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Categories: family home; respondent's illness; section 32 Report sought

Mother to live in family home after divorce until youngest child 18

A judge in a regional town heard an application for divorce and certain ancillary orders. The hearing lasted approximately three hours and the parties were each represented by a solicitor and barrister.

The applicant husband's barrister said that the parties had married approximately twelve years earlier and they had two primary school-aged children. The applicant husband also had a college-aged child from a previous relationship for whom he was paying maintenance. The family home of the parties was held in the joint names of the applicant and the respondent wife, and it was subject to a mortgage. There was some equity in the property. The parties had agreed a valuation of the family home. Both parties resided in the family home, albeit separate and apart from each other.

The applicant's barrister told the Court that when the parties were purchasing the family home, the parties had received a lump sum from the applicant's parents. He said it was the applicant's position that this lump sum was a loan which had to be repaid to his parents. The respondent wife's position was that this was not a loan but a gift and it did not have to be repaid. The husband's barrister said that when the parties had moved into the family home some six years previously, the parties had repaid a small portion of this lump sum to his parents, and the remainder of the lump sum remained outstanding.

The husband's barrister said that he was employed in a job where he worked shift work and he looked after the children on his days off. He also ran a small separate business from the family home which supplemented his income. The Court heard that both parties were in new relationships. The husband's barrister said that the applicant had been in a new relationship with someone for the past year or so while the wife had been in another relationship for a considerable period of time.

The applicant's barrister told the Court that the applicant's income was as set out in his sworn affidavit of means. He said that the income sworn by the respondent wife in her affidavit of means was disputed by the applicant and he believed it to be somewhat higher. Both parties had a pension and the applicant's pension was significantly greater than the respondent's pension as she had only started contributing to her pension in recent years.

The applicant's barrister said that throughout their marriage the parties had paid into a joint account on a basis proportionate to their incomes, and from this account the household bills and mortgage were paid. The child benefit payment had been paid into this account until recently when the respondent wife arranged for it to be paid into another account in her sole name.

The applicant's barrister said that the main issue in this case was the future of the family home, which was a house with a significant value. He said that both parties were eager to

remain in the family home with the children, to the exclusion of the other party. The applicant had made enquiries and was in a position to raise a loan to buy out the respondent's share in the family home. The husband's barrister said that if the husband left the family home they would continue to share the parenting of the two children and their related expenses on an equal basis.

Judge: "Are you seriously telling the Court that proper provision is that your client makes no allowance at all in his pension for the respondent?" Applicant's barrister: "Judge, my client's position is that the marriage had ended not long after it started".

The respondent wife's barrister outlined the position of the respondent. She said that medical evidence had been provided to the Court and to the applicant's legal team that the respondent suffered from a significant long-term debilitating illness which required ongoing care. The barrister said that her income was as sworn in her affidavit of means, she was a PAYE worker on a set wage. The wife's position was that the husband was earning almost twice as much as she was, and she bought all of the groceries and discharged the expenses relating to the children. She said that in contrast to the respondent's affidavit of means, there was very little disclosure from the applicant in respect of the income he earned from his second job.

The respondent's barrister said it was unrealistic for the applicant to say that the parenting of the children could be shared between them on a 50-50 basis. She said that the applicant worked shift work and was away from the home at least three nights a week, so in reality was only available to look after the children and put them to bed two nights a week. Her barrister said that the care of the children was paramount for the respondent, she had lived her life and arranged her working hours around the applicant's working hours and to ensure that she was available to look after the children.

The wife's barrister said her position was that she wished to remain in the family home with the children until they finished their education, caring for them as their primary carer and co-parenting with the applicant. She was proposing that when the children were finished their education, the family home would be sold and the proceeds would be divided on a 50-50 split between the parties. This would mean as little disruption as possible for the parties' children. The respondent was also seeking maintenance for the children and an equalisation of the parties' pensions.

The respondent wife's barrister said that the respondent regarded the money given to the parties by the applicant's parents as a gift. She said that there was no contract of loan or statement from the applicant's parents that it was a loan.

The barrister said that there was significant disparity between the pensions and the respondent struggled with her health issues. The applicant had removed her from the family health insurance policy. The respondent's barrister said that while both parties were in alternative relationships this had no bearing on the financial circumstances of the parties.

The wife's barrister said that one other issue had arisen, which was that the husband had removed some personal items belonging to her. These had been taken from her own bedroom without her consent.

Judge: "This is a difficult situation. It's a matter of managing, there is never a perfect solution and the priority of the Court is the welfare of the children. There is no question here that both parties can look after their children, the issue here is how they will do it."

Husband's evidence

The applicant husband identified the marriage certificate and confirmed the date of marriage. He confirmed the ages of the parties' children and he said he had one dependent child from a previous relationship, for whom he paid maintenance.

The applicant outlined a history of the marriage. He detailed how the parties had financed the purchase of their family home. He said that the parties had been given a lump sum by his parents which had to be paid back to them. He said that as part of the mortgage drawdown the parties had to write a letter saying that the sum was a gift from his parents, but he and the respondent were always aware that it had to be paid back and they repaid a small portion of it as soon as the mortgage money was drawn down.

The applicant gave evidence in relation to his career history. He said he worked shift work and also had a second job. He said he arranged his work hours so that he could look after the children as much as possible. He had taken unpaid parental leave that year. He said he had often turned down work if he was looking after the children. He said he was gradually building the business and he said he was rarely paid in cash as everybody looked for receipts. A set of accounts for his second job which had been prepared by an accountant was shown to the judge.

