

Neutral Citation No: [2025] NIFam 5

Ref: HUM12816

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 04/07/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
(PROBATE AND MATRIMONIAL OFFICE)

Between:

B

Petitioner

and

B

Respondent

(No. 2)

Frank O'Donoghue KC & Rachel Lyle (instructed by Bernard Campbell & Co Solicitors)
for the Petitioner

The Respondent appeared in person

HUMPHREYS J

Introduction

[1] In a judgment delivered on 13 December 2024, I ordered that the husband in these ancillary relief proceedings pay to the wife a lump sum of £375,000 within 12 weeks of that date. That figure represented, on the evidence, approximately 60% of the equity in a property in Belfast.

[2] This order arose on a need-based analysis, focussing on the needs of the child of the marriage. I specifically found:

“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.” (para [79])

The appeal

[3] The wife appealed this decision to the Court of Appeal. On 11 June 2025 it remitted the matter back to me to carry out the type of needs-based analysis referred to in *AH v BH* [2024] 2 FLR 909 and consider fresh evidence on the issue of housing needs. In terms, it was claimed by the wife that the lump sum ordered was insufficient to meet housing need in light of the statutory charge which would attach to the lump sum in respect of her costs.

[4] The court cautioned:

“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.” (para [31])

The fresh evidence

[5] At the reconvened hearing, I considered the following fresh evidence:

- (i) The evidence of the wife, which consisted of three affidavits and exhibits, together with her oral evidence;
- (ii) A report from Samuel Dickey MRICS, of Simon Brien, dated 23 June 2025, which had been directed by the court; and
- (iii) Various pieces of evidence relating to property prices in the relevant part of Belfast.

[6] I also heard submissions from the wife’s counsel and from the husband.

[7] In her first affidavit, sworn for the purposes of the appeal on 27 February 2025, the wife stated that her legal fees stood at approximately £143,000, inclusive of VAT, subject to taxation. She had been advised that the costs of the appeal would be in the order of £40,000. She stressed that she would also be responsible for stamp duty, conveyancing fees and removal costs. The wife also averred that the husband owned all the contents of the Belfast property and she would have to furnish the new home from scratch.

[8] As a result, on her analysis, the sum available to her in respect of the purchase of a new home would be around £210,000 to £220,000. The wife stated:

“...from the net proceeds of the award made to me our only option will be to move to a modest terraced accommodation or something similar if it were possible to find the right house. I need a house with a minimum of

three bedrooms. [The child] has two half-sisters from my previous marriage who also live with us. They form part of our family unit and cannot be excluded from my considerations when it comes to identifying suitable accommodation.”

[9] In a second affidavit, sworn on 3 March 2025, the wife sought to explain why it was in the best interests of the welfare of the child that she reside in East Belfast, based on her education and friendship group.

[10] In her third affidavit, sworn on 20 June 2025, the wife set out her current and future needs. She has two adult children from her previous marriage, one of whom has graduated and is back living with her and seeking employment whilst the other has just completed her A levels and continues to live at home. The previously stated requirement had altered and, by this stage, the wife said she needed a four bedroom house in East Belfast.

[11] In terms of her own financial resources, the wife has increased her working hours and now works 30 hours per week, earning approximately £1500 net per month. She is also entitled to Universal Credit of £284 per fortnight and Child Benefit of £170 per month. Her first husband pays £340 per month in maintenance for the second eldest child but this was expected to cease in September 2025. Her current net annual income is £31,000, falling to around £27,000 if the maintenance payments stop.

[12] The wife was cross-examined in relation to her ability to raise finance to contribute to the acquisition of a property. She stated that she had not taken any financial advice, despite the fact that a recent boyfriend had been a financial advisor. She referred to credit card debts and a car loan, as well as her 2013 bankruptcy, as factors which would tell against her being able to borrow money.

[13] The wife stated that the husband had failed to make any maintenance payment since December 2024, in breach of existing court orders.

