Year: 2026 **Vol:** 01 **Case No:** 71

Categories: family home; custody and access; pension; maintenance; Section 20 Report

Maintenance, custody and access ruled by court in contested divorce applications

There were 14 cases in total at a hearing in a Circuit Court in a provincial city, 12 cases were on the court list, and two cases were added that morning. Four divorce cases were for hearing: one case concerned the sale of property after divorce, another case concerned an appeal for an order for discovery in divorce and a third case concerned a lump sum for accommodation in a divorce.

The first two divorce cases were short matters, and a court date was given for hearing, while the third divorce case was for hearing, but the case was adjourned due to the length of time that the fourth divorce case took which concerned the family home, custody and access, pension and maintenance. This case is set out in detail below.

There were also four pension adjustment orders, three "for mention only" cases, and one *ex parte* application seeking to prevent the respondent from removing a child from the jurisdiction in circumstances where there were access orders in place. One of the "for mention only" cases is also set out below as it concerns a delay from the Child and Family Agency in providing the Court with a section20 Report.

Judge rules on custody, access and maintenance in contested divorce hearing
The Court granted a decree of divorce where both parties were represented by a solicitor and barrister. During the call-over in the morning the barrister for the applicant husband estimated that the case would take two hours.

The hearing took approximately three hours, and the parties were in negotiations for over two hours over the course of the day. Some terms were agreed by the parties in negotiations, including about the family home and the respondent wife's pension. Agreement could not be reached about custody and access and maintenance for the children and the judge determined these issues.

The applicant husband gave evidence that the parties had married in 2009 and had two children, one child was in primary school and the other was in secondary school. The marriage had broken down six years earlier. Both parties were in employment. The parties were joint owners of the family home, valued at €435,000 and they had a mortgage.

Both parties were residing in the family home with their children. The respondent wife wished to remain in the family home with the children and the applicant intended to move out in eight weeks and buy another property nearby.

There was positive equity in the family home of €300,000 and the applicant was seeking 50 per cent of this equity, €150,000. The respondent had offered to pay the applicant a lump sum of €125,000, she had a loan approval for this amount.

There were negotiations throughout the court day about the lump sum, and it was agreed that the respondent would pay €125,000 within eight weeks to the applicant and a further sum of €20,000 over two years, bringing the total to €145,000 to be paid to the applicant for his share of the family home.

The respondent had a pension and wanted to retain it. The parties negotiated and it was agreed that 25 per cent of it would go to the applicant and 75 per cent of the contingent benefit would go to children.

The applicant sought shared care of the children on a week on and week off basis from Sundays. The respondent claimed that shared care could not work as the applicant worked in another city two days a week which involved an overnight stay away from home. The respondent wife said that the eldest child's wishes must be considered, as the child was a teenager and the younger child needed stability and certainty as this child had a medical diagnosis. The parties could not reach agreement on shared care arrangements.

The judge said that "shared care will change as children's needs change. The children need two parents." The judge ordered that "to retain consistency" the children would be with the applicant father from Wednesday evening when the applicant returned from work in another city, between 4.30-6pm, until Monday at 7pm (Week 1 for the applicant). The children would be with the respondent from Monday 7pm to Wednesday 4.30 - 6pm, that is for 9 nights, (Week 2 for the respondent).

The judge also ordered that the parties were to cooperate with each other regarding the children's extracurricular activities. Further, as both children had phones, the judge ordered that the children could contact the other parent when they wanted. Phone bills were to be shared between the parties. Children's holidays were to be shared on a 50-50 basis, with plans already negotiated between the parties about summer holidays and Christmas holidays for 2026.

There was no application for spousal maintenance. The respondent wife sought maintenance of €75 per child per week. The respondent said that the shared care arrangement has been put forward by the applicant so that he could pay less maintenance. The husband had offered to pay maintenance of €20 per child per week, and that the parents would share all medical and dental costs for the children on a 50-50 basis.

The judge said that "sometimes tying maintenance to access, people get caught up. There is a leading parent that deals with clothing and other purchases so that is what the maintenance is for." The judge said that "maintenance of €40-€50 per child per week would be more reasonable".

There was disagreement in the negotiations about maintenance, and the applicant offered €35 per child per week while the respondent continued to seek €75 per child per week. The

judge ordered that the applicant pay the respondent €45 per child per week for maintenance and that payment would start once the applicant vacated the family home.

Further, the judge ordered that the applicant would share medical and dental costs of the children on a 50-50 basis.

After many hours of negotiations and a hearing, the barrister for the applicant husband informed the Court that the applicant had made an application for a safety order in the District Court the previous week. The applicant was asked if they wished to pursue this safety order. The applicant stated that "matters have moved on" and the application for a safety order was struck out.

Both parties were visibly very upset in court. The judge said that "today is a difficult day for both parties and it is difficult when the parties are living together. However, this is a fair proposal for both parties". The barristers would write up the terms and hand them in to court in two days' time. The barristers said that the usual ancillary orders applied.

Custody and access: Section 20 Report

The issues of a section 20 Report from the Child and Family Agency came up in a case that was "for mention only". The applicant husband was a lay litigant. The respondent wife was also a lay litigant and came late to court and missed the proceedings, but the judge explained to her afterwards what had been said.

The judge had ordered a section 20 Report (to be compiled by the CFA/Tusla) in January 2025 and directed it again in May 2025 but this report had not yet been sent into the Court. The applicant husband contacted the CFA to enquire about the report in October 2025 and was told that it would be ready in 2026.

The judge had appointed a guardian *ad litem* to write the report in March 2026, but the GAL had not been in touch with the applicant about it. The husband had not been in court in March.

There were three children, two of whom lived with the husband and one with the wife. One of the children visited the wife once a week for access, while the other child rarely saw her. The child who lived with the respondent had run away from home when they were living with the applicant.

The child living with the respondent went to school but arrived late. The applicant rarely saw this child. The judge said that "there has never been an appearance by the Child and Family Agency in court for this case". The judge said that the Court "will contact the *guardian ad litem*, notify the Child and Family Agency and put in a date" for one month's time.

The judge said that "it is not acceptable that the Child and Family Agency do not have a representative in court. It has been a year and a half."