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Categories: previous domestic violence allegations; proper provision; family home; pensions

Divorce granted, financial orders made, following contested hearing

A Circuit Court judge in a rural town granted a decree of divorce and a number of ancillary orders following a day-long contested hearing. Both parties were present in court and each was represented by a solicitor and barrister.

The applicant husband's barrister opened the case. She said the parties had been married for approximately 20 years and there were two children of the marriage who were both in their twenties and no longer dependent. The family home was held in the joint names of the parties and was now mortgage free. The parties had agreed a valuation of €475,000 for the property. Both parties were working and it was the husband's case that the wife earned almost double what he earned. Both parties had pensions and had sworn up-to-date affidavits of means which were before the Court.

The husband's barrister said that the wife lived in the family home with the parties' two children and the husband had moved out approximately three years previously. The parties had lived separate and apart in the family home for some time before that. The husband had purchased a property to live in at that stage, and he resided there with a tenant to whom he rented a room. The husband bought this property by way of a loan from a relative and for which there was a loan agreement in place.

Apart from his loan, there was no mortgage on the property and he had used money which he had saved to pay the deposit for the property. He was paying back a monthly repayment on the loan to his relative. The husband's case was that he also owed a smaller sum of money to another person who helped him renovate and furnish the house, but this was not accepted by the wife.

The husband's barrister said that both parties had private pensions, but the wife had not provided an up-to-date pension benefit statement and so a valuation of the pensions could not be agreed. The wife's barrister said that it was open to the husband to put the value of her pension to the wife in evidence.

The husband's barrister said that differences arose in the marriage and the husband left the family home over three years earlier. She gave an overview as to how the parties divided the family finances during their marriage. husband's barrister said that there had been considerable delay by the wife at the start of the case and he had had to bring two motions for judgment in default of defence, and although the costs of these were reserved, he had incurred a lot of expense.

She said the husband was seeking a lump sum of €220,000 from the wife for his interest in the family home on the basis of the contributions he had made towards the purchase of the property and the discharge of the mortgage throughout the marriage.

The wife's barrister said that the ages of the parties had to be taken into account. She said if the buy out figure was €220,000, the wife would be left with a mortgage of €220,000, and her equity in the property would be €250,000. The husband would then have the lump sum of €220,000 plus the net equity in his own property, which, minus his loan of €150,000 which had to be paid back, gave the husband equity of €342,000. She said this was almost €100,000 more than the wife would be left with. The wife's barrister said it was accepted that the earned more than the husband, but she worked very long hours, and the husband also earned additional tax-free income from renting a room in his property.

Husband's evidence

The husband was sworn in. He confirmed the date of marriage and identified the parties' original marriage certificate. He confirmed that they had lived apart for over six years and he had moved out of the family home approximately three years earlier. He said there was no reasonable prospect of reconciliation between them.

The husband provided an overview of how the parties financed the purchase of their first family home. The parties had purchased the house with monies the wife had received from a previous road traffic accident case, and he had contributed a small inheritance he had received from a family member. He said he paid for the decoration, tiling and flooring of the property.

The husband said that at the time the parties operated a joint account and they each put their full salary into this account. He said some years later the parties purchased their current family home and this property now had an agreed value of €475,000. The husband said this property was purchased with the proceeds of sale of their first home, and he used an inheritance together with the proceeds of his Special Savings Incentive Account (SSIA). He said the wife received a large redundancy payment and she put most of this into the mortgage while retaining the balance to purchase a car for herself.

The husband said that during the marriage his salary remained more or less at the same level and the wife's salary increased significantly as she changed jobs a number of times. He said they had paid more or less equal amounts into a joint account which was used to pay the mortgage and household bills.

The husband said that the parties shared their duties in relation to dropping the children to and from childcare more or less equally, but as the wife increased her working hours, he did more and more with them and also cooked the family dinner every evening.

The husband said the marriage broke down and he left the family home approximately three years previously. He said the wife had obtained a protection order before that and she also applied for a safety and barring order against him.

The husband said there had always been difficulties in the marriage and he started to drink heavily towards the end of the parties' marriage. He acknowledged that this had a negative impact on the family. He said he gave an undertaking and left the family home and he had attended a rehabilitation centre. The wife then withdrew her safety and barring order applications on the basis that he had moved out of the family home. The applicant husband

acknowledged that both of his children had their own mental health issues, but he denied that his was as a result of his drinking and behaviour.

The husband said that when he moved out of the family home he first stayed with a friend and then a family member and he managed to save some money towards buying a new property for himself. He said he had secured a mortgage, but the bank would not let him draw it down until he had a separation agreement in place, so a family member had given him a loan.

