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Categories: contested divorce; previous safety order

Judgement reserved in contested divorce with young children

A judge in Dublin Circuit court reserved judgment following a one-day divorce application hearing where the parties could not reach agreement.

The applicant wife was looking for a divorce in the case where there were two very young children in the marriage and the parties living together "was causing stress". The Court heard the family home's median value agreed by both parties was €662,500 and €250,000 was outstanding on the mortgage.

The respondent husband had a salary of just under €140,000. The projected value of his pension fund would be over €1 million at retirement, giving him a monthly income of over €2,000.

The wife's barrister told the Court her client, who was on a low income and working full-time from home, had two views. She firstly put forward a proposal for her to remain in the home with the two primary school-aged children until they had finished college, which the husband's current income would allow him to maintain, counsel said.

Counsel for the applicant submitted that, were the home to be sold, the equity released would be €400,000. Her client would need 90 per cent of the equity, which would still not be enough, requiring her to get a loan in order to purchase a house near the children's school. Counsel said her client was seeking monthly maintenance of €1,500 from the husband and 15 per cent of his pension.

"My client is quite happy to stay in the family home," counsel said, as selling it "will cause upheaval."

The husband's barrister said the home was the main asset as his pension had not yet matured and at present was worth one third of the projected fund. Counsel added the wife worked full-time and was also in receipt of Child Benefit.

He desired to make "a clean break" with a preference for putting the home on the market with him retaining one third of the equity. He suggested the wife take out a local authority loan specifically for people in her position coming out of a marriage, which would be more favourable than a private mortgage.

The said he would be able to take out a larger loan because he had a higher borrowing capacity. He said he would like to purchase a three-bedroomed property to enable him to have joint custody of the children.

His counsel said the man fully understood it was a maintenance case and the woman would be reliant on him in repaying the loan. He proposed to pay just over €500 a month in

maintenance as well any out-of-pocket expenses for the children including dental, medical and medication expenses. The man said he would pay for any extra-curricular expenses going forward. He offered €10,000 to the woman in moving costs. Counsel said he proposed a 70/30 pension split in his favour.

The respondent's barrister said he was a very detail-oriented individual and had put a lot of work into the proposal. However, he did not think that it was fair that he would have to spend half of his salary on housing himself in a rented property, were the family home not to be sold, and he would still have to pay maintenance. Advertised rental properties in the area were €3,000 a month, the Court was told. Were the woman to be given right of residence, the children would not reach independence for another 16 years and the equity would not be released until then.

Wife's evidence

The woman took the stand and gave evidence that they had married in 2015 but had been living separate lives for the previous five years with no prospect of reconciliation. Although still living under the same roof, they did not socialise together and she slept in a small bedroom which she also used as her home office. The man had two bedrooms including the master ensuite and another he used as his home office. Their children shared a bedroom. The woman said she had moved out of the master bedroom after their second child was born.

The judge asked counsel for the applicant to go into evidence regarding section 20 of the Family Law (Divorce) Act 1996, which the Court must have regard to, when determining proper provision for spouses and dependent children.

The woman told her barrister in evidence she was doing 85 per cent of the school drop-offs, collections and lunches. She said the man did not collect the children any more believing they were old enough to walk home from the bus.

"Are they old enough to walk home?" counsel asked, to which the woman replied: "No, and I'm happy to collect them."

The woman said she worked full-time from home and had a level of flexibility. However, she said she had concerns about her future as there had been a number of redundancies directly related to her sector due to the emergence of AI.

"How would you describe your standard of living?" the barrister asked. The judge also enquired what the standard of living was like before the breakdown of the marriage.

"We never had a date night," the applicant replied.

When asked about the atmosphere at home the woman replied: "Sometimes it's tense. We can fight or disagree and we don't want the kids to see that."

She said she had to go to court to obtain a protection order because her husband had placed a GPS tracking device in her car. The woman said the judge told the respondent he could not continue tracking her. She said the situation improved after the safety order was granted.

The woman said the man also changed the Internet password meaning she now had to pay €70 a month for a separate provider.

Husband's evidence

The man took the stand and was asked by his counsel when the marriage had irretrievably broken down.

"In my mind I had hoped that there would be some reconciliation, that's why we engaged in counselling" he said.

The father said he was making an offer of €65 per child per week as well as paying medical and dental expenses. He said he would pay for 100 per cent of the extra-curricular activities.

He said the maintenance payment affected his borrowing capacity when looking for a mortgage.

The judge put it to the man that he could borrow up to three-and-a-half times his gross income.

He replied that it was "not a simple equation" and €2,000 a month was the repayment over 20 years on a borrowing of €315,000.

The judge replied there was "an element of double counting there."

Counsel for the respondent said there was a letter from AIB saying the most he could borrow was €315,000.

Under cross-examination by the woman's barrister, the said he did not have health insurance.

"So, you don't have health insurance for yourself and your kids?" the woman's counsel asked him, noting there was an option of a group health insurance scheme with his employment.

"I did when the kids were babies," he said, but they are "in very good health" adding that there was a public healthcare system.

"It's very unusual for someone on your income not to have health insurance," she added.

Judgment was reserved and the legal teams would be informed of the next date. The judge said the parties would have to re-attend court for the decree of divorce.