit, on the application of the maintenance creditor, the maintenance debtor or the District Court clerk on whose application the order was made, make an order discharging or varying the order."

34. Finally, Section 18 of the Act provides:

"18.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the relevant antecedent order, except as regards payments under the attachment of earnings order in respect of any time before the date of the discharge.

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer."

35. The above provisions seem to me to be the statutory provisions which are relevant to the submissions made on behalf of the parties.

Applicant's submissions

36. Derval Browne SC on behalf of the applicant has referred at the outset to the terms in which the antecedent maintenance order was made, and to the form of the order drawn up to reflect what was ordered by the District Judge on that occasion. That form is Form 3 as provided by S.I. 96 of 1976. That form allows for a number of possibilities depending on the facts of a particular case, and, as in the present case, was completed to reflect the fact that the Court ordered that a sum of £80 per week was to be paid for the future maintenance of the wife, and a further sum of £40 per week for each of the children named in the order "until such child shall attain the age of 18 years". The remainder of the prescribed form of order was left blank in respect of the names of any such child being at any time in full-time education up to the age of 23 years, and was left blank also in respect of any child who might have been under any form of disability. In Ms. Browne's submission, the order must be seen as an order which simply ordered the payment referred to in respect of the wife for an undefined period into the future, and payment to her in respect of each of the named children until each attained the age of 18 years, the date of birth of each such child being recited in the order. She submits that to read into the order as drawn and perfected any possibility that the amount payable to each child might continue to be payable in the event that any such child might continue in full-time education up to the age of 23 years, or until any such child might not be suffering from any disability, simply on the basis that the paragraphs in the prescribed form of order have been left blank as opposed to being actually crossed out or deleted on the basis of non-applicability is to read or understand the order drawn as one which the District Judge did not make. She submits that it must be a clear inference from the terms of the order drawn that at the hearing of the maintenance application, at which the husband was not present or represented, no evidence was given that any of these children would be going on to further education after the age of 18 years and that any such child was suffering from any disability. In this regard also, she refers also to the fact that the eldest child referred to in the order was only 6 months away from her 18th birthday on the date on which the order was made, and yet there is no reference to the order extending beyond the age of 18 years.

37. An important aspect of the applicant's submissions is his evidence that he was never aware of the precise terms of the order made, and that following the making of the order he never saw a copy of the actual order made. His evidence has been that as soon as his employer made deductions from his salary in accordance with the attachment of earnings order he saw that a sum of £200 was being deducted, and he had no reason to believe or know that a consequence of the antecedent order was that as each child attained the age of 18 years, his liability for £40 per week for that child ceased. Indeed, his evidence is that it was only after he retired from Eircom, and when the amount being deducted was reduced to £110, being the reduced amount by which the husband's earnings exceeded the protected earnings limit, that he made enquiries about the matter through his solicitor, and learned for the first time of the precise terms of that antecedent maintenance order.

38. Ms. Browne submits also that the Attachment of Earnings Order as drawn up fails to properly inform the husband's employer of the amount which was required to be deducted from time to time as each child reached the age of 18 years, and that it was an obligation upon the District Court Clerk to inform the husband's employer of the dates on which the amount required to be deducted from the husband's earnings had to be reduced to reflect the husband's liability under the antecedent order.

39. I should also refer to the fact that when Eircom was furnished by the District Court Clerk with a copy of the Attachment of Earnings Order, he did not attach to it or forward to Eircom a copy of the antecedent order. It follows that as far as Eircom was concerned they were required to deduct the sum of £200 per week for as long as the husband was in their employment, and upon retirement such lower sum as was applicable given his reduced pension salary.

40. In aid of her submission that there is an obligation on the District Court Clerk to ensure that the amount deducted by the employer is reduced as each child reached the age of 18 years, she describes the role of the District Court Clerk in such matters as being more than a purely administrative role, where the Court is directing another party, the employer, to make deductions of such sums as the husband is liable to pay under the antecedent order. She submits that in the present case the District Court Clerk was obliged to either forward to the employer a copy of the antecedent maintenance order so that the employer would know the dates on which the amount to be deducted must be reduced, or at least inform the employer in a covering letter when sending the Attachment of Earnings Order, of the dates on which the amount deducted must be reduced and by what amount, as each child reached the age of 18 years. It is submitted that under the scheme of the Act the District Court Clerk is obliged to ensure that his or her functions are performed fairly and in a manner which protects the legal and constitutional rights of the parties, and in this case the husband, and that it was incumbent upon him to ensure that no more was deducted from the husband's earnings by the employer than was required to be deducted under the terms of the antecedent maintenance order. She submits that in the present case the Attachment of Earnings Order incorrectly informed the employer of what the obligation to deduct consisted of.

