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Contested divorce granted after long marriage, no clean break

A judge in a rural town granted a decree of divorce and certain ancillary orders to a husband and wife who had had a long marriage. The hearing ran for a full day. The applicant husband was represented by a solicitor and barrister and the respondent wife represented herself.

The judge explained to the parties how the case would run before her. She explained what the concept of proper provision was and she asked if the parties agreed with the valuation of the family home, which they did. The parties confirmed that there were four marital and non-marital children of the marriage, none of whom remained dependent.

The judge asked the parties if they each had a position in mind and what they wanted by way of an outcome. She said they were not obliged to give these open offers to the Court but they could be helpful.

The applicant husband's barrister said his position was that the parties had ceased cohabitating approximately six years earlier when the husband moved out of the family home. He said prior to that, the parties had been living separately and apart but in the same house for approximately 25 years. The husband's barrister said that the wife remained living in the family home and the husband's position was that he wanted a sale of the family home and a 50-50 split of the net proceeds of sale, and for both parties to keep their own pensions. He was not seeking maintenance from the wife.

The wife said that she wanted the family home to be transferred to her sole name, and she did not think the husband was entitled to anything in consideration of this. She said her husband had not been transparent in his discovery and she believed that he had interests in other assets including property and money in another country.

Husband's evidence

The husband was formally sworn in and he confirmed his original marriage certificate. He outlined a history of the marriage, and he confirmed that there were four children, some of whom were born outside the marriage. None of the children remained dependent. The husband's evidence was that the parties had been able to buy their first home because his own family had helped him out financially to purchase their first house.

He said that the parties had separated for a short time very early on in their marriage. They got back together and after that they only really communicated about the children. He said they did their own thing and were effectively married in name only for much of the marriage.

The husband said he worked early on in the marriage but due to an accident he had to stop working and he was in receipt of Disability Benefit from then on. He said the wife worked

outside the home and he stayed at home to look after the children which he did as best he could.

Husband's barrister: "Your wife will say that you had a problem with alcohol. What do you have to say about that?"

Husband: "She always knew I took a drink, but I was never violent. I organised the house, it was never short. She controlled the family finances and ran the money side of things. My brothers would give me a few pound a week for various jobs I did for them."

The husband said that when the older two children had finished school the parties decided to sell their house and move to a different part of the country. He said they did this to give the two younger children a better life. He said that when they moved to the country the parties bought a comfortable house where they resided in separate bedrooms. He said that after the Covid pandemic he had had enough of the situation and he moved out to stay with a family member and then later into rented accommodation where he now resided. He said he had a good relationship with the children, and they visited him in his rented home.

Husband's barrister: "Your wife is convinced that you have other accounts and properties that you haven't declared. Do you?"

Husband: "No, I do not. I have never been to the countries where she says these accounts are. I swear on my children's lives. My father died intestate, but he had already given me my inheritance when we bought our first family home. My mother passed away a few years ago. She only had her own home left and that was left to my brother who was living there. The residue was to my sister. I got no provision from my mother's will, not a penny, and I agreed with it as my sister had cared for my mother. I know my wife thinks I have another house as well but I don't, this was a house owned by my father who had the same name as me. I never had any connection to the property. I don't know why the wife is fixated on it."

The husband's barrister said that the husband was asking the Court to sell the family home, and split the net proceeds 50-50. He said that the husband had a State pension and a small UK pension, and if he got a 50-50 split of the family home he would not be seeking any of the wife's pension. He said he was happy in the neighbourhood he was living in and he would like to buy a home there.

The judge asked the husband what the cost of homes in his neighbourhood were but he said he had not looked into this.

The respondent wife cross-examined the husband. She said that she had worked full time including a lot of overtime when he was receiving Disability Benefit, but he did not look after the children properly and there had been several issues. She said he would never give the children money when they asked for it. She asked the husband if he had received money from his family while he was on Disability Benefit. He said he had not, he had looked after the children as best he could and he had given them money when they had asked for it.

The wife said she had contributed towards the husband's stay in an alcohol rehabilitation facility. The husband agreed with the wife that she had paid for the extension to their original family home.

The wife asked the husband if he ever owned a certain property in another county. The husband said that he never owned it. The respondent wife showed the judge an excerpt from the land registry. She had already given this documentation to the husband's legal team. She said the husband had also received a letter from the Revenue Commissioners requesting him to pay tax on any proceeds received from the sale or rental of this property.

The judge asked her if she had a copy of this letter and she said she did not as it had been removed from the house after the husband had moved out. The judge said that she could give her evidence on this when she was giving her own evidence later on in the hearing. The judge asked the parties for a copy of the probate for the husband's late father's estate.

Wife: "Why did you not contest your own mother's will? I believe you got money from your mother's estate and that is why you left me very shortly after your mother died."

Husband: "I left because the situation was unbearable."

Wife: "My money was being used to run the house, you were spending money on bookies and drink. I have worked all my life. I ran the house and paid for holidays. You haven't paid for anything to do with the family home since you left several years ago."

Judge: "You will have time to give your evidence but ask please ask him any questions you may have."

The wife asked the husband how he was managing to be in receipt of social welfare payments and the Housing Assistance Payment (HAP) when he had interests in other properties. He denied he had interests in other properties or cash in any other accounts other than the account he had declared in his Affidavit of Means.

