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Categories: contested divorce; family home; property adjustment; non- disclosure of assets; domestic violence order; undertaking given

Divorce granted following hearing, home to be sold, property adjusted

A Circuit Court judge in a rural town granted a decree of divorce and various ancillary orders following a three-hour contested hearing. Both parties were present in court and each was represented by a solicitor and barrister. The parties had been married for over 30 years and had one daughter who was no longer dependent.

The parties had agreed a valuation of the family home. They had built the house by direct labour a few years previously. The parties had also purchased a site during their marriage which they had transferred to their daughter and she resided there. The applicant wife remained living in the family home and the respondent husband was residing with the parties' daughter following the granting of a three-year barring order over a year previously.

The wife's barrister said that the husband had appealed the barring order to the Circuit Court and it was struck out as he had given an undertaking to stay away from the family home. She said the parties had agreed to sell the family home, but they were not in agreement as to how the net proceeds of sale were to be divided between them. The wife had a small pension, and the husband had two bigger pensions.

Wife's evidence

The wife said that she had just received and accepted a job offer and she did not have this job when she had sworn her Affidavit of Means. She informed the Court of what her salary would be when this new job began.

The wife outlined a history of the marriage. She said that when the parties were saving for their first house her father had given her a sum of money which the husband had put into his bank account as the parties had recently moved to Ireland and she did not have an Irish bank account at the time. She said that the parties had bought their first family home and had sold it some years later for a profit. She said the husband had inherited a small amount of money from one of his parents and he had used this money to purchase personal items for himself.

After the parties had sold their first family home, they built a substantial family home. They built it by direct labour and the husband had carried out a lot of this work himself. During their marriage, the husband lost his job and went to college for three years to retrain. The wife said that during this time she worked three jobs to keep the family afloat, and the husband also had a part time job.

The wife said that the parties had also purchased a holiday apartment in another country which they had used for several years. However, it did not factor in the divorce proceedings, as it had been repossessed a number of years ago. The mortgage had fallen into arrears as

there had been an issue in that country with mortgages being repaid from non-resident bank accounts.

The wife said that when her husband re-entered the workforce some years later he was earning significantly more than she was. The parties had agreed to separate some four years previously. The wife said that when the relationship between the parties broke down, she was forced to move out of the family home as a result of the behaviour of the respondent husband. She attended the District Court and obtained a barring order for three years.

She said when she initially left the family home before obtaining the barring order, she lived in her daughter's annex and she spent a significant amount of money refurbishing it so it was suitable for her to reside in. She said she paid for plumbing, decorating and the electrical fit-out of the annex. She said she moved back to the family home when she obtained the barring order, and she believed that the husband had then moved into the annex of their daughter's house.

The wife said that when the parties built their family home, they had a joint account to which they both contributed and from which the mortgage was paid. When the husband lost his job, he had negotiated an interest-only repayment rate with the bank, and when he re-entered the workforce he refused to apply to change from the interest-only rate. She said that when the parties started to live separate and apart but within the family home, the mortgage repayments fell into arrears, and the mortgage was sold by the bank to a credit servicing company. The wife said at that stage the repayment on the mortgage came from her account, as she wanted to ensure that it was being paid.

The wife's barrister asked her what outcome she wanted from the divorce proceedings. She said she was satisfied that the family home would have to be sold. She said she would need a certain amount of money so that she could secure accommodation for herself. She said her options were limited as it was still not a substantial amount of money and she was looking at cottages and houses that required full refurbishment. She had printed out examples which were shown to the Court. The wife said that she had made enquiries, and she was advised that because she still had a property in her name, it would have to be sold before she could obtain another mortgage.

The wife gave details of her debts including a credit card debt. She had taken in students to supplement her income when she had times of lower pay, and she stated that this would not be an option for her when the house was sold. She said there was no inheritance due to her, her mother had passed away in recent times, but she had not inherited any money or property from her as she had lived in a council-owned house all her life.

