Neutral Citation No: [2025] NICA 27	*Ref:* **KEE12773**
	ICOS No: **18/036092/07**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **28/05/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND FAMILY DIVISION

Between:

B

Petitioner

and

B

Respondent

Mr O'Donoghue KC with Ms Lyle (instructed by Bernard Campbell & Co Solicitors) for the Petitioner/Appellant
The Respondent appeared in person

Before: Keegan LCJ, Horner LJ and McBride J

KEEGAN LCJ

Introduction

[1] This is an appeal from an order of Mr Justice Humphreys ("the judge") of 13 December 2024, wherein he made an order determining ancillary relief between the parties and as to costs. The petitioner in these proceedings is the wife and the respondent, the husband.

[2] The substantive order the judge made after hearing the ancillary relief application was that the respondent pay to the petitioner on or before 14 March 2025, a lump sum of £375,000 in full and final settlement of all financial claims. The judge also ordered that following payment of the lump sum there would be no continuing obligation on the husband to make any periodical payment to the wife and the order of £1,000 a month would be discharged. The only other order that was made which is not contentious is that the respondent should continue to pay the school fees for

the child of the family who was born in 2017. Following this substantive ruling the judge received submissions on costs and decided to make no order as to costs.

[3] Both aspects of the above final order are now appealed, but it is apparent that this is on a limited basis. The appeal is essentially that the order is insufficient to rehouse the petitioner and her child and that this court should consider fresh evidence as to housing needs and make an increased lump sum order in favour of the wife on ancillary relief.

[4] We have considered the fresh evidence *de bene esse*. It is comprised in affidavits of 27 February 2025 and 3 March 2025 sworn by the wife. In summary, the wife raises issues as to how the judge's order can meet her needs. First, at paras [3] and [4] she refers to her cost's liability of £143,000 for the first instance hearing and £40,000 for the appeal. She also refers to projected costs for housing and furnishing a new home. Finally, she avers that her new home must be in East Belfast. So, in a nutshell, the wife maintains that after payment of her costs she will not in fact be able to purchase a house from the lump sum awarded to her. Exhibited to this affidavit is substantial evidence of potential properties.

[5] The husband disputes the wife's averments almost in their entirety and makes the case that she could rehouse with the money awarded, that she need not live in East Belfast and that, in fact, she is going to live with her partner.

[6] Since we heard the case the wife's solicitors have also contacted the Legal Services Agency who have confirmed that the statutory charge may be applied to the lump sum. Also, the wife's solicitor sent in correspondence which shows that on 12 May 20025, an order for possession of the former matrimonial home was made by the Enforcement of Judgments Office, no persons objecting to the order after a notice of intention being forwarded to both the wife and the husband on 23 April 2025. This means that the wife will have to vacate the property forthwith. The husband has failed to pay maintenance since December 2024.

Factual background

[7] The petitioner and respondent were married in February 2016. The wife issued a petition in June 2016 which was later withdrawn. Further divorce proceedings were issued on 26 April 2018 by the wife. This petition was contested. However, on 19 March 2021, the Master stayed the first petition and granted leave to the wife to issue a second petition which she did on 30 July 2021. We do not have a copy of the second petition in the appeal bundle, but we are assuming this was on a consent ground and that it proceeded as an undefended suit.

[8] There was also litigation before the High Court for a Mareva injunction and proceedings for contempt against the husband. Without recounting all of the details of these various pleadings that we have in the appeal bundle, it is clear that there is a

high level of acrimony between these parties and a high level of tension generated by litigation.

[9] The application for ancillary relief is dated 5 March 2021. In summary, this is a short marriage. There is also a prenuptial agreement. It is the fact of the child of the marriage that makes this case in anyway complicated as will become apparent.

[10] The procedural history of this case is somewhat unsatisfactory. That is because the summons for ancillary relief which issued in 2021 was only heard in November 2024 before the High Court judge. It is highly unfortunate that proceedings were not dealt with earlier before the Master's court or that a financial dispute resolution hearing ("FDR") did not take place. As we see it, the proceedings were ultimately heard before the High Court judge who had become seized of the case through the contempt proceedings that were brought due to alleged non-disclosure. It is commendable that the High Court judge heard the case and issued a judgment ([2024] NIFam 14), but in the usual scheme of things, ancillary relief cases, unless transferred to the High Court, should be heard before a Master and should be dealt with by way of FDR prior to hearing.