41. In this regard, Ms. Browne has emphasised the provisions of s. 6(3) of the Act, which I have already set forth, but which provides that "*that part of the maintenance order which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child by reason of his attainment of the age of 18 or 23 years, as the case may be, …*" (my emphasis). She submits that the clear meaning of this provision is that as each child in the present case reached the age of 18 years (given the absence of any reference to any child being one continuing in education until age 23 years), "that part of the maintenance order" referable to each child stood discharged automatically as and from the date each child reached 18 years, and the husband was under no obligation arising from the order thereafter in respect of each such child, and that the cesser of the order in this regard does not require any action to be taken, or application to vary the order to be made, by the husband, and that part of the order simply ceased to be operative in accordance with the provision of the section.

42. It is worth referring at this point to the fact that under the terms of the Attachment of Earnings Order the employer is required to make deduction "*from the earnings of the maintenance debtor employed …*"(my emphasis), and that the term "maintenance debtor" is defined in s. 3 of the Act as follows:

"maintenance debtor", in relation to an attachment of earnings order……means the spouse by whom payments are required by the relevant antecedent order to be made, and …….".

43. It seems to follow that a person is only a "maintenance debtor" under an attachment of earnings order for as long as he is a person who is required to make payments, those payments being ones in respect of which a maintenance order is extant. That is relevant to the provision of s. 6(3) of the Act to which I have referred.

44. Ms. Browne has submitted also that as each child reached the age of 18 years in this case, the District Court Clerk, in the

absence of any information in this regard being contained in the attachment of earnings order, was obliged to make an application to the District Court for a variation of that order so that no more was deducted by the employer than the husband was required to pay, following the automatic discharging of the part of the antecedent maintenance order in respect of the payment to each child as he/she reached the age of 18 years.

45. In relation to Section 18 of the Act which I have set out above, Ms. Browne submits that once the part of the antecedent maintenance order which related to the payment of £40 per week for each child stood discharged upon each child reaching the age of 18 years, and after which the husband was no longer bound to pay that sum, an obligation fell upon the District Court Clerk under s. 18 of the Act to make that fact known to the husband's employer. She submits that the clear meaning of that section is firstly that an attachment of earnings order ceases to have effect "*upon the discharge of the relevant antecedent order*", and that under subsection (2) thereof, upon that happening, the District Court Clerk "*shall give notice of the cesser to the employer*". She submits that this section is clear and unambiguous, and that in the present case this obligation is not complied with, and that the husband has in such circumstances suffered a significant loss by having had deductions made from his earnings in respect of amounts for which he was under no obligation to pay to his wife, and that the respondents should be held liable in damages to the husband in respect of that amount.

46. In so far as the respondents submit, as I will come to, that the discharge of the antecedent maintenance order referred to in the Act, as outlined above, means only the entire of that order, and not just any part of it, Ms. Browne submits that such an interpretation is an absurdity and would be unconstitutional, and contrary to fair procedure. The absurdity is contended for on the basis that if that interpretation is correct, it would mean that while a person who is subject only to a maintenance order, and not to an attachment of earnings order, would be entitled to cease making payments for a child upon that child reaching the age of 18 years, a person in the position of the husband in this case in respect of whom an attachment of earnings order has been made, must continue to have these payments deducted until such time as the attachment of earnings order has been varied or discharged, even though he has no liability or reduced liability under the antecedent order. She submits that such an unfairness could not have been intended by the Oireachtas.