[14] In this affidavit, the wife admits to having sold various items of furniture within the Belfast property, including two sofas, a mirror, two side tables, a hearth seat, three lamps, two occasional chairs, a chaise longue, a chest of drawers and a footstool. She deposes to having received a total of £4,400, having advertised them for sale in an online marketplace. According to her evidence, the purchasers came to the property and paid cash for the various items.

[15] The husband produced a quotation from Beaufort Interiors to the effect that replacing the sold furniture with new items would cost some £55,000.

[16] In cross-examination, she admitted having commenced this course of action in January 2025, prior to the swearing of the two affidavits which were before the

Court of Appeal. The affidavit sworn on 27 February 2025 makes express reference to the furniture in the home but no explanation has been offered as to why her decision to sell significant items was not mentioned. The wife said that had spent the cash received on general living expenses, including about £1000 on car repairs.

[17] On 6 June 2025 the husband had sent an email to the wife's solicitors with the following request:

"For me to assess the property and the contents therein with a view to providing funds I wish to have access with Samuel Dickey on Friday 20 June at 10am. I confirm no items will be taken from the property and that I will be accompanied throughout my time on site and in the house."

[18] This entirely reasonable and constructive request was met with the following response from the wife's solicitors, no doubt acting on instructions, some 10 days later on 16 June:

"For the sake of clarity our client does not consent to you attending at the former matrimonial home with Mr Dickey. A valuer of your choice from the list above...may attend the house, subject to agreement with our client, at a mutually convenient time when neither of you should be present."

[19] No explanation was offered as to why the husband should not be entitled to attend at the property which he owns. As a result, I made an order on 17 June 2025 requiring the wife to permit the husband's attendance at the house, together with Mr Dickey, on 20 June.

[20] That very morning, shortly before he was due to attend at the property, the husband received the wife's third affidavit which referenced, for the first time, the sale of items of furniture. Of course, the absence of these items would have become evident on arrival. The clear inference to be drawn from this sequence of events is that the wife resisted the husband's attendance at the property in order that she would not have to disclose her conduct in relation to the sale of the furniture. It was only at the last moment, a week before the reconvened hearing, that this affidavit was sworn.

[21] This evidence follows on from that given to the court in November 2024 whereby the wife had sold a diamond engagement ring, again for cash, to fund a holiday in Majorca.

[22] Having listened to the wife give evidence on two separate occasions, I have formed the view that she lacks both prudence and candour when it comes to

financial matters. She does not pay any rent or mortgage for the property in which she lives, her utility bills have been paid by the husband and the entire cost of her elder daughter's university education has been met by her first husband. Despite this, she is unable to live within her means. This has been reflected in her inflated perception of her needs.

The valuation evidence

[23] The report from Mr Dickey MRICS included an updated valuation of the Belfast property, which is £1,150,000, reflective of its poor presentation and defects to the windows and roof. The present mortgage liability is £530,000 and the court was told that the EJO are likely to enforce the existing order for possession in or around October 2025.

[24] The report also included recent evidence in relation to sales transactions in the East Belfast area. Mr Dickey referenced:

- (i) Two bedroom properties which sold between £145,000 and £350,000, including Millmount Village Square in Dundonald for £175,000;
- (ii) Three bedroom properties which sold between £125,000 and £380,000, including Eastleigh Dale for £210,000; and
- (iii) Four bedroom properties which sold between £195,000 and £995,000, including Castleview Terrace for £195,000.

[25] The court also had the benefit of a plethora of links to various properties being marketed for sale in the area. The wife made reference to the new development at Millmount Village where three bedroom detached properties are currently on the market for around £250,000. A three bedroom semi-detached property is for sale in Abbey Park, close to the King's Road, for £215,000. A variety of three bedroom houses are for sale in Dundonald for around £200,000.

