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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

A

Petitioner

and

A

Respondent.

MASTER SWEENEY

[1] This case was listed for hearing before me on 9 April 2024 and was adjourned for judgment today. It is a case where it seems to me the words of Lord Nicholls in the seminal case of *White v White* [2001] 1 AC 599 are particularly pertinent.

> "Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided … Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair ... But everyone's life is different ... And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder."

[2] In this judgment I refer to the petitioner as "the husband" and the respondent as "the wife."

[3] The husband was represented by Ms Robinson BL and the wife by Ms Trainor BL. I am grateful to counsel for their detailed position papers which they filed in advance of a pre-hearing review listed on 20 February 2024. I also had the benefit of the parties' affidavits, the other papers filed and the evidence of the parties.

[4] It is a mainly straightforward case, the marriage lasting just two and a half years, albeit that a child was born during that time. The most valuable asset is the former matrimonial home which was owned entirely by the husband before the parties married.

[5] The facts of the case including those which were disputed do not appear to justify the escalating costs. It is of note that in his affidavit, the husband expressed his concern about the monies already expended in costs in other courts in relation to this short marriage.

[6] Before the hearing commenced, I was advised that the husband's costs were £32,400.00 including vat and the wife's costs in relation to her current legal representation were £43,200.00 including vat while her total outstanding legal costs were at least £50,000.00. It is interesting that the wife told the court she did not wish to receive a lump sum as that would require her to immediately pay for her legal costs. The wife had the benefit of a legal aid certificate. The husband did not.

[7] The age of the parties and duration of the marriage are among the factors to which the court is to have particular regard under Article 27 Matrimonial Causes (Northern Ireland) Order 1978 which is our primary legislation and the starting point when determining any case in this jurisdiction.

[8] Peter Duckworth in Matrimonial Property and Finance, at section C1 of that book, says under the subject title "Short Marriages":

> "Every lawyer practicing in family law knows that, every so often, he or she will come across a case with certain defining characteristics which mark it out from the general run of instructions."

[9] The first of the so-called special cases listed by him are short marriage cases. Referring to age of parties and length of marriage as factors to which the court should have regard, Duckworth says:

> "Quite simply, this means that, in short marriage cases, the wife may get less. She has less time to notch up a "contribution" … or to become accustomed to a "standard of living" which the court will perpetuate."

[10] That said, as Duckworth also points out, the birth of any children will have a significant impact because first consideration is to be given to any dependant child and also because the legislation "gives pronounced emphasis to contributions by either party in looking after the children."

[11] Duckworth says too that:

> "Short marriages throw into sharper relief the duty of the court to consider implementing a clean break, or a programmed transition to independence."

[12] In the case of *Sharp v Sharp* [2017] EWCA Civ 408 which was a short marriage case, Mc Farlane LJ, as a matter of law referred to the decision of the House of Lords in Miller which, he said,

> "... established that departure from the principle of equal sharing may occur in order to achieve the overarching goal of fairness in a particular case."

The offer

[13] Before the hearing commenced, the wife's lawyers were afforded an opportunity to take instructions from their client about an improved offer made by the husband of which the court was advised and which subject to anything arising from the hearing, appeared to be fair and reasonable. The husband offered to transfer to the wife the former matrimonial home which had been brought to the marriage by the husband and which was free from mortgage or incumbrance. Alternatively, he offered to sell that property and give the proceeds to the wife. In consideration thereof, he proposed that he would receive the partially completed and less valuable barn conversion property which had been bought during the marriage. The parties had intended that property would become a new matrimonial home when completed. However, significant funds are still required to complete that property.

[14] When the court was advised the wife instructed her lawyers to reject the improved offer made by the husband, the case proceeded to hearing.

The facts

[15] Both parties are now aged thirty-five years and still relatively young. The marriage was short, enduring for just two and a half years. Judging from the speed with which both separately contemplated issuing divorce proceedings, it seems clear they at least shared the view that their differences were irreconcilable. They have now been separated for almost three years.