47. By way of additional support for that submission, Ms. Browne has referred to the judgment of Budd J. in *The Dunraven Estates Company v. The Commissioners of Public Works in Ireland* [1974] I.R. 113, where at p. 132, the learned judge, referring to the Arterial Drainage Act, 1945, stated:

> *"In my view, the Act of 1945 should be construed on the basis that it was not the intention of the legislature to deprive the plaintiffs of their property or interfere with it save in so far as that was necessary for the common good and was in accordance with the Constitution."*

Respondents' submissions

48. Siobhán Phelan BL for the respondents has submitted first of all that the applicant has delayed unreasonably in seeking any redress in this matter. She has referred to the fact that the applicant never made any application to have the Attachment of Earnings Order varied as each child in turn reached the age of 18 years, and that even when the second named respondent in December 2004 advised the applicant to bring an application to the District Court to vary the Attachment of Earnings Order, he did not do so, but rather embarked upon a judicial review application in March 2005 which was unsuccessful on the basis that the matter could be rectified by an application to the District Court to vary the attachment order. She refers to the fact that instead of making that application to the District Court, the applicant chose instead to apply to the District Court to vary the maintenance order. That application was refused by the District judge since in her view that order "stood discharged" in respect of the payments to the children, and that in those circumstances there was no order in existence which could be varied. The present proceedings were then launched. Subsequently, as has been described above, the District Court Clerk, in an effort to sort the matter out, and not the applicant, made an application to the District Court to have the attachment of earnings order varied to reflect the attainment of majority of the children. That application was successful, but it is submitted that it was at all times open to the applicant to have taken this step himself, and that he ought to have done so in order to address the situation.

49. She also submits that in the six years between the making of the antecedent order in December 1997, it was at all times open to the applicant to make enquiries about the precise terms of the orders made, if he was unaware of the contents, and to obtain copies of same.

50. She suggests that these facts should be taken into account by this Court in deciding whether any relief should be granted, judicial review being a discretionary remedy.

51. It is submitted on behalf of the respondents that the correct interpretation to be given to the maintenance order made in this case, and drawn up by the use of the prescribed form described above, is that the applicant was obliged to pay the sum of £40 per week in respect of each child referred to in the order until in respect of each child:

> (i) the relevant child attained the age of 18 years, and was no longer in full-time education;
>
> (ii) the relevant child, being above the age of 18 but under the age of 23 years ceased receiving full-time education in an educational establishment;
>
> (iii) the relevant child attained the age of 23 years, while still receiving full-time education in an educational establishment; or
>
> (iv) the relevant child, being above the age of 18 years and having suffered from mental or physical disability to such an extent that it was not reasonably possible for him or her to maintain him or her to maintain himself or herself fully, ceased suffering from such disability.

52. In so contending, Ms. Phelan has submitted that the antecedent maintenance order must be read in conjunction with the definitions of "dependent child" contained in s. 3 of the 1976 Act, and that when approached in this way it is clear that when a maintenance order is made under s. 5(1)(a) of the Act, as in this case, "that part of the maintenance order which provides for the support of a dependent child shall stand discharged" under s. 6(3) of the Act at some unascertained date in the future when the child ceases to be dependent, as that term is defined in s. 3, unless, of course the order has already been discharged by the District Court following application made in that regard under s. 6, by the time that unascertained date is reached.

53. She submits also that it is not part of the function of the District Court Clerk to conduct an investigation in any individual case in

order to ascertain whether any child referred to in a maintenance order has ceased or will cease to be a dependent child for any of the reasons set forth in the definition of "dependent child". She submits that it is artificial to suggest that this order should have ceased to have effect in respect of each child, solely on the basis that the child or children reaches the age of 18 years, given the definition of "dependent child" in the Act.

54. Ms. Phelan has submitted also that the Attachment of Earnings Order was duly prepared by the District Court Clerk in the prescribed form for such an order under the Rules of the District Court. That prescribed form does not require the details of the dates of birth of the children to be inserted therein, and she submits that the reason why information as to the dates of birth of the dependent children are not inserted therein is that this is not information required by the employer, since the attachment of earnings order is not varied, modified or otherwise altered in any way simply by part of the antecedent maintenance order ceasing to be effective. Any such modification, in her submission, requires an order of the Court. She submits that the respondents would not be aware of whether any relevant child had continued in full-time education or was otherwise continuing to be dependent within the definition of that term. In that regard she submits that the onus was on the applicant herein to ascertain the position, and if he so wished to make an appropriate application to the District Court for a variation of the antecedent maintenance order and/or the attachment of earnings order.

