Year: 2026 **Vol:** 01 **Case No:** 74

Categories: family home; inheritance

Judgement reserved in divorce application where division of home sought

A judge in a rural town heard an application for divorce and certain ancillary orders where the parties had separated over 15 years earlier. Both parties were present in court and each was represented by a solicitor and barrister. Judgment was reserved.

The parties had two children, neither of whom was dependent. The applicant husband's barrister said that during the marriage he ran a successful business and the family unit benefitted greatly from the money made by it. He said the business was wound up during the economic crash of 2010 and a judgment mortgage had been registered against the family home. The husband's case was that this was not due to lifestyle choices but due to commercial reasons. The husband would say that he continued to contribute maintenance for the children and he started paying maintenance directly to the youngest son from when he was aged 17 years.

There was a mortgage outstanding on the family home, and the parties had different valuations but had ultimately agreed a valuation of the property. The husband had not contributed to the mortgage repayments since he left the family home. The husband's barrister said that the husband was looking for a sale of the family home and a division of the proceeds of sale with a deduction from the husband's share to reflect the wife's contribution to the mortgage repayments over time.

The husband was in an established relationship, and his partner was the sole owner of the house where he currently resided. The husband's barrister said that he was in his late 50s and had pension Additional Voluntary Contributions (AVCs) but he did not have any specific employment security.

Husband's evidence

The husband identified his original marriage certificate, and he confirmed the date of marriage and the ages of the parties' two children. He outlined a history of the marriage. He said both parties had always worked and contributed to the household. He said his wife had undergone a major operation two or three years previously, but she had been well since and he did not think this negatively affected her earning or borrowing capacity.

He said that when the parties were married, he had brought home a good salary and the family had enjoyed a good standard of living with many holidays and they had eaten out regularly. The husband said he had left the family home approximately 15 years previously when the parties' relationship had broken down and there was no prosect of reconciliation.

Husband's barrister: "What are you saying to the Court would be the required proper provision for both you and your wife?"

Husband: “There is a mortgage on the property, she has paid capital off the mortgage after changing it from interest only over the last few years. I want to split the proceeds 50-50 with a deduction from my half to reflect her contributions. I am working and I can raise a certain sum if I have to, but I would not like to have to borrow that much.”

The husband said that the valuer had brought some structural damage to the family home to his attention, and he said that this should be covered by insurance. Otherwise, the family home was in a saleable location and should sell. The husband said that the parties had built the house together and he was confident that no issue such as unauthorised development could cause a problem.

Husband’s barrister: “What do you believe about your wife’s compromised health system?”

Husband: “She has life insurance in place, and she could transfer that to a new mortgage. I have seen no evidence that her health is compromised.”

The husband said that when he first left the family home he resided with his parents. He confirmed that he had been in a relationship for a number of years and he resided with his current partner who owned her house. He said his name was not on the lease and he did not make any contributions that would provide him with an equitable interest.

The husband went through the details of his affidavit of means including his salary and bonus. He said he was entitled to draw down one of his pensions at 60 and he anticipated retiring at 72 or 73. The husband outlined the maintenance payments he had made in respect of the children. He said that he had always paid the child maintenance in cash to the wife and when the youngest child was almost 18 he started paying the maintenance in cash to him directly.

Husband’s barrister: “In relation to travelling, you obviously enjoy travelling, and your lifestyle might be described as a lavish one, what do you have to say to that?”

Husband: “It’s a false picture because I have only been able to enjoy travelling in the last number of years. My employment wasn’t as lucrative as it is now. I travel but I don’t stay in five-star hotels. I have made other sacrifices, I don’t go to pubs and I don’t gamble. Travelling is what I like to do. I stay in budget and inexpensive places where I can.”

Husband’s barrister: “What is the position with a mobile home? Your wife has raised in correspondence that she believes you own a mobile home which you have not included in your Affidavit of Means?”

Husband: “My father owns it. It was very old and my siblings and I chipped in to get him another one, but he is the owner of it. My siblings and I use it regularly enough.”

Under cross examination, the wife’s barrister said it was suggested that the husband had a much greater income than his wife and a much greater level of discretionary spending.

Wife's barrister: "Your relationship is a lot more concrete than you are leading us to believe, you are saying your situation is very uncertain when it is not. Your wife has been told that she can only raise X amount on her best day out and on a six-year term. Do you accept that your wife's major operation impacted her ability to boost a house purchase application?"

Husband: "If my relationship ended in the morning I would have nowhere to go."