The wife said that towards the end of their marriage the parties had jointly bought a large vehicle which they had refurbished together. The wife detailed the money she had put in towards buying and refurbishing the vehicle. She said at case progression stage of proceedings, the husband had been ordered to swear an affidavit detailing the money he had put into the vehicle, and detailing its current whereabouts.

She disputed the amount and year of purchase. The husband had sworn on affidavit that he had taken out a credit union loan to purchase the vehicle. She said there was never any conversation about getting a credit union loan and he never provided proof of such a loan. He said he sold it for X amount but he had no receipt. She said she had seen it advertised on Done Deal at a higher price. She said before they sold the vehicle they were advised by garages that the value would have been approximately double of what the husband said he had sold it for. She said he had been told not to dispose of any marital assets during the proceedings. He said he used the money to discharge part of a credit union loan and the balance was used to purchase a van for himself.

The wife said further matrimonial assets were certain building materials that had disappeared from the family home. The wife said that at the barring order appeal, the Court Order stated that the material was jointly owned and he was not to dispose of it. She said there was no sign of it now in the family home or in their daughter's property, and her belief was that he had sold it. She said she wanted the proceeds of the vehicle and the building materials to be divided equally between them.

The wife's barrister highlighted certain lodgements that had been made to the husband's bank account. In correspondence before the hearing the husband had said that these were tax refunds he had received. The wife said that she believed it was really the money for the building materials and vehicle that he had sold, subsequent to the undertaking he gave at the barring order appeal.

Under cross examination, the husband's barrister put it to the wife she had not been close to her father and the husband would say that she had not been given a sum of money by him which was used for the purchase of the parties' first home. The wife refuted this, and she said he did give her a sum of money but at the time she viewed it as their joint money and not her money as she was married by then.

The husband's barrister said that the husband would say that he also received money by way of an inheritance from his mother, and he put this money towards building and running the family home. The wife said that he did receive a small amount of money, but it was nowhere near the amount he said he received, and he spent this money on personal items for himself.

Husband's barrister: "Your evidence is contradictory, and I put it to you that you had no involvement in the purchase or reconstruction of the vehicle?"

Wife: "I was fully involved in the purchase and reconstruction of the vehicle."

The husband's barrister asked the wife if she had changed the code of the family home and refused to allow the husband access when he had arranged to pick up some of his belongings. The wife said that she had not refused him access. She said he came to the house later than had been arranged, and when he showed up unaccompanied and abusive, she called the Gardaí as he was seen on security cameras trying to scale the walls.

The husband's barrister asked the wife if she had access to her mother's bank accounts. The wife said she had access to her account when she was alive as she had arranged to pay her

nursing care bills. She said after her mother's funeral expenses had been paid there was very little in the account before it had been closed.

Husband's barrister: "You have given evidence on how you will rehouse yourself after this case is finished you said your options are limited? Isn't it the same for your husband? In terms of rehousing?"

Wife: "I agree that anyone going through divorce will find it difficult to find accommodation."

Husband's evidence

The husband said that he did not know anything about the wife's father having given her a sum of money at the beginning of their marriage. He said as far as he was concerned this did not happen. The husband outlined how much their first family home had been bought and sold for. He said he paid 10 per cent of the purchase price as a deposit by way of an inheritance he received from his mother.

The husband confirmed that he was now living in his daughter's annex. He disputed the claim that the wife had spent the money she said she had spent on the renovation of the annex. He said there were many electrical items outstanding, and he estimated that a smaller amount of money had been spent on the annex by the applicant wife.

Husband's barrister "Did you sell the building materials that the wife said you did?

Husband: "No, I did not. It is worthless, old material that I have had for a long time. I still have it. The lodgements to my credit union account were a tax refund."

The husband said that the wife made no contribution to the purchase of the vehicle. He said that she had spent a small sum of money buying certain parts for it but that was it. He said he bought the vehicle and did most of the renovation of it. He thought of it as a hobby.

Under cross examination, the wife's barrister put it to the husband that the wife's evidence on everything was far more credible than what he was saying. The husband rejected this. He said that the wife had bought him a car when he went back to college, and he used this car as a taxi so that he could contribute financially to the household. He said the refurbished vehicle was bought with his money and he alone refurbished it. He said he also helped build their daughter's house around this time.