55. It is submitted also that once the maintenance order is made, the District Court has no further function in the matter until such time as any further application to the Court is made by either party. Equally, it is submitted that the employer is under no obligation to make enquiries as to when the obligation to deduct from earnings should be varied or discharged.

56. The respondents place emphasis on the fact that there was always in existence only one maintenance order, and that it follows from s.6(3) of the Act as amended that only "that part" of the order relating to each individual child would stand discharged when circumstances became such that such child was no longer "dependent", whether by reason of reaching age 18 or any other reason set out in the section.

57. In relation to the provision of s. 18 (2) of the Act which requires the District Court Clerk to give notice to the employer of the cesser of the Attachment of Earnings Order upon discharge of the antecedent order, Ms. Phelan has submitted that this obligation arises only when the antecedent order has been discharged in full, and not partially from time to time, as each child ceases dependency. She has referred to the affidavit evidence of District Court Clerk, John Browne referred to above, wherein he has stated, inter alia, that the ordinary practice in District Court offices around the country is that an employer is notified of the cesser of an Attachment of Earnings Order only when the antecedent maintenance order is discharged in full (or of course where the attachment of earnings order has itself been discharged by order of the Court). She submits that this position must be the correct position given the terms in which the form for such a notification appears in Form No. 56.10, Schedule C of the District Court Rules, 1997. That Form states:

> *"TAKE NOTICE that the Attachment of Earnings Order dated day of , made at the sitting of the District Court at …… whereby you as employer of the above named maintenance debtor of ……. were ordered to deduct the weekly sum of £ from the earnings of the said maintenance debtor has on and from the day of , BEEN DISCHARGED and thereby has ceased to have effect as regards the sum of £ being the payments due under the said order up to the date of such discharge*." (my emphasis)

58. It is submitted that s. 18(2) of the Act cannot be reasonably interpreted as imposing an obligation upon the District Court Clerk to notify an employer that an attachment of earnings order must be treated as continuing in part only and that it has ceased in part by reason of part of the antecedent maintenance order standing discharged as a result of an event of which the District Court Clerk may have no knowledge whatever, and would have no reliable means of ascertaining. It is further submitted that as a matter of practicality it would be impossible for such a Clerk to "police" those parts of maintenance orders which concern dependent children, since this would require such Clerks to seek out information from maintenance creditors and maintenance debtors as to whether such children who had reached the age of 18 years were or were not still in full-time education, or were or were not suffering from a disability. She submits that even where such information was available, there could be dispute between the parties in relation to dependency and these could be resolved only by means of an application to the District Court.

59. She submits also that the normal and usual practice where a maintenance debtor is of the view that a child has ceased to be dependent that such a debtor will make an application to the Court to be made for the purposes of varying the attachment of earnings order, pursuant to the provisions of s. 17 of the Act. Any such order made on that application would then be served upon the employer. She rejects any suggestion made by the applicant that any event which may happen to the antecedent maintenance order is in some way "transmitted" to the attachment of earnings order, and that such onward effect occurs only upon the full discharge of the maintenance order, and not when only part of it has ceased to be effective.

Conclusions

60. I accept as a matter of fact that the applicant herein was not of the antecedent precise terms of the maintenance order in December 1997, or even that such an order had been made. But that is not a fact that can assist the applicant on this application, since the District Court Order in question recites the fact that the Court was satisfied that he had been properly served with the summons dated the 15th October 1997. There is no question arising that that order was not properly made. I am also satisfied that all he was aware of in relation to maintenance was that after March 1998 a deduction of £200 per week was being made from his salary under an attachment of earnings order.

61. The applicant's lack of awareness of the details of the maintenance order is irrelevant to the main issue for determination in these proceedings, namely whether there has been a failure on the part of the respondents to notify the applicant's employer, Eircom, on three occasions after the making of the attachment of earnings order as each child reached the age of 18 years, that the deductions to be made from the applicant's earnings should be reduced by a sum of £40 per week. The resolution of that issue involves a determination as to the correct interpretation of the relevant statutory provisions.