He said he also got a smaller loan from someone else which was put towards essential repairs and maintenance of the property, and this loan had to be paid back after his family law case was finalised. He said the property had spare bedrooms and he let the children stay there whenever they wanted to. He said one of these rooms was now being rented to a tenant and he allowed a friend who had fallen on hard times to use the other room when he needed it.

He said he was no longer in a new relationship and while his partner had resided there with him for a time she had not contributed any rent and had not made a claim on the property as it was in his sole name. The husband described the maintenance payments he had made for the parties' children since he left the family home. He said the children were now both working and were able to pay their way in the world, and they were now living rent free in the family home with the wife.

Husband's barrister: "What do you say to your wife's case that the children still need her financial support?"

Husband: "One child is earning close to what I am earning, and the other child works and has a partner, and has worked on and off since she was 16. I understand they have now bought a property together. I am more in contact with one of the children, but I don't understand why the wife says she still wants to support them financially and to allow them live rent free in the family home."

The husband gave an overview of his income and expenditure. He said he agreed with the valuation of €475,000 for the family home. He said he also had a Revenue debt as he had misunderstood the Revenue rules and had claimed tax relief for child maintenance, when this was not allowed.

The judge asked the husband if he had quotes for the building and renovation work which was required for his own house. He said he had been told these works would be a certain amount, but he did not have documentary quotes. He said he was also looking into the grants that were available for the work.

Under cross examination by the wife's barrister, the husband said that he had paid maintenance until the oldest child left college and he had paid maintenance for the daughter as she required it. He said maintenance was paid in a very fragmented manner and he stopped paying it when the youngest child started working full time.

The wife's barrister asked the husband if he had used marital savings to put towards the purchase of his own property. He said he had saved a lot of it towards the latter part of the marriage when the parties had operated sole accounts. She asked the husband if he had a loan agreement with his friend in respect of the smaller loan. The husband said there was no loan agreement in place, but he had a text message from this person requesting that the money be repaid. The wife's barrister asked the husband if he had a personal injury claim which was ongoing. He said he had not yet received any award in respect of it, and that it was a District Court case.

Wife's evidence

The wife said she wanted to stay in the family home. She said she was settled there and so were the children, albeit that they were no longer dependent. She said that she had spent her significant savings running the family home and looking after the parties' two children after the husband left.

She said she was not in a position to rent out a room as the husband had done as the children still resided there. She said she had to buy a car when she received a bonus at work as she had given her own car to the parties' daughter. She said she did this as she had been giving her daughter a lift to and from work every day and it was taking at least four hours out of her day when she should have been working herself.

The wife said she worked between 50 and 60 hours every week. She was willing to give the husband €150,000 for his share in the family home. She said to do this she would have to take out a mortgage whereas the husband would be mortgage and debt free and would still have equity in his new property. His outgoings would also be reduced by the amount he was repaying to his relative on a monthly basis. The wife said that the husband also had the added comfort of greater pension provision than she had.

The wife's barrister asked her if she was able to save any money. She said that she was not even though she worked long hours. She said she was paying into AVCs as she wanted to build up her pension because she was a few years behind in paying her pension. The wife said she did not charge her children rent for living in the family home as she wanted to give them both a helping hand in saving for their futures. She said her daughter's partner was in the process of buying an apartment but this was not being purchased jointly with her daughter.

The wife said that the husband had had an alcohol problem from very early on in their marriage and she described a number of incidents which occurred when the children were present. She said the children had been very emotionally affected by his behaviour. The judge asked the wife if she had made enquiries as to how much of a mortgage she could obtain. She said she had been told that based on her income and age she could obtain €150,000 by way of a mortgage secured against the family home.

The wife's barrister asked her if there were any building works required on the family home. The wife said the house required new windows and the roof needed to be fixed but she did not have any costings for this work.

Under cross examination by the husband's barrister, the wife explained the share options and bonus scheme that she received as part of her salary. She said she was in a new relationship and she had no plans to reside with her current partner.

The judge said that she had considered the contributions made by both parties to the properties of the marriage and while there was little disparity between them, she accepted that the wife had contributed more than the husband. The judge said she had heard the evidence as to how the husband's behaviour had impacted the children, but they were now no longer dependent and there was no legal onus on either parent to house the children.

The judge granted the parties a decree of divorce, and nil spousal maintenance for either party. She directed the family home be transferred to the sole name of the wife, and the wife was to pay the husband a lump sum of €190,000 for his interest in the family home.

This money was to be paid within six months, and in default of this there would be an order for sale of the family home, with the proceeds to be divided pro rata as set out based on an agreed valuation of €475,000. The judge made nil pension adjustment orders, and both parties were to keep their own pensions. The judge ordered mutual blocking orders pursuant to section 18(10) of the Family Law (Divorce) Act 1996, with liberty to apply, and no order as to costs.