[16] The parties have one child, aged three years as of last month. Both parties appear devoted to their daughter. The husband moved out of the house at separation enabling the wife and child to remain living there. The wife subsequently made the decision to return to live with her mother before ultimately securing her own rental

accommodation close to her mother's home. The wife told the court this support was important to her as a single mother.

[17] It became necessary for the husband to bring an application for contact following which that court made an order under which the child is to have defined overnight contact every week with her father. Social Services have been involved. Sadly, contact has not been without problems. The wife for her own given reasons, in the month after the decree nisi was granted, again suspended contact. The discovery by the wife that the husband had fathered a second child with someone he met following the parties' separation was perhaps understandably hurtful. This court was told contact only recommenced when agreement was reached immediately prior to the commencement of the hearing of the husband's contempt application.

[18] Sadly, this court was advised problems arose again when contact was due to take place on the Saturday preceding this hearing. The wife said the child was crying and upset on going to the handover location. The husband said that despite the fact that the social worker had recommended the wife deliver the child to the husband at the location and then leave, the wife did not do this but was emotional and the child became upset. I asked the wife about this. There did not appear to be an obvious reason for the child's upset at going for contact. Ideally this child should enjoy the benefit of a meaningful relationship with two parents who appear devoted to her.

[19] The court was told the husband had voluntarily been paying weekly maintenance of £50.00 in respect of the parties' daughter. However, the wife brought an application to the Child Maintenance Service as a result of which it was assessed that the husband should pay £29.27 weekly. The husband says he also pays £10.00 weekly into a savings account which he set up for his daughter and which continues to grow. He has further purchased clothing and shoes for the child when she stays with him and bought other items needed for her when she was in his care such as a cot, pram and car seat. Of course, as the wife is the primary carer of the parties' daughter, she has the main financial burden.

[20] The husband was challenged about the amount which he pays for his daughter. He said that the wife provided wrong information to CMS (Child Maintenance Service) advising them that he paid nothing for the child whereas he was in fact paying maintenance regularly on a voluntary basis. He said CMS advised him clearly, perhaps because of that background, that he should pay the exact amount of the assessment. Notwithstanding that advice, the husband said he pays more than directed.

[21] It is clear that within a short time of the separation, both parties expressed a desire to divorce. In her affidavit, the wife says she issued, an unserved petition, on

14 August 2021, just two months after the parties separated. The husband issued his own petition soon thereafter, and the wife cross petitioned. Each alleged unreasonable behaviour against the other and this was accepted by them at the Decree Nisi hearing when mutual decrees were granted to the parties on 13 October 2022.

[22] When the parties separated, the husband initially went to stay in a caravan and then to a rental property which he said was necessary for him to have overnight contact with his daughter. While renting that property he met and formed a relationship with his neighbour with whom the husband now has a second child, a son. The wife averred that the rental property in which the husband said he resided was his girlfriend's property. There was no evidence of this. It appears the property is owed by an entirely different person. It is possible the proximity of the two properties led the wife to her mistaken conclusion.

The former matrimonial home

[23] After the separation the wife initially remained living in the former matrimonial home in Portadown. This property was wholly owned by the husband before the parties married. It was purchased by the husband in the years before the parties met and he initially lived there with his two brothers. The husband had paid a deposit and secured a mortgage. The husband discharged the mortgage before the parties were engaged to be married.

[24] The wife moved into the property and cohabited there with the husband before their marriage after which it became the former matrimonial home. The property remained at all times in the husband's name.

[25] The parties differ about when they started to cohabit. The difference is not particularly significant. The wife says she began living with the husband in July 2017 while the husband says it was in December 2017 the date when they became engaged and a year before their marriage. This appears to be around the time when he says his younger brother moved out, his other brother having vacated the property in the previous months.

[26] The wife ultimately left the property to return to live with her mother with whom she had lived before the parties began to cohabit and thereafter the wife secured her own rental property close to her mother. On becoming aware of that situation, the husband returned to live in the former matrimonial home and says he has lived there since save for time spent with the mother of his second child in her home. The husband says on his return to the former matrimonial home, he discovered the wife stripped the property of expensive newly purchased furniture. It was put to the husband that the wife needed the furniture for their daughter. The husband replied that the wife did not need the outdoor furniture for that purpose.