62. Some reliance has been placed by the respondents on the impossibility or impracticality of a District Court Clerk "policing" as it were the maintenance orders made, and notifying the employer from time to time as and when any reduction in the amount to be deducted from a maintenance debtor's earnings should be made. Reliance has also been placed on the fact that there is nothing in the prescribed form of attachment of earnings order which refers to the dates of birth of dependent children, on the basis that it is not relevant to the employer's obligations. Some reliance is placed also on the ordinary practice operated in District Court offices whereby it is only upon the final discharge of the antecedent maintenance order that the employer is notified of the cesser of the attachment of earnings order.

63. In relation to these particular matters, I am of the view that the manner in which the District Court Rules Committee has drafted

the forms intended for use following the making of orders in the District Court, or the ordinary practice of District Court Clerks in relation to when they notify an employer in relation to such cesser, cannot determine how particular sections of an Act of the Oireachtas should be interpreted. That Committee's function is to put in place rules of procedure and appropriate forms for use in order to achieve satisfactorily the statutory aims and objectives found to exist in the legislation. It is the legislation alone which determines what those aims and objectives are. The ordinary practice of the District Court offices and/or the prescribed forms may be wanting in some respect and may in any case fail to adequately and fully put into effect the legislative provisions, and any such failure cannot alter or dilute the legislative intention, to be gleaned from the plain and ordinary meaning of the words chosen by the Oireachtas to express its intention. In the event of any doubt or ambiguity arising from those words used, then of course there are well-accepted and recognised canons of construction which can be called in aid in order to give a proper interpretation to the provisions in question. But the rules and forms cannot assist in the matter of statutory interpretation. They are subservient to it, and must successfully do its bidding.

64. The other matter which can be disposed of easily at this point is, in so far as it is relevant to decide at all, that Eircom was correct to continue to make the deductions in accordance with the terms of the Attachment of Earnings Order, even after each child had reached the age of 18 years, even if they had been aware that any such child had reached the age of 18 years, because the Court order binding them in this regard was open-ended and made no reference to any reduced amount being applicable at any future dates. Until such time as they received a copy of any subsequent Court order replacing or varying that which had been served upon them in March 1998, they were bound by law to comply fully with its terms. So there can be no question of Eircom having acted in any way improperly. In any event no relief is sought against Eircom in this application.

65. The respondents have submitted that the maintenance order made on the 17th December 1997 must be seen not just as ordering the applicant to pay maintenance to the children until each reaches the age of 18 years, but potentially beyond those dates in the event that any such child continued in education until any age up to 23 years, and further while any such child might be suffering from a disability. That submission is made by reference both to the text appearing in the prescribed form of such order in the District court Rules, and the definition of "dependent child" contained in s. 3 of the Act. I should say that the form of maintenance order used by the District Court Clerk is that appearing as Form 3 in S.I. 96 of 1976. In fact, in May 1997 (i.e. before the date of this maintenance order) new forms had been introduced by S.I. 93 of 1997, and these new forms could have been used. Nothing turns on that fact. It would not have altered anything relevant to this case. But the fact is that the order drawn up is drawn up on the prescribed Form No. 3.

66. Overlooking the fact that in the present case the maintenance order was not sent to the applicant following its making, and that consequently he was unaware in any event of its contents, it must be said that the purpose of the order being drawn up following its pronouncement in Court by the judge is to reflect accurately and clearly what order was made by the Court.

67. The prescribed form which was used is clearly designed to allow for several possibilities. There are blank spaces available for completion depending on the facts of the individual case and the terms of the order actually made. The nature of such a prescribed form is convenient, but in my view clearly anticipates sensibly that inapplicable portions of the form will not simply be left blank as in the present case, but actually deleted. In fact the prescribed form in the Rules contains a symbol in the margin beside the various parts of the operative part of the order which by reference to a statement at the foot of the order form beside the same symbol indicates that any inapplicable text should be deleted.