[11] The FDR system in Northern Ireland has the benefit of requiring parties to make realistic financial proposals at an early stage and to avoid costs. It is an extremely successful mechanism for resolution of financial disputes after divorce in our jurisdiction which saves costs and court time and reduces the acrimony that can be caused by lengthy litigation. This case is not a model of how ancillary relief should be dealt with.

[12] All of that said, we have now an appeal from a judgment of a High Court judge who on request of the parties expedited the case and heard evidence in this case over two days in November 2024 before he reached a decision.

This appeal

[13] The parameters of this appeal become apparent on reading the skeleton argument for the appellant. This written submission summarises the appeal in several paragraphs from [5]-[19]. From this we discern as follows. First the appellant accepts, it is an appeal against the exercise of a judge's discretion. Next, no complaint is made in this case that the trial judge erred in his application of the law.

[14] Of course, the division of matrimonial assets is a matter of judicial discretion. Rightly, the appellant appreciates that the court has a wide discretion. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible and is in fact plainly wrong that an appellate body is entitled to interfere, see *Bellenden (formerly Satterthwaite) v Satterthwaite* [1948] 1 All ER 343, and the well-known case of *G and G* [1985] 1 WLR 647.

[15] Therefore the only issue in this appeal is how the judge dealt with the rehousing of the wife and child. As to this the skeleton argument goes on to state at para [11] as follows:

> "… the judge, without either posing or answering any of these questions or inviting submission on them, proceeded to order the payment of the sum of £375,000 payable by 14 March 2025. He gave no reasons as to how he considered that such a sum was capable of meeting the identified need. He appears to have arrived at the sum, not as a reflection of need, but on the basis that it represented approximately 60% of the net equity of the matrimonial home (it is only 57%) and that to make a property adjustment order with the wife to use the entirety of the net equity would not represent a fair division of the assets of the marriage."

Furthermore, para [16] states:

> "In the present case while, of course, the court was concerned with the division of matrimonial assets, this party did not anticipate (perhaps wrongly) that the court would measure a sum to meet a housing need without addressing the issue of where it is that the mother is expected to purchase a house to meet the child's needs or the amount that was necessary."

[16] Summarising the arguments, it is submitted by the wife that the judge fell into error and was plainly wrong by opting for a lump sum without having the necessary evidential basis by which it was safe to reject, what it is said is actually the only viable option open to the court – that of a property adjustment order transferring the home to the appellant thereby allowing for the orderly sale of the matrimonial home and the appropriate use of the net equity.

[17] Against that position, the husband states that the judge's order should stand given he heard evidence and made factual findings which cannot be impugned. He also represented to this court that notwithstanding his own dire financial straits he would raise the money to buy out the wife. That we observe may be overtaken by the order for possession.

The hearing at first instance

[18] At the outset we recognise that the judge was much better placed to assess this case given the fact that he heard the parties and witnesses over two days. In his judgment he sets out the evidence in some detail which we will not repeat. He heard, in detail, from the husband and the wife as to their respective positions and

the assets of each of them. He also concluded that the various allegations and counter allegations of conduct did not meet the threshold to be properly taken into account in the overall analysis when making proper financial provision.

[19] The judge then recounts hearing evidence from Paul Black of Goldblatt McGuigan, Forensic Accountants, who had been instructed on behalf of the wife and who provided two reports to the court dated 5 January and 2 October 2024. The court dealt with this accountancy evidence in some detail and made some adverse factual findings in relation to this which are contained in his judgment at paras [30]-[39]. There is no appeal against these factual findings which, in the result, amounted to the judge finding that the value of the shares owned by the husband and the wife in each of the companies that was examined was nil.

[20] Pausing at this point, it appears to us that a considerable amount of expense and court time was taken on an issue which was going in one direction and which, to our mind, was an unnecessary complication in the case.

