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**Categories:** family home; other property; pensions; auctioneer's valuation

# Divorce granted following two-day hearing

Dublin Circuit Family Court ordered the sale of a family home and that the proceeds be split equally between the parties following a two-day divorce hearing.

The judge made the orders as part of an application for a decree of divorce and ancillary reliefs. One of the reliefs sought by the applicant wife was to allow a deferred sale of the family home until the youngest of their three children was finished college.

The wife had also had wanted 60 per cent of the equity and to retain her pensions and another foreign property she had claimed her husband, the respondent, had signed over to her despite his name remaining on the mortgage. She had also claimed that a number of her husband's 's heirlooms had been gifted to them as a couple. She had also wanted to retain her money, pensions and a foreign property.

The husband had wanted the family home sold immediately and had also asked for 60 per cent of the equity. He had also wanted to keep his pension and to receive €60,000 in the divorce settlement. He disputed owing money towards a director's loan taken out from the wife's company.

The Court heard the couple had still been living together but the respondent husband had spent part of the week with his new partner.

The Court heard the couple had been estranged but had chosen to stay in the marriage. The woman gave evidence the husband would not move out. He was sleeping upstairs but then moved to a bedroom downstairs. The woman gave evidence during the trial that there had been domestic abuse. She also claimed the man had crashed his car on three different occasions. The Court made no ruling on these claims.

Only one child remained dependent and was in third-level education. The respondent had been paying €590 maintenance into the couple's joint account, the Court heard.

The Court heard the family home was a large house with an outstanding mortgage of €286,000. Its value had been disputed and an expert, an auctioneer, was called by the applicant. The auctioneer said the property was worth €1.35m while the respondent said it was worth €1.45m.

The couple had owned an investment property during the marriage which had since been sold. The couple had also purchased a property overseas which was still encumbered and the man was still named on that mortgage.

The applicant, a business woman, had three pensions, with one being worth €507,000 and a further two having had a fund value of €165,000.

The applicant gave evidence that an €80,000 directors' loan had been taken out of her company that she said she had paid back but the respondent had not paid back his share. This was denied by the respondent.

The woman had also claimed a number of the man's family heirlooms had been left to them collectively but the man denied this when he gave evidence.

She also gave evidence she had two lodgers in the family home who were paying rent.

The respondent wanted the sale of the family home and also 60 percent of the equity in it. He wanted to keep his pension and said the applicant could keep the overseas property. He also wanted €60,000 cash and disputed the claim he had taken out a directors' loan.

The judge said unhappy differences had emerged between the couple who had been living apart, with no prospect of reconciliation. In her judgment, with regard to distribution of assets, she said Ireland had a non-fault system and it "matters not who earned the money." All assets are assessed jointly but inherited assets are treated differently. A financially dependent spouse would require different treatment than someone who was independent, she added.

The judge had noted the applicant had had a number of high-level jobs in the past but she said she did not believe she would be able to get a mortgage to buy out the man's share in the family home in the near future. The judge said the fairest solution would be to secure an independent purchaser.

The judge said she had no jurisdiction over the property abroad. The judge said the woman had sole ownership of the property and it would generate income for her.

The judge accepted the man's family heirlooms entirely belonged to him.

She said there had been insufficient evidence of a loan in relation to the woman's company. "I do not accept her evidence in this regard," said the judge.

The judge also noted the woman had a number of compensation payments and also had money in the names of their children. The parties held an overseas bank account and the man was the co-owner of these funds. Another account was held by the woman for dental treatment for one of the children, but the judge said she had heard no expert evidence from a dentist as to why this was necessary.

The judge noted the woman was currently in receipt of Jobseeker's Benefit, based on PRSI contributions, which would come to an end. But the judge said she did not accept the woman's evidence she could not get employment as she had already had turned down a job offer.

The judge made no order for maintenance payments and the applicant was ordered to pay €72,000 to the respondent within two months.

She granted a decree of divorce and made an order and cross-order that neither party was to benefit from the estate of the other on death.

Ordering the sale of the family home, she put a stay on its sale for six weeks until parties agreed on an auctioneer and named a default estate agent should agreement not be reached. No large payments should be made without the consent of both spouses and the joint accounts should be closed and distributed between the parties.

She said equalisation of the pensions was to take account of the amount the respondent had previously encashed. She ordered the death-in-service benefit was to be given to the surviving person while the child was dependent.

The judge allowed the lifting of the *in camera* rule for the benefit of any lending institution. The judge ordered the sale of the family home and that the net proceeds to be split 50/50. In her decision the judge said the applicant had “urged on me what is fair” but said that as a married couple, there was presumption of advancement and it was inappropriate to conduct a tracing exercise.

“I accept they both contributed,” said the judge, noting the applicant had a greater income but they had “both operated as a team”.

She said tenants living in the home were “mere licensees” and as such, did not have any rights under the Residential Tenancies Acts.

The judge noted the applicant woman had wanted time to raise funds to buy the family home but she did not believe that she would be able to do so in the near future given she had not been working in the recent past and was on social welfare.