68. In the present case, this symbol is clearly intended to indicate that the text left blank in respect of a child being in full-time education and that in respect of any child being under a disability ought to have been deleted as directed by the form, rather than simply left blank and undeleted. In such circumstances, it cannot be correct that this order must be read as meaning that the Court on the 17th December 1997 ordered the applicant to continue to pay maintenance for each child not just up to age 18, but onwards from that time while any such child was between the age of 18 years and 23 years and might be in full-time education, or be suffering from a disability. Simply because those parts of the order have been left blank rather than deleted could not achieve more than was intended to be ordered by the District judge. It is quite clear to me that when the order was made there was no question of full-time education between age 18 and 23 being relevant, nor any question of a disability being relevant. It is quite clear from a sensible reading of this order that the obligation imposed upon the applicant was to pay maintenance for each child until each reached the age of 18 years, and nothing more.

69. Having reached that conclusion, one must consider the implications therefore of s. 6(3) of the Act which clearly states that "*that part of a maintenance order which provides for the support of a dependent child shall stand discharged when the child ceases to be a dependent child by reason of his attainment of the age of 18 or 23, as the case may be…*".

70. The use of the words "*as the case may be*" is significant, because it indicates that an order may stand discharged when a child reaches the age of 18 years, if that is the age relevant to any particular case. This case is such a case, because the maintenance order can be seen as regarding these children as being dependent up to the age of 18 and not beyond that date because full-time education beyond that date or disability was not relevant to these children's status of dependency.

71. It follows in my view that as each child reached the age of 18 years, the applicant was no longer bound by the order to pay the sum of £40 per week for that child. To demonstrate this graphically, and for the sake of that demonstration the attachment of earnings order should be ignored, the applicant would have been entitled to reduce the sum of £200 per week by £40 per week each time one of the children reached the age of 18 years. In the event that he did so, it could not possibly be suggested that an application for the committal of the applicant could succeed because he had not continued to pay the sum of £200 after those dates. Any judge hearing such an application for committal would be bound to conclude that the order was clear and that the liability under it reduced as and from the date of each child's 18th birthday.

72. If, following the making of this maintenance order, any one of the children had continued full-time education after age 18 or had acquired subsequently some relevant disability, it would have been necessary for the applicant's wife to go back to the District Court for a further order to take account of those factors which did not exist at the time the first order was made.

73. In my view, the conclusions thus far lead inexorably to the further conclusion that as each child in this case reached the age of 18 years, that part of the order (i.e. as to £40 per week for that child) stood discharged. Nothing was required to be done for that to be the case. Thereafter the only obligation placed on the applicant by this order was to pay the reduced amount. He was not liable to pay the £40 per week thereafter for the child in question.

74. Coming therefore to the Attachment of Earnings Order, I have already set out its terms. It is clear and unambiguous, and required the employer to deduct a sum of £200 from the applicant's earnings. It does not state for how long that deduction is to be made, and makes no reference to any child or to the age of any child.

75. This order refers to the applicant herein as "the maintenance debtor" throughout. That phrase is defined as I have already set out above, namely "the spouse by whom payments are required by the relevant antecedent order to be made". The clear meaning is that such a spouse is a maintenance debtor in respect of any sum which he/she is liable to pay. In the present case, therefore, the applicant was not a maintenance debtor in respect of any sum for his eldest child after that child reached the age of 18 years on the 28th June 1998, that he was not a maintenance debtor in respect of £40 per week for his second child after he reached the age of 18 on the 10th November 1999, and was not a maintenance debtor in respect of £40 per week for his third child after he reached the age of 18 on the 24th June 2001. After the last of these dates, he was a maintenance debtor for the purpose of an attachment of earnings order only in respect of the remaining amount of £80 per week for his wife.

76. If the applicant's liability under the antecedent maintenance order was automatically reducing by operation of law (i.e. in accordance with the provisions of s. 6(3) of the Act), in my view the Attachment of Earnings Order should have reflected that in the way it was drawn up, even if that meant that the prescribed form of attachment order was adapted appropriately to accurately and clearly reflect the obligation of the maintenance debtor at relevant dates. To do otherwise produces the situation where the employer is required to deduct sums for which the maintenance debtor had no obligation to pay. That cannot be right.