[26] When questioned about the suitability of various properties, the wife made the case that her needs entailed a detached four bedroom house, with a garden, in an area deemed suitable by her. She rejected two of the properties which are situated near to where she currently lives, and proximate to the child's school, on the basis that they were too close to public houses. One property which would have been acceptable to her, in Neills Hill Park, had sold recently for £295,000.

[27] It was apparent from the wife's evidence that her focus remains on what she wants out of these ancillary relief proceedings, rather than what is actually needed to provide for her child.

The needs-based assessment

[28] In *AH v BH*, Peel J determined the appropriate division of assets on divorce in a case where the assets amounted to some £50M. There was a pre-marital agreement and the needs of the wife and children fell for consideration. The judge observed:

“It is of note that, so far as I am aware, there is not a single reported PMA case where a primary carer of the children, with no significant assets of his/her own, has not received a sum of money for housing outright.” (para [53])

[29] As in this case, albeit with a very different asset picture, the pre-nuptial agreement weighed in the balance as did the needs of both the wife as primary carer and the children during their minority. The court rejected the parties’ competing contentions and ordered that the matrimonial home be sold and 60% of the equity, amounting to £2.75M, be paid to the wife. An additional lump sum of £300,000 was payable in respect of stamp duty and removal costs. In the event that there was capital gains tax (‘CGT’) payable on the sale this was to be borne by the husband.

[30] It is clear that the appropriate disposal in the instant case is that described at para [52] (iv) of the judgment, namely an outright payment enabling the payee to purchase a property for herself with no reversionary terms.

[31] I am satisfied that the housing needs are met by the provision of a three bedroom property. There is no obligation on the husband to provide for the wife’s adult children, a point expressly acknowledged in the pre-nuptial agreement. The child should live in reasonable proximity to her school and friends, but the lack of a garden or the presence of a public house do not represent viable objections to particular properties.

[32] The evidence reveals that these needs can be accommodated by a property valued at between £200,000 and £220,000. By way of example, the properties cited by Mr Dickey at Eastleigh Dale and at Castlevue Terrace are entirely apposite to meet the needs of the wife and the child, as is the property for sale in Abbey Park.

[33] The stamp duty on such a purchase will be between £1500 and £1900. Conveyancing costs may be in the region of £3000. The wife has previously stated that she requires around £8000 to furnish the new property.

[34] The updated figure for the wife’s costs, provided to me by counsel at hearing, was £150,000, inclusive of VAT. This will, in due course, be scrutinised by the Taxing Master, who may wish to take account of the failure by the wife’s advisors to bring forward evidence of the housing market and the wife’s needs at the original hearing. In the event that these costs are reduced on taxation, the sum available to the wife will exceed £225,000.

[35] The husband stated that he has received advice to the effect that any disposal of the Belfast property will be subject to CGT. No written advice was produced and the level of any CGT, in light of the renovations which were carried out to the property, remains unclear. In any event, any such CGT liability will have to be met by the husband if the property is disposed of.

[36] The totality of the evidence, including the fresh evidence presented, establishes clearly that the lump sum ordered at the original hearing was entirely appropriate to accommodate the needs of the wife and child. It is also evident that the wife's financial position has improved in terms of her income and it is perfectly reasonable, particularly in light of her recent conduct, that she be responsible for some of the furnishings and other outlay in respect of the new home.

Conclusion

[37] I therefore decline the invitation to vary the order which I made at the original hearing. The husband will pay to the wife the lump sum of £375,000. In light of the child's education this should be paid as soon as possible but in any event within eight weeks of this ruling. On receipt of the lump sum, the wife shall vacate the property. 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. Following payment of the lump sum, there will be no continuing obligation on the husband to make any periodical payment for the benefit of the wife.

[38] In arriving at this conclusion, I have reconsidered the statutory factors set out in Article 27 of the Matrimonial Causes (Northern Ireland) Order 1978.

[39] I make no order as to costs between the parties, save that the costs of the wife be taxed as those of an assisted person.