[27] The wife says she no longer felt safe in the property but apart from referring to security cameras which the husband had installed at the front door when he was living there, the reason for the wife feeling unsafe was not clear. It is possible that the wife felt the cameras were intrusive.

Second property

[28] It is the second property in Portadown which represents the main subject of dispute between the parties. Each seeks to retain it.

[29] The husband says he would like to retain the property due to the time and money he has already invested in it. The wife says she would wish to retain the property as it is located in close proximity to her family and was bought from her father's second cousin. Neither party has ever lived in what appears from photographs to be a shell of a property.

[30] The husband gave evidence that he would be required to pay £20,000.00 to have the mortgage transferred into his name. I accept that this is not beyond his means. He then proposes working to complete the property. He believes that he would be able to use his knowledge, skill, and contacts to reduce the cost of completing the property in a way which would not be manageable for a different person. He says he would hope to make the property his home and ultimately pass it on to his children who currently comprise the parties' child and the husband's second child.

[31] The wife on the morning of the hearing produced an email from her mother with a supporting bank statement and an email from her father with a supporting letter in relation to funds which they say they would gift to the wife to enable her to discharge the existing mortgage on the property. However, this would not be sufficient to enable the property to be completed, only to discharge the mortgage.

[32] The wife said she has a sentimental attachment to the property which the husband disputes. The wife in her evidence identified different people who lived in close proximity who she said were related to her. She said her father lived approximately one mile from the property. The husband said not all the people named shared the wife's narrative that they were related. In relation to all the people mentioned, he said there was not a close connection with the parties, that they did not share phone numbers, that they did not visit when the parties' daughter was born.

[33] The wife said the property was always regarded as her home and that she was reared close by. However, when cross examined, she confirmed her parents separated when she was four or five years of age. She said they were "very much together" and that they enjoy meals together and went on holidays together.

[34] The wife however accepted that after her parent's separation she went to live with her mother and remained living with her mother. This did not tally with her evidence that she was reared close to the partially built second property.

[35] It also became clear that the former matrimonial home is closer to the wife's father's home and the second property than to the wife's mother's home in Portadown where the wife was reared and where she returned after the separation before renting her own home close by as she wanted the support of her mother. It seems the former matrimonial home is located around three miles from the wife's father's home and the people who the wife says are connected to her.

[36] The site for the second property was purchased in the parties' joint names from a second cousin of the wife's father for £60,000.00 which represented the market value of that property which had planning permission for a barn conversion. The husband paid the deposit using the proceeds of sale of his vehicles, two motor bikes and a car, along with his savings. The parties secured a mortgage for the new build. The husband related that the architect had underestimated the cost of the build with the result that he had to utilise funds from his business to complete the stage to be reached in order to trigger the mortgage payment for the next stage. The husband said that as his business was a limited company, he was taxed on dividends used and he described the need for a director's loan.

[37] The wife suggested that the site, extending to two acres, would not have been sold to the parties were it not for her family connection. The husband maintained the parties had looked at other sites in various areas and at an adjoining site. He said the site was offered as planning permission was about to expire. I can easily appreciate that the seller found it easier to sell to a blood relative. That said, the joint valuer confirmed that the £60,000.00 paid was the market value. There was evidently no discount for family connection. The site without planning permission was valued at £25,000.00. It is clear too that the site would never have been afforded without the husband's funding.

[38] The husband gave persuasive evidence about the works undertaken by him. He is a joiner by trade and was able to save on construction costs by undertaking the levelling work and installation of sub floors himself, along with the driveway which was one hundred metres in length for tarmac or stonework. The husband had to lay the stones to keep the planning alive and mindful that the mortgage only became available for release when stages were completed. The husband said he had to pay for steel work, for a structural engineer, architect, and builder. He gave evidence the architect's costings proved too low with the result that when the first drawdown of £60,000.00 was made, he had to add £30,000.00 to enable that stage of the work to be completed. The husband said the stonemason alone had to be paid around £40,000.00

which the husband pointed out represented almost half of the mortgage utilised. I believed the husband when he said the wife had no appreciation at all of the cost. Indeed, the wife does not appear to say differently.