77. I can easily agree with Ms. Phelan's submission that it is impractical and impossible for District Court Clerks to "police" maintenance orders, and to keep track of when children will reach the age of 18 years or who otherwise might remain within the definition of dependent. But that impossibility is easily obviated in every case where under the antecedent order made, the liability ceases for a child at age 18, by the proper drafting of Attachment of Earnings Orders to reflect in each case the dates on which a child or children will reach that age. In that way the employer would know exactly the amount at various dates into the future deductions must be made. The Oireachtas clearly cannot be understood as intending that amounts for which there is no liability to pay would be deducted. In s. 10 itself it is provided that the attachment of earnings order "*shall operate as a direction to [the employer] to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate*". It was appropriate to direct payments only of such sums as the applicant was liable for at particular dates. The order in this case failed to do this, and could easily have done so.

78. The consequence of all this is that over a number of years amounts were deducted for which the applicant had no liability to pay. The result has been that the applicant's wife has been in receipt of a considerable sum of money in respect of these children and to which neither she nor they had any entitlement under law.

79. The remaining question is what relief, if any, should be granted in these proceedings to the applicant.

80. It has not been shown that the applicant was made aware of the terms of the antecedent maintenance order, and I am accepting that what he says in this regard is true. The order was made in default of appearance by him in December 1997.

81. When he discovered that an amount of £200 per week was being deducted from his earnings by his employer pursuant to an attachment of earnings order, he was entitled to presume that any sum which was being deducted from his earnings were amounts for which a Court had found him to be liable. In this way, he is not culpable for not having sought out earlier information about the terms of the orders made. However, it is correct to say that from the correspondence which has been exhibited in these proceedings the applicant could have taken the reasonable step of making his own application to the District Court for the purpose of correcting the situation by obtaining a variation order in respect of the attachment of earnings order. A decision not to make such an application was obviously made, but for reasons not given on this application. However, even if such an application had been made, it would have served only to reduce the amount from that date.

82. However, it does not follow that what I have found to be a failure to draw up an order which made clear to the employer exactly what sum was to be deducted from time to time must entitle the applicant to an award of damages against the respondents in respect of the excess amount deducted on foot of the order. The liability for damages on the part of the respondents is constrained. To succeed in the recovery of damages by way of negligence or breach of a statutory duty in this case, it would have to be shown that the respondents acted *mala fides*, and that certainly is not the case.

83. In any event, it seems to me that the applicant has a potential claim against his wife in respect of money received by her and to which she had no entitlement under law, as found by me. Whether such a claim exists or whether it exists as a claim to money "had and received" or on the basis of an unjust enrichment are not matters on which I can or should reach any conclusion.

84. As far as declaratory relief is concerned, the applicant has sought a number of different declarations, as set forth in his Amended Statement of Grounds. It is appropriate in my view to grant a declaration in the terms of reliefs (i), (iii) and (v) of the Statement of Grounds, namely that the antecedent maintenance order stood discharged in respect of each child as he or she respectively reached the age of 18 years. The reliefs at (ii),(iv) and (vi) are refused since they seek a similar declaration in relation to the attachment of earnings order. That order remained valid until its variation or discharge and did not stand discharged in the way the antecedent order stood discharged. I refuse the declaration at (vii) that the sum of €9,142.11 was "unlawfully deducted from the applicant's earnings and subsequently from his pension. These deductions were made by the employer in accordance with the order directed to them. Eircom was obliged to comply with the terms of that order. The order of mandamus sought at (vii) is no longer necessary. Neither is the injunction sought at (ix). The declaration sought at (x) that the failure of the first named respondent to notify Eircom of the cesser of the attachment of earnings order is a breach of his statutory duty is refused, in spite of my view as expressed above that the attachment of earnings order could have been better worded to reflect the liability of the applicant for the sums in question. I should grant the relief at (xii) that in drawing up the attachment of earnings order the first named respondent failed to comply with the provisions of s. 10(4) in that he specified a normal deduction rate in excess of the rate necessary for the purpose of securing payment of the sums falling due from time to time under the antecedent order. Having granted that declaration, that sought in the alternative at (xiii) is unnecessary, but in any event would have to be refused in view of my findings. I refuse the declaration at (xiv) is refused as there was no obligation on the first named respondent to bring an application under that section to vary the attachment of earnings order. The applicant himself shares an entitlement to bring such an application and did not himself do so.