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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND FAMILY DIVISION (PROBATE AND MATRIMONIAL OFFICE)

Between:

CIARAN McKAVANAGH

Petitioner

and

BRENDA BREWSTER

Respondent

Ms O'Grady KC with Ms Lyle (instructed by PA Duffy, Solicitors) for the Petitioner
The Respondent appeared as a Litigant in Person

Before: Keegan LCJ and Scoffield J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This case arises in the context of ancillary relief proceedings. At judgment hand-down, the parties were informed that the proceedings had not been anonymised and would be reported in this form unless any contrary submissions were made within one week of the date of delivery of the judgment. Ms Brewster provided detailed comments in relation to the judgment (which are discussed further at paras [50]-[54] below). In the course of those comments, she suggested that the judgment "needs anonymised", but without providing any basis or grounds for that application. We see no basis for the interference with the principle of open justice which the grant of anonymity in this case would involve.

[2] The parties were married on 24 August 1996. They separated some six years later in July 2002. They finally divorced on 28 June 2009. There are two children of the family, a girl born in September 1994 and a boy born in September 1997. The

order for ancillary relief (on 12 March 2012) came at a time when the wife was in occupation of the matrimonial home and the children were 17 and 14 years of age. The children are now (as at 1 August 2022) 27 and 24. The eldest has qualified as a doctor and is living in England. The youngest has had difficulties in obtaining third level education but is now enrolled in a course at John Moore's University until 2024.

[3] Ms Brewster applies to extend time to appeal an order made by Mr Justice McFarland on 31 October 2018, when he was sitting as a Deputy High Court Judge. The said order provided as follows:

> "(1) Leave is hereby granted to extend time to appeal the order of Master Redpath dated 12 March 2012.
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> (2) The order of Master Redpath dated 12 March 2012 is hereby varied by the deletion of para 1(b)(ii) with the substitution of the following 30 June 2019.
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> (3) The order of Master Redpath made on 18 February 2013 is varied by the removal of the requirement to pay spousal maintenance of £400 and child maintenance of £450 per month after the 31 October 2018. For the removal of doubt the requirement to pay £450 to the mortgage account shall continue to the 30 June 2019.
>
> (4) The application to revoke or amend the order of Craigavon Family Proceedings Court dated 3 February 2014 is hereby dismissed."

The history of court proceedings

[4] The order of McFarland J is part of a complicated sequence of orders and is only fully understood by reference to the history of proceedings, starting with what may be termed the "parent order" which was made after the original ancillary relief hearing. That order was made by Master Redpath on 12 March 2012 in full and final settlement of all matrimonial claims between the parties. The numbered paras of the order which are material to this case are as follows:

> "(1) The property held at 31 Brett Avenue, Lurgan, shall be held by the petitioner and the respondent on trust for themselves as beneficial tenants in common in the following shares, namely 65% to the respondent and 35% to the petitioner and upon the following terms and conditions:

(a) The respondent shall be entitled to occupy the said property rent free to the exclusion of the petitioner until the determining date as hereinafter defined.

(b) The property shall not be sold without the prior written consent of the respondent or further order until the first to happen of the following events (the determining event), namely:

(i) The death of the respondent;

(ii) The youngest surviving child of the family completing his/her third level education whichever shall be the latter.

(d) Until the determining events set out at para (b) above or further order of the court, the petitioner and respondent shall with effect from the date of this order be equally responsible for all payments of capital and interest on the mortgage secured on the said property in favour of First Trust provided that all mortgage payments made by the petitioner shall be deducted from the petitioner's payments to the respondent of £450.00 periodical spousal payments. In the event that the petitioner fails to pay his share of the mortgage, interest shall be payable at the Supreme Court rate.

(e) The respondent shall be responsible for all routine maintenance and decorative repairs of the said property.

(f) The cost of any structural repairs shall be shared between the parties as 65% by the respondent and 35% by the petitioner provided that no structural repairs shall be carried out to the said property save by agreement between the parties or by further order of the court.

(3) If the respondent shall remain in occupation of the said property for more than six months after the determining events she shall pay the petitioner from the date thereof such sum by way of occupation rent as may be agreed or in default of agreement as determined by the court.

> (4) On or before the determining event the respondent shall have the right to purchase the petitioner's interest in the property and an open market valuation to be agreed or in default of agreement to be determined by a valuer nominated by the court and subject to all necessary accounting under the terms of the order.
>
> (6) The petitioner shall pay or cause to be paid to the respondent's spousal periodical payments at the rate of £450 per month commencing on 1 February 2012 until the petitioner commences child support payments for the benefit of the two children and in accordance with para 1(d) above."

[5] Master Redpath made a further order by way of variation of his original order, which is dated 18 February 2013 and provided as follows:

> "Para 2 of the Order dated 12 March 2012 be amended as follows:
>
> The petitioner shall pay the mortgage on the former matrimonial home of £450 per month into the mortgage account with First Trust Bank commencing 1 March 2013 with a further £400 per month in respect of spousal maintenance and £450 per month in respect of child maintenance for the son of the parties."