The wife's barrister said that the husband had made no contribution whatsoever to the mortgage since he left and the wife had kept the property alive. She put it to the husband that at one stage the wife had lost her job and was receiving jobseekers' benefit, and the husband just carried on with his life. The husband denied this and said that during the economic crash the country was in a very bad position and he contributed by always paying maintenance for the children.

The wife's barrister said that the wife's evidence would be that a sum of maintenance was paid every second month and it depended on the husband's whim whether the maintenance came or not. The husband also denied this and said that she could have applied for maintenance at any stage if it didn't suit her at that time. He said he had started paying maintenance directly to the children after the wife had accused him of not paying in front of the children. He said he felt that at almost 18 it was more appropriate for him to give it to the child directly.

Judge: "The judgment mortgage is gone as 12 years has lapsed. If it was not a Revenue debt, it was a creditors' debt so the title is clear other than the mortgage herself. Is it a mortgage protection policy or a life insurance policy? You are saying you have no security, but you are paying rent, so you are a tenant and you do have rights, whether or not the relationship sustains itself. You said you have the ability to raise a maximum of X, is that confirmed?"

Husband: "I haven't done anything concrete on it. I have just made first enquiries with a view to buying a property, to purchase a home for myself. I want something that I can have for myself."

Judge: "When you get to age of 60, you can access your larger pension fund?"

Husband: "I could, yes, but I don't plan on that yet, and any monies would be taxable. I am a full-time salaried employee and I want to stay working."

Wife's evidence

The wife outlined a history of the marriage. She said that family life until separation had been more or less a joint enterprise where both parties worked full time and pooled resources, bills and childcare. She said that for eight months before he left the family home, the husband's business had failed and he had no income. After her husband left he did not contribute towards the mortgage, and she had gone back to work full time so she could continue paying the mortgage. She said the mortgage had been in a small amount of arrears when he left and she had kept the repayments up and sorted it out.

She went through her Affidavit of Means and she confirmed that she had received a lump sum redundancy payment some years earlier which she had spent on the mortgage, house upkeep and looking after the children. She said that child maintenance was paid in by the husband in cash but it was never guaranteed that she would get it every month, and he started paying money directly to the youngest child when he was 17. The wife confirmed that she was not entitled to an annual bonus structure, but she would get a pension lump sum when her pension crystallised at 60.

The wife said she believed that the husband had a campervan that he owned as she had seen it and it had been shown to the children. She said she was not able to go any foreign holidays as she could not afford it. The wife outlined her current health presentation.

The wife told of the efforts she had made to see how much she could borrow. She said that the life cover policy was her own personal policy and was not linked to the mortgage. She said the husband was incorrect to say that the life policy would transfer across. She said there was no mortgage protection policy as the mortgage had been sold on a few times to various loan servicing companies.

Wife's barrister: "Your position is that you want to maximise what you can get out of the sale of the family home, and will what the husband is offering, including a top up amount which reflects your contributions, be sufficient for you to purchase somewhere suitable to live?"

Wife: "His offer would not be enough to get me any property. I have no access to any other finance or borrowing and he is in an established relationship. For the last fifteen years I have maintained the house as well as paying the mortgage. I never wanted to deny the children their lifestyle. I am getting a lump sum soon when I turn 60 but as far as I'm concerned I am looking forward to my pension, I have worked for 40 years. He had a lavish lifestyle which I didn't."

Wife's barrister: "You received an inheritance approximately six years ago, where are those monies?"

Wife: "I spent my inheritance on paying the mortgage and putting two kids through education, which I take a lot of credit for."

Under cross examination, the husband's barrister asked the wife how she explained the lack of a mortgage protection policy. She said that she did not have an explanation, she had taken the mortgage over from how he left it. She said that he had remortgaged the house on several occasions.

The barrister said that this had not been put to the husband when he was being cross examined. The husband's barrister put it to the wife that she had never brought a maintenance application to secure the maintenance, so she could not have been that concerned about money as she had enough. The wife said she was not able to face coming to court at the time.

Husband's barrister: "You are asking the Court to accept your evidence on the balance of probabilities. Have you any evidence that you would not get a good mortgage? The letter you got from the mortgage broker, although it was only an enquiry, said that the mortgage company might take the operation you had into account, but it doesn't say it would preclude you from obtaining a mortgage. Did you sister give you any money? Why should the husband be left with less on the split?"

Wife: "No, my sister did not give me any money. I feel I have no choice but to sell the family home, but I would like to buy a small house outright for myself. He wouldn't be able to get any money from the house if it had been repossessed. He has far more money and has enjoyed a lavish lifestyle. I don't think his proposal is fair, it's not half of all the stress and work that went into keeping the house."

The judge thanked the parties for their evidence and reserved judgment to the following legal term.