The applicant confirmed that the parties had ceased living together as a married couple six years earlier and there was no prospect of reconciliation. He said that the respondent had commenced a relationship with her current partner shortly after the parties had moved into their family home. The parties had attended marriage counselling but to no avail.

The husband said that the respondent had been in a relationship with her current partner for a number of years and her partner also had children. He said that the parties' children had been introduced to and spent time with her partner's children. He said that the wife's partner lived in rented accommodation close to the parties' family home.

In respect of his own new relationship, the husband said that his new partner lived some distance away in a house with her children. It was not open to him to reside with her, and he was not willing to bring his children there as it was too long a round trip to do with them each week.

Applicant's barrister: "Do you accept that the respondent has health conditions?"

Applicant: "Yes and I didn't understand it was as bad as it was. I am sorry to hear it and I was surprised by it."

Applicant's barrister: "Can you tell the Court how the household expenses were discharged during the marriage?"

Applicant: "It was always two thirds paid by me and one third paid by her. There was a shortfall since the respondent diverted the children's allowance into her own account and the mortgage direct debits have been returned a few times this year due to insufficient funds."

The husband gave evidence as to the lump sum he could borrow to buy out the respondent's interest in the family home. He said that it was the least disruptive option to the children if they remained in the family home as they were near their school and friends. He was proposing that the respondent wife collected them two nights a week and they would stay overnight with her. He said that the respondent seemed very comfortable in her new partner's home and it seemed like an appropriate set-up to have the children for overnight access.

Applicant's barrister: "Do you think a shared parenting agreement is possible in terms of cooperation?"

Applicant: "Yes, I do. There is never a blaring row in front of the children, we agree on a lot of parenting issues together, we do sing off the same hymn sheet by and large and we parent well together."

Applicants' barrister: "Do you appreciate that it is going to be difficult for one of you to move out? The respondent is proposing that she would stay in the house until the end of secondary school and then the proceeds split 50-50, what do you say to that?"

Applicant: "What's important is the happiness of the children. I would have to get a premises which would mean more childcare for the children. If I can't do that, I would have to give up my secondary business. If I move out, they will have three separate homes as she is also planning a life with her new partner and his children."

In relation to the pensions, the applicant said that he was slightly older than the respondent and he could retire in the next six to ten years. He said the respondent was younger and ambitious and she was doing well in her job where she had recently been promoted.

Under cross examination from the wife's barrister, the husband also gave evidence in relation to his overtime payments and expenses. The wife's barrister queried his secondary income and expenses. She also put it to the applicant that he was not available to mind the children as much as he had said he was, and that this was unrealistic given that he had two jobs and various other commitments.

Respondent's barrister: "Where are the respondent's personal items which you removed from her bedroom?"

Applicant: "These are items which are of sentimental value to me as well."

Judge: “I have no intention of getting into this. Please sort this out between you or get your legal representatives to do it.”

Wife’s evidence

The wife gave evidence that she did not intend to cohabit with her partner, it was not an option. She said she did not want it for herself or for the children, and she wanted to keep them where they were as they were happy and settled there. She said she was a constant presence for them in the home, she scheduled her work and social life around the applicant’s work and she had always done this throughout the marriage.

The wife gave evidence that she had approval in principle to borrow a sum of money but that would mean working until she was seventy, and the sum was not enough to purchase a suitable house in the area or its surrounds, even if the applicant gave her the lump sum he was proposing.

She said that the lump sum given to the parties by the applicants’ parents was a gift. She said a small sum of money was given to her parents-in-law when they drew down the mortgage as a token of thanks, but there was never any discussion or pressure from his parents to repay it.

The wife gave evidence of her health issues. She also provided an overview of how the parties had paid for their cars and what the arrangements were for discharging each of their car loans.

Wife’s barrister “Is the applicant in a position to care for the children 50 per cent of the time?”

Respondent: “No. He may be available, but they are usually in school when he is available. Being present is not being available. They are of school-going age and they still have requirements.”

Under cross examination from the husband’s barrister, the wife said that the applicant had always been a brilliant father for the children and she was not implying otherwise. She said that he would always give the children priority.

The judge noted that the issue here was a substantial family home. She said that both parties had given their evidence appropriately and kindly to each other, and She noted that it had been difficult between them for a long time. The judge said that she would give her judgment a week later, and in the meantime, she wanted the matter of the respondent’s personal items sorted out as it was not appropriate for the Court to do this.

Judge’s decision

The judge gave her judgment a week later. The legal representatives for both parties informed the judge that the personal items had been returned to the respondent the evening before. The judge ordered the respondent wife to remain in the family home until the youngest child reached the age of 18 years or had completed their Leaving Certificate.

The family home was to then be sold and the net proceeds split on 50-50 basis between the parties.

The wife was to pay two-thirds of the mortgage going forward and the husband to pay one third. The husband was to pay the local property tax and the respondent to discharge the house insurance. The applicant husband was to pay child maintenance in the sum of €75 per week per child. The Court ordered pension equalisation of the applicant husband's pension for the period of the marriage.

In respect of the children the judge ordered a section 32 voice of the child Report before access was be finalised and the case was put in for mention two months later to see whether this had been completed.