[6] On 23 September 2013 an order was also made under the Domestic Proceedings (Northern Ireland) Order 1980 "the 1980 Order") by District Judge Bates. This was made in relation to the daughter of the family pursuant to Article 4 of the 1980 Order on the basis of Mr McKavanagh's failure to provide reasonable maintenance. He was ordered to pay to the applicant (Ms Brewster) for the benefit of the female child of the family the sum of £500 per month, with the first of such payments to be made on 28 March 2013. Payments in respect of this child were to continue until she ceased full-time education.

[7] Next there were proceedings brought before Mr Justice Maguire in relation to mortgage arrears, which Mr McKavanagh had failed to pay in accordance with the orders of Master Redpath. Ms Brewster brought a judgment summons dated 5 March 2014 in relation to arrears of £4,356 in relation to the property. An order was made by Maguire J on 20 March 2014. That order was subsequently rescinded due to inadequate service on Mr McKavanagh in Switzerland pursuant to the relevant European regulations.

[8] After this an application was made by Mr McKavanagh dated 4 July 2017 pursuant to Article 33 of the Matrimonial Causes (Northern Ireland) 1978 for

variation of the orders of the court for both child and spousal maintenance and in relation to the property adjustment order by way of the Mesher order.

[9] This application was determined by Master Sweeney, who provided a written decision of 15 September 2017. The Master made an order against Mr McKavanagh in the sum of £19,843 to be paid within eight weeks in relation to arrears of maintenance. The Master rejected the application for variation of spousal maintenance and payments of £450 towards the mortgage on the former matrimonial home.

[10] The making of this order by Master Sweeney was the trigger for the appeal proceedings with which we are concerned, as an appeal was then brought by Mr McKavanagh to the High Court. Ms Brewster was also unhappy with the order of Master Sweeney (albeit that it was largely in her favour) but there was no appeal against it lodged on her behalf.

[11] In addition, Mr McKavanagh lodged an application of 9 February 2018 out of time seeking to:

(1) Appeal the order made by Master Redpath on 12 March 2012, notwithstanding that the time limit prescribed by Order 58, rule 1(2) of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules of Court") had expired;

(2) Vary the order of Master Redpath made on 18 February 2013 whereby he was to pay to the respondent the sum of £850 per month spousal and child maintenance; and

(3) Vary the order of the Domestic Proceedings Court made on 23 September 2013 (and amended on 3 February 2014) for £450 per month to be paid to the respondent for the benefit of the child daughter under Article 31 of the 1980 Order.

The Mesher Order

[12] Notwithstanding the many and various issues raised in these proceedings, the centrepiece of this application undoubtedly is the Mesher order made by Master Redpath in March 2012 which was amended by McFarland J in October 2018. In simple terms a Mesher order postpones sale and division of the proceeds of a matrimonial property until the youngest child of a family reaches a certain age, usually 18, or finishes full-time education. The name derives from the case of *Mesher v Mesher and Toal* [1980] 1 All ER 126.

[13] The use of Mesher orders has experienced peaks and troughs, helpfully discussed in *Duckworth Financial Matrimonial Property and Finance*, particularly in section 4(b)(xii) which refers as follows :

> "Suffice to say that, after enjoying a honeymoon phase in the 1970s, it fell into desuetude under sustained attack from Ormerod LJ and others. Since *White v White* [2001] 1 AC 596, however, it is set to make a comeback and so deserves fresh consideration."

[14] After the House of Lords decided *White v White*, the principle of equality of division of assets between spouses was established. Thereafter, a deferred charge was sometimes the only option to settle ancillary relief cases where there was no surplus of funds. Of course, this went against the grain of "clean break" which is enshrined in Article 27A of the Matrimonial Causes (Northern Ireland) Order 1978.

[15] Unsurprisingly, there are pitfalls with Mesher orders in that they bind parties together financially long after the marriage contract was severed. This case is a paradigm example of how a deferred charge in the form of a Mesher order can play out for the worse. Ten years from Master Redpath's order this court has, again, been asked to grapple with the ending of a relationship and financial matters which have not reached any level of certainty; far from it. In addition, this case is characterised by ongoing acrimony and the persistent resurrection of matrimonial issues dating back to separation. The real issue has been clouded by a tendency on both sides to try to score points through seemingly endless litigation; and, it should also be said (in fairness to the respondent), to some degree by a failure on the part of Mr McKavanagh to meet his financial obligations.

[16] Predictably, the financial landscape has also changed over time, and not for the better. Ms Brewster continues to live in the matrimonial home which appears to be in a bad state of repair. She has been made bankrupt due to non-payment of rates. There is also an order charging land belonging to Mr McKavanagh in relation to non-payment of a lump sum for maintenance arrears. A repossession order has been made in relation to the matrimonial home which is currently stayed. We were also told that there may be ongoing maintenance arrears.

[17] Mr McKavanagh's actions since the ancillary relief order was made do not reflect well upon him. First, he left the jurisdiction of Northern Ireland almost immediately after the order was made and went to Switzerland. It is obvious to us that this signalled an intention to avoid his obligations where possible, or at least render their enforcement much more difficult. Next, he blatantly refused to honour a series of court orders for maintenance made by our courts. This has caused Ms Brewster financial hardship and given rise to a deep feeling of bitterness and injustice on her part, allowing her (rightly or wrongly) to attribute all her later woes to the actions of the petitioner. In addition, she has had