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Judge refuses divorce where Lay Litigants present agreed terms, adjourns application pending legal advice

A Circuit Court judge in a provincial city said that the consent terms presented by two lay litigants in a divorce application did not make proper provision for the applicant husband. The judge granted two other divorces on consent and heard one protracted access application.

Judge said that consent terms did not make proper provision

The judge heard an application regarding the division of property in divorce proceedings. The applicant husband and respondent wife were both present in court and self-represented.

The husband and wife had been before the judge previously and on that occasion, the judge recommended that they get legal advice on the distribution of the family home. Both parties said that they had got legal advice, and they sent in amended consent forms to court. The judge reviewed the forms and queried the legal advice. The judge said that she was not satisfied that there was proper provision in respect of the husband.

The family home was valued at €200,000 and had a mortgage remaining of €16,000 over three or four years. The wife was living in the family home with their only child who was 20 years old. The wife said that the child was healthy and had no needs. The husband was living with his parents in another city.

The husband said that he was happy that the wife lived in the family home as long as their son was also there and the house would be “going to the son”. The judge sought clarity on the terms in the consent forms stating that the agreement they had was not clear. The judge said that the house was held jointly. The legal advice did not deal with any of the issues on the mortgage. The husband said that he would pay the mortgage and the wife had a right of residence.

The judge suggested that they could hold the house together as tenants in common and allow the wife the right to live there. The judge said that the parties should go and talk to another solicitor each as there were many variables, the husband did not have proper provision and he was “giving up more of his rights”. The wife did not know how much the mortgage repayments were and they both had not read their affidavit of means. The judge said that they both needed to know what they have.

The judge also suggested that the wife could repay the remainder of the mortgage. The judge let the case stand so the parties could consider whether they wanted to get legal advice. The parties returned to court an hour later and confirmed that they would get legal advice. The case was adjourned for five months.

Two consent divorces granted
The judge granted a decree of divorce where both parties were in court and were represented by a solicitor and barrister. They presented consented terms.

The applicant wife gave evidence that the parties had married in 2012 and separated in 2019. They were living separately in the family home until the respondent moved out in 2024. There were no children of the marriage. The wife said that the marriage had irretrievably broken down.

The family home was unencumbered and was on the market. It was agreed that the wife would be paid €440,000 from the sale of the family home and the respondent lived in another property which was registered in his sole name. The consent terms provided that the respondent would retain the farmlands.

Both parties were in employment and there would be no spousal maintenance. The applicant wife would retain her pension. The judge reviewed the terms and was satisfied that there was proper provision. The judge asked if there was a spousal scheme in the wife's pension. The barrister for the applicant wife said that she would check this. The judge granted the divorce and made a nominal pension adjustment order. The judge also granted liberty to apply and liberty to re-enter and no order for costs.

In another consent divorce case, where both parties were in court and were legally represented the judge also granted the divorce. The applicant husband gave evidence that the parties had separated in 2010 and that there was no prospect of reconciliation. It was agreed that the family home would be sold, with 53 per cent of the proceeds going to the husband and 47 per cent to the wife. The house was worth €440,000 and was mortgage free.

There were three children, all of whom were no longer dependent. Both parties received social welfare benefits and both could get new accommodation. The judge said that "the parties are advanced in years so this is a difficult case. The parties were given an opportunity to explore the division of property."

The judge granted the divorce, extinguished succession rights and made nominal pension adjustment orders. It was agreed that the respondent wife had no entitlements to the applicant husband's pension as the parties were judicially separated when the husband joined the pension. The barrister for the husband offered to make enquiries about spousal benefits in the husband's pension. The judge granted liberty to apply so that the parties could come back to clarify the pension.