The wife finished her cross examination of the husband and the husband's barrister called the husband's brother to give evidence. The husband's brother was formally sworn in and the judge explained the i*n camera* rule to him.

The husband's brother explained how his father's estate had been administered and he confirmed that the husband did not receive anything from this estate. He said there was very little in the estate at the end of his father's life as the father's company had been in great financial difficulty. He said that the husband had been given his inheritance when the father was alive in the form of the first house that the parties owned. He said the father died intestate and any property was reassigned to their mother's estate, and the husband did not inherit from his mother's estate. He said that the family's solicitor could verify that the applicant was not the beneficiary of the house, and he could not believe that the Revenue would have written to the husband and in relation to some other property.

Wife: "Were there any other properties that did not go into the probate?"

Husband's brother: "Not that I know of but our solicitor compiled the probate in consultation with the bank as there was a lot of debt owed to the bank."

Wife's evidence

The respondent wife was formally sworn in and she outlined a history of the marriage. She said that she had worked from the beginning of the marriage and her husband was in receipt of Disability Benefit. She agreed that the parties had been given a house to live in by the husband's father for which they paid a modest sum of money. The wife said she had put her own inheritance and proceeds of a personal injuries award into the marriage. She said the parties had a good lifestyle when the children were growing up and she had paid for all the holidays and household bills.

The wife said that things were made difficult by the husband's alcohol problem and she often had to take parental leave as he was not looking after the children properly. She said that when they did move house approximately 16 years earlier the parties continued their sexual relationship for a period.

The wife said that she never received any money from the husband during their marriage even though he was working and in receipt of Disability Benefit. She said she was sure he had received some inheritance from his mother's and father's estates. When the judge asked her to present whatever evidence she had, she said she did not have anything to prove these assertions.

Judge: "What do you want to do going forward, what are your plans?"

Wife: "I want to move forward and to continue my life. I want the house fully in my name and the lands around them. I wish him well, but I want us to be separate."

The wife said she had not seen her children in some years which was a source of great sadness to her, but she was comforted by the fact that they had great family memories of the good times together. She listed various health issues she was suffering from.

Under cross examination the husband's barrister asked the wife whether she would have been able to do her job if the husband had not stayed at home to look after the children when they were young. The wife said that she also had to get childminders and her family to help as the husband was often drinking or out working with his brothers. She said everything she earned was spent on family life whereas she never saw any of the husband's money. She said that the money she generated went into the value of the house to make it what it was.

The husband's barrister said that the wife had disclosed many documents and bank statements in the discovery process but the statements that were missing were those which would show exactly how much of the proceeds of the sale of the previous family home had been retained by the wife. The wife said that there had been very little left over and all of the net proceeds of sale went into the renovation, redecoration and maintenance of the new home the parties had purchased.

Husband's barrister: "I put it to you that you bought a house mortgage free, you did not have to work after you moved, it was nowhere near as bad as you are making out?"

Wife: "All of my money went into the family home. He did support the children and helped with meals, but he spent an awful lot of time in the pub. He didn't make any contribution to the family home since the day he left four years ago. I feel it's fair that I now get the house and keep my pension as I have worked for it and I can't get a mortgage because of my age. He spent all of his money on drinking and gambling. I stayed with him because I believe in marriage and I wanted to keep the family together."

The judge asked if there was any possibility of selling the land adjoining the house. Both parties were in agreement that there was no reality to this, and they had taken the advice of the auctioneer on this.

Judge: "The bottom line is that it doesn't make sense to sell a property where the proceeds are insufficient to rehouse both parties. There are certain councils who won't rehouse somebody if they have a beneficial interest in another property."

The judge asked both parties if they had the facility to raise any money to buy the other out. They both responded that they did not. After rising for a short time, the judge returned and delivered her judgment.

She said she was satisfied that the parties had been separated for more than two out of the previous three years and that there was no reasonable prospect of reconciliation. The judge said that she was bound by the Law and this divorce jurisdiction was a non-fault jurisdiction. She said what was required was proper provision rather than mutual allegations. The law did not allow for bias and contributions to the family were looked at on an overall basis, financial and otherwise, and there was no formula.

The judge said that spousal independence was not always possible and unfortunately in this case neither party had a lump sum to buy the other out. She said that the legislation set out various factors that had to be taken into account including the ages, needs and earning capacity of both parties. The judge said it was unfortunate that despite the fact that there were certain leads that there may be other assets in the background there was no evidence of this. She said that the Court made its decisions based on their affidavits of means and on the sworn testimony of the parties and unfortunately this was not one of the cases where a clean break was possible.

The judge granted a decree of divorce, and she directed that the parties retain the family home in their joint names with a sole right of residence to the wife for her lifetime to the exclusion of the husband. She said that during that lifetime the wife was at liberty to buy out the husband's interest in the family home should she be in a position to do so. The wife was to be responsible for the upkeep of it for her lifetime and to augment her income if required by the room rental scheme if it was an option. Therefore, the joint tenancy would not be severed and on the death of either party the other would inherit the property.

There was to be no maintenance payable between the parties. The judge ordered mutual blocking orders pursuant to section 18(10) save for the fact that the family home would go to the other upon their death. A section 17 order directing the respondent to be entitled to full benefit of her own pension was also made. The judge made an order lifting the *in camera* rule to give effect to any part of this order and she made no order as to costs.

She wished both parties well in their lives going forward and she urged the wife to try and repair the relationship with her children.