[39] The wife was not involved in the building, but it must be remembered that she was expecting the party's child for some of that period. The wife relied on the husband in relation to the funding and building of the property. The building commenced with the assistance of a mortgage in respect of which £83,000.00 remains outstanding.

[40] The husband's evidence was of feeling the wife only had regard to the benefit of the properties without wishing to take any responsibility for the burden.

The businesses

[41] The husband and wife, who are the same age, had each started their own business before they met, the husband's relating to the installation of lifts and the wife's being a clothes retail business. The wife opened her business sooner than the husband and the husband's business appears to have been more successful than that of the wife albeit that neither business had significant value.

[42] The wife maintains her business was successful. The court was shown the exhibited accounts for the year ending 31 January 2021 when the wife's business showed an annual profit of £7827.00. However, in the following year ending 31 January 2022, the business showed an annual loss of £8013.00, and the business ultimately closed two years after the separation. The wife says she has related debt of around £49,000.00.

[43] The husband said the wife required financial support from him in relation to her business, that he advanced money which was noted as a loan in the statements and which the wife repaid in part although he stated that after the separation, following instructing her then solicitor, the wife began to say that money which continued to be paid for a short while thereafter did not relate to the previously noted loan but instead represented her contribution to the mortgage. The husband said the wife's trading accounts recorded an outstanding debt to the husband's business of £9662.00.

[44] The husband said he became aware of the wife's business difficulties after they were engaged, that she initially repaid small lump sums he loaned her but that the wife would then seek more financial assistance from him. He felt good business practice made it important to record the money advanced from his business as a loan and he a creditor. He also considered it important for a business owner, the wife in this instance, to have a realistic appreciation of the viability of the business in terms

of the monies it earned and the monies it borrowed. Having heard from the husband, he presented as having a straightforward and clear approach to business and I preferred his evidence.

[45] In relation to his business the husband clearly described how before the covid pandemic, he was able to accurately anticipate his business for the following six months whereas after Covid, that reduced to four months.

[46] In her evidence it seemed to me that the wife had difficulty recalling or recounting her business financial standing, she had difficulty recalling the value of her stock or what was sold save in a very general way or the amount of her indebtedness until it was specifically put to her. Even then, she appeared to have no realistic plan for discharging her debt.

[47] The court was told the husband's business had a net capital value of £64,000.00 which was made up predominately of machinery. The husband's counsel submitted that the wife had stock of £83,000.00 when she liquidated her business. However, I accept the wife's account that she had to sell the stock for a considerably discounted price, and it is likely too, that not all stock was sold. The stock figure attributed to the wife has to be seen in that context. Any money received by the wife appears to have been spent by her which is understandable in all of the circumstances.

[48] The wife said she planned to start a health and wellness business in September and spoke non-specifically of grants being available, of expecting support from neighbours in the townland of the parties' partly built second property and of growing crops. Her plans were devoid of substance if not, wholly fanciful. In the meantime, the wife is dependent on government benefits and the child maintenance provided by the husband.

[49] Despite not having addressed her existing debt which taking account of business and legal fees appears to be in the region of £97,000.00, the wife said she intended completing the partially built second property. There was not a scintilla of evidence provided as to how this would be achieved. The wife did not know how much the property would cost to complete. The house is described as a shell. The husband suggested it could cost the average person in the region of £120,000.00 to £150,000.00 with the property requiring the interior to be plastered, heating, electric, plumbing, bathrooms and kitchen to be installed along with the gardens and outside groundwork to be undertaken. It was not disputed that the husband undertook an amount of the initial work himself. The husband felt that the contacts and experience available to him would enable him to complete the property for less than the expected costs.

[50] When pressed about the fact that she clearly did not have the means to complete the property, the wife suggested she would sell some of the land. She also said she believed that as planning had already been granted for the partially completed barn conversion, it would be easier to get planning permission. I found such suggestion lacking in credibility.