[21] Another aspect of the hearing before the judge which occupied a lot of time was as to the effect of the prenuptial agreement. The judge, having considered the terms of the prenuptial agreement and the settled law in *Radmacher v Granatino* [2010] UKSC 42, made the assessment at paras [59]-[61] of his judgment as follows:

> "[59] The status of such agreements in Scots law is quite different. Unlike the position under the 1978 Order, the parties to a marriage can oust the jurisdiction of the court to resolve any dispute relating to the division of assets on divorce, subject to the powers of the court to vary or set aside such an agreement pursuant to section 16 of the 1985 Act. Prenuptial agreements are regarded as legally binding and enforceable provided:
>
> (i) The parties freely entered into the agreement with the benefit of independent legal advice; and
>
> (ii) Its provisions are fair and reasonable.
>
> [60] The fact that the agreement ultimately results in a division of assets which is unequal does not, of itself, give rise to an inference of unfairness or unreasonableness – see *Gillon v Gillon* [1995] SLT 678. The court will focus on the circumstances leading up to the execution of the agreement, particularly on the nature and quality of the legal advice given to each party.
>
> [61] There does not appear to be any authority in this jurisdiction on prenuptial agreements, although the

> Master has referenced the case of *Radmacher* in at least two decisions, *D v E* [2013] NIMaster 13 and *G v G* [2024] NIMaster 5. The Supreme Court decision represents an authoritative statement of the law, following a review of the relevant authorities and a consideration of the policies at play, and relates to materially identical statutory provisions in England & Wales. The Northern Irish courts should adopt and follow these principles."

[22] There is no issue taken with any of the above analysis. Rather, the case advanced by the wife was that she was coerced into entering the agreement. The judge, made a factual finding in relation to this as follows:

> "This allegation is quite hopeless. There is no evidence whatsoever of the wife's will being overborne. She had the benefit of legal advice from two separate firms of solicitors, experienced in family law, and received clear and accurate advice on the implications of the prenuptial agreement."

[23] The judge then made a specific finding that he was satisfied that the wife entered into the prenuptial agreement with full knowledge and appreciation of its terms and its implications. However, that was not the end of the matter because, rather obviously, the real question in this case was whether it would be unfair to hold the parties to their agreement. That was a live issue because if the terms of the prenuptial agreement were enforced the wife would be left with 20% shareholding in five valueless companies together with 50% of the value of the Belfast property over £1m which amounted £50,000. In the circumstances where there was a child of the family that came after the date of the prenuptial agreement, the court would have to look at proper provision in taking into account the welfare of any minor child of the family.

[24] There is no appeal raised against the judge's factual finding that that is the only factor which would cause him to depart from the prenuptial agreement provisions. We are bound to say that this was a predictable outcome. Yet there appears to have been quite substantial evidence on this issue along with the accountancy issue initiated by the wife which has added to costs and the time spent in this case.

[25] The way in which the litigation was conducted probably distracted attention from the needs-based analysis that was required. That may be why the judgment is relatively sparse when it comes to defining the assets, dealing with the Matrimonial Causes (Northern Ireland) Order 1978 checklist found in Article 27, and settling upon a fair division.

[26] The assets are defined as being the Belfast property, the former matrimonial home, which had a valuation of £1.1m on 7 November 2022. In relation to that the judge pointed out that on 11 September 2024 the Master made an order for possession of the Belfast property in favour of the mortgagee, the Progressive Building Society. As of 30 October 2023, the debt secured on the property in its favour was £444,000. The only other asset is described as a Scottish property. The husband's evidence was that the debt secured against the Scottish property stood at £700,000, the Scottish property having a valuation of £1m as at 30 May 2023.

[27] The judge then deals with the statutory checklist at para [77] of his judgment in brief. Then, the core of his ruling is found at paras [78]-[80] as follows:

> "[78] In arriving at my determination in this case, I have borne in mind all the statutory factors set out above but also the welfare of the child, which is the primary consideration, and the factors set out in Article 27(3). Fundamentally, it is the needs of the child which must be the focus of the court's analysis. I consider that the best outcome for the parties, and for the child, is a clean break settlement which facilitates the purchase of a new property for the wife and child to live in. I also take account of the fact that there is a prenuptial agreement which must be given appropriate weight.
>
> [79] The assets in this case are such that sufficient capital can be raised to purchase a property for the needs of the child and the wife. It is neither necessary nor appropriate to require them to live in rental accommodation. Equally, however, an order for the sale of the Belfast property with all the equity being paid to the wife does not represent a fair division of the assets in light of the factors which I have set out above. Both sets of proposals put forward by the parties at the direction of the court following the hearing were, regrettably, hopelessly unrealistic.
>
> [80] I order that the husband pay to the wife a lump sum of £375,000 within 12 weeks of the date of this judgment. This represents approximately 60% of the equity in the Belfast property. It will be a matter for the husband as to how this sum is raised. Upon receipt the wife and child must give up vacant possession of the Belfast property to the husband. The order of Master Sweeney dated 2 February 2023 will remain in effect until the lump sum is paid at which stage it will be discharged.

Our conclusions

[28] Unfortunately, this appeal has raised some rather concerning aspects of matrimonial practice which we must record. Firstly, the core of the appeal is essentially that the judge did not properly consider what would be needed to rehouse the wife and child. However, as counsel had to accept, the evidence which is now before us on this issue was not before the trial court. Allied to that omission, the court did not have an up-to-date schedule of assets which is a basic requirement in a matrimonial case of this nature.

[29] A further difficulty is the escalating costs. The statutory charge applies to ancillary relief costs notwithstanding the provision of legal aid which will be well-known to practitioners. The petitioner's costs to date are said to be £143,000. That is before any appeal costs. The respondent is now a litigant in person but indicates he has a bill from previous solicitors of £100,000. It, therefore, seems that given the realisable equity in the matrimonial assets is somewhere in the region of £600,000 the costs are around two thirds of that. Courts have consistently warned of the danger that litigation is pursued where costs are disproportionate to the recoverable assets. We repeat that warning.

[30] The only question is whether we should overturn the judge's conclusion as to the appropriate lump sum to be paid to the wife. The limited basis upon which we could possibly do so is by virtue of the fresh evidence. This evidence could have been made available at the lower court and so on the principles which flow from *Ladd v Marshall* [1954] 1 WLR 1489 a question arises. However, there is a child of the family, and the welfare of a child is the primary consideration in ancillary relief. Were this a case of two spouses without a child, the prenuptial agreement would have prevailed. However, the landscape is different because of the position of the child.

[31] The difficulty here is that the type of needs-based analysis that was required has not taken place. This is the type of analysis set out in *AH v BH* [2024] 2 FLR 909 which was cited in this court but not put before the court at first instance. We cannot simply ignore this omission when the child's needs are in play. Neither can we as an appellate court fully examine this evidence. That is for a court of first instance. Whilst we cannot predict the outcome of any reconvened hearing, we are bound to say that given the limited pot of assets and mounting costs the wife may not actually be advantaged. Her lawyers can advise her accordingly.

[32] Thus, with great regret we find that a sustainable case has been made for remittal to first instance for a needs-based analysis to take place and adjudication on the fresh evidence. We hasten to add that the judge is blameless for the error that has arisen as he dealt with this case on an expedited basis in line with how counsel asked him to and applied the correct law.

[33] We find no reason to depart from the judge's exercise of discretion in relation to costs at first instance. Furthermore, the fact that fresh evidence is produced after the event by the wife confirms the appropriateness of this order. We dismiss that aspect of the appeal and affirm the order below by which both parties bore their own costs.

[34] However, we are prepared to allow the wife 14 days to decide whether she wishes this case to be remitted to Mr Justice Humphreys (as there is at present no reason we see why he could not pick up the case again) or whether, notwithstanding the omission we have identified she is willing to accept the judge's determination as to the split of equity in the former matrimonial home. In addition, the husband will have 14 days to make proposals including for payment of the outstanding maintenance from December 2024 which he unilaterally stopped.

[35] Given the repossession order which it appears the wife did not object to (in circumstances where we think she could have applied for a stay) it may be that the parties will have to renegotiate in any event. The outcome we have reached does not preclude the parties reaching their own settlement although we stress that given the repossession order the time for that is limited. We will, therefore, adjourn for 14 days for both parties to take the steps we have set out above. We will hear the parties as to the costs of this appeal in due course.