Wife's barrister: "You were ordered to swear an affidavit by the county registrar in relation to the vehicle, and provide receipts for the sale of it, and bank statements showing the lodgement into an account?"

Husband: "I had no receipts, it was a private sale. I was paid an amount of money in cash. The cash went on legal fees, materials and my daughter's family."

Wife's barrister: "I put it to you that you are lying as you swore to this Court on affidavit that you put it towards a credit union loan so there should be a paper trail for this. If you paid

your legal fees and material for your daughter's house, why didn't you say so in the affidavit? The affidavit you swore did not have any vouching exhibited to the affidavit."

Judge: "You put the vehicle on Done Deal. Can you tell us how much it sold for and to whom?"

Husband: "I sold it for cash."

Judge: "Are you not going to say to whom?"

Husband: "No."

Judge: "What do you say that there was a court order forbidding you from selling it?"

Husband: "I needed to sell it to pay legal fees. I sold it for around X amount."

The wife's barrister asked the husband if he had done a deal with the parties' daughter in relation to him residing in her house. He said he had not and he was hoping he would not be living there indefinitely.

The husband gave evidence of his income and savings. He said he was employed and he also carried out private work as a source of extra income.

Wife's barrister: "Why didn't you disclose the cash work in your affidavit of means? I put it to you that your affidavit of means is a balancing exercise, and you are able to have significant savings in two different accounts. You have made several large withdrawals, they can't all be for your legal fees. You must be telling untruths. You say it was a tax rebate, do you have a Revenue slip?"

Husband: "It's just a few odd jobs here and there. I am not telling untruths, I agree with everything you have said. I don't have anything from the Revenue, it's at home but I already sent you a letter on it."

Under re-examination from his own barrister, the husband said that when he sold the refurbished vehicle he also used some of the money to buy a car as he needed his own transport.

Judge's decision
The judge said that this was an application for divorce and the issue was proper provision.

He outlined the provisions of section 20 of the 1996 Act which the Court was obliged to take into account. He noted that conduct did not really come into this case save and except that it was not appropriate for the husband to have sold some matrimonial assets during the proceedings. He said he did not accept that the husband needed to do this as he had funds.

The judge said that both parties had gaps in their earning abilities at times, but it did seem that the husband had a stream of private income which he had not disclosed in these

proceedings. He said that was an unknown quantity, and for someone to dispose of a matrimonial asset without any documentation was grossly irresponsible and led to a belief that he was keeping financial evidence from the Court.

The judge agreed with the assessment reached by the parties that selling the family home and dividing the net proceeds was the only way. He said he felt the husband was in a stronger position financially and was satisfied that he was not disclosing other income. He said the wife's position was significantly weaker but hopefully she would regain a stronger one in the future.

The judge said that the significant undeclared earnings of the husband were grounds for making some weighting in the division of the assets. He was making adjustments to the division of the property to take into account that there were assets that had been sold or converted to his own use by the husband.

Judge: "If someone did this in a way it can never be valued, they have to expect that the Court can make a generous value of the property rather than reducing its value. I don't accept the figures put forward by the husband that the amount is a true valuation of the vehicle. The building materials are more of an unknown but it's clear the husband wants to hold on to them, and I don't accept the valuation of a few hundred euros. The wife is very suspicious about the monies in the accounts, but on the husband' s own account these are savings that accrued during the marriage so they are matrimonial assets which really should be divided by 50 per cent."

The judge made an order for the sale of the family home. The sale was to take place forthwith and the wife was to remain in the family home to the exclusion of the husband until she was called on to make vacant possession. The parties were to agree an auctioneer and the solicitors to have joint carriage of sale. The judge gave liberty to apply for any ruling in terms of the sale.

The judge directed the net proceeds of sale to be split on a 50-50 basis minus the sum of €35,000 to the wife from the respondent husband 50 per cent share. Each party were to have nil interest in the pension of the other, and each party to bear their own costs.