[51] The husband started his business, which involves the installation of lifts initially as a sole proprietor and then as the sole director and shareholder of a limited company. The husband's P60 income for year ended 5 April 2021 was in the sum of £30,850.00 and was £20,000.00 for the following year.

[52] The husband did not present as unsympathetic to the wife. He spoke empathetically about her private difficulties as a result of which she sought assistance. Both attended marriage guidance counselling but were ultimately unable to resolve their difficulties.

[53] In relation to the wife's business, the husband did say he had concerns about the wife's poor spending patterns. They clearly had different approaches. The husband said he worked long hours to make his business a success. Neither had a big business but the husband appeared organised and more business savvy than the wife. The wife spoke with real passion about working on window displays into the early hours of the morning but was less certain when dealing with accounts.

[54] A further example of their different views on business operation is perhaps evident from the husband's account that after they became engaged but before the parties were married or had a child, the wife took six months leave from her business and paid staff to do the work in her place. The husband does not appear to have challenged the wife's decision at the time but clearly, he felt such decision did not make business sense.

[55] The husband did not believe it was sensible for the wife to use her business to make a number of personal purchases. He said these came to the house and that packages were unopened and unwanted packages were not returned. The wife in response said packages also came for the husband and that her purchases related to their daughter. I can easily understand that the wife would have made purchases for the parties' daughter. I can also understand that related expenses cited in the wife's accounts impacted considerably on profitability.

[56] In the round, the husband presented as more likely to live within his means. The husband had utilised his resources to purchase the former matrimonial home before the parties ever met and thereafter to discharge the mortgage. The husband's sale of vehicles contributed to the financing of the purchase of the barn conversion site. The husband also used savings. The husband applied money from his business

to meet the deficit between the mortgage draw down available and the cost of getting the property to the next stage.

[57] The wife said the husband operated her accounts in a manner unknown to her but given it was her business, she surely ought to have ensured she was acquainted with the accounts. There was no evidence presented of impropriety on the part of the husband. During the marriage the wife's business remained in the black. After the marriage ended, the wife's business deteriorated and ultimately closed. I take due account of the fact that the covid pandemic is likely to have had an impact as well as the wife's personal circumstances, and particularly her care of the parties' young child.

[58] In the management of their household finances, the husband discharged the bills and paid the mortgage. In her evidence the wife says that when her business was improving after Covid, she wanted to contribute but the husband was content to continue to discharge the outgoings. I am not persuaded by this narrative. It is not clear that the wife's business was improving. Also, if the wife was spared having to contribute to the household bills, one might have thought she could have accumulated savings. Instead, there is no evidence that the wife saved money as opposed to spending it. It seems on the whole the wife did not contribute save that from time to time the wife purchased groceries.

Other matters

[59] The wife made other general assertions that the husband had racing cars, a boat and motor bikes. The husband said he did not have racing cars or a boat but did have a motor bike which he said was worth around £1500.00.

[60] The wife said the husband had a lot of cash from his business and this was contained in a safe. The husband said the parties did have a safe in the house for documents, rings and money given for their daughter. He said the companies he did business with such as Otis did not operate in cash and he did not operate in cash save that he recalled one occasion when in Dublin, the owner paid him a cash sum of £500.00 to stay and complete the job.

[61] The wife said the husband had a side business taking cars from England. The husband pointed to his statements which showed flight expenditure only. He said on one occasion after the separation he drove a car from England as a favour for his cousin and for which he did not receive monetary reward.

[62] The wife said the husband removed a jar from the house containing £4000.00. When asked about this, the husband said this simply this did not exist in the same way that the alleged racing cars and boat did not exit.

[63] There was no evidence whatsoever to support the wife's said general allegations and I found that the husband provided credible responses when asked about these matters.

[64] The husband was asked about the wife's claim that he had cosmetic surgeries. He admitted to one surgery in relation to hair transplant. He said he never liked his hair and had "discussed it with" the wife during their marriage and he had one surgery, a hair transplant in Turkey which cost £2000.00.

Relevant matters

[65] In the exercise of commutation and distribution and mindful of the Miller considerations of sharing, needs and compensation along with whether property is matrimonial or non-matrimonial in nature, the following facts are relevant:

- The fact of the short marriage.

- The fact there is a young child for whom the wife has primary care albeit the husband pays and will continue to pay maintenance. The child has housing needs and is the court's first consideration.

- The fact that the husband owned the most valuable asset, the former matrimonial home from before the marriage. That property is free of mortgage and has an agreed value of £130,000.00.

- It is noteworthy too that the second property site could not have been bought without the husband's funding. Building is not likely to have continued without the husband contribution in terms of his labour and also the funding he advanced from his business over and above the mortgage payments made by him and at a time when the wife had her own business. Each party appears able to have the other discharged from liability for the mortgage, but it is clear that the wife does not have the means to finish the property whereas the husband is more likely to be able to do so.

  That property has an agreed value of £200,000.00 and a mortgage liability of £81,000.00. It therefore has an equity of £119,000.00.

Conclusion

[66] Even if one ignored the disproportionately higher contribution made by the husband to the assets in this case where the marriage was so short, there is no logic to the wife's suggestion that the second property should be transferred to her. To do so would be to give the wife an unfinished building which she cannot afford to complete.

Sadly, the wife appears unable or unwilling to recognise that fact. This is disappointing but the court understands that sometimes emotion clouds logic.

[67] The wife in her evidence said that in relation to herself and the parties' child, "I ultimately want a roof over our heads." In reality, transferring the second property to the wife would not ensure that. However, transferring the former matrimonial home to the wife would.

[68] Therefore taking account of:

- Needs, including those of the parties' child for whom the wife has primary care,
- the unusually significant contribution made by the husband,
- not ignoring the fact that the husband now has a second child for whom he also has a financial responsibility and
- mindful of the shortness of the marriage which commends a clean break settlement,

The court finds that the husband's offer to transfer the former matrimonial home which is mortgage free to the wife or to alternatively sell it and give the wife the entire proceeds of sale, represents a fair resolution. That property has an equity of £130,000.00.

[69] In transferring the second property to the husband, which property has an equity of no more than £119,000.00 and less than that if one takes account of the payments made from the husband's business, the husband is receiving less than 50% of the assets but with the potential to work and invest further expenditure to complete the property.

[70] I have considered whether, considering the feelings of the wife, the property ought to be sold and the proceeds given to the husband but that would likely result in an unnecessary loss of potential benefit and in its present state there may be difficulty in selling the property.

[71] If the husband retains the property and makes it his home, it is hoped the parties' daughter will share in the benefit. The husband expressed the wish to do that and in that way the blood connection to the land may continue, as may have been the wife's desire.

[72] It is to be further hoped that the parties are able to work together in relation to contact which will enable husband and daughter to have a meaningful relationship and enable the wife to have that time for herself.

[73] The husband will continue to have a maintenance responsibility for the parties' daughter.

Order

[74] I therefore order that in clean break settlement of all the parties claims against each other for financial and ancillary relief in life and in death, within 12 weeks hereof:

(a) the wife shall transfer her entire legal and equitable interest in the second property at MXXXXX Road, Portadown to the husband upon the husband releasing the wife from the related Progressive mortgage and in consideration thereof

(b) within 12 weeks hereof, the husband shall transfer his entire legal and equitable interest in the former matrimonial home to the wife and

(c) the parties shall complete all documentation to effect transfer when called upon to do so failing which the Master shall sign the documentation necessary to effect transfer on behalf of the defaulting party who shall be responsible for the costs of any consequent application to the court.

(d) Upon the said transfers taking place, ancillary relief claims of the parties of maintenance, property or pension provision nature arising from the breakdown of the parties' marriage shall stand dismissed.

[75] I have heard the parties' submissions about costs and make no order as to costs as between the parties.

[76] I make an order for legal aid taxation of the wife's costs.

[77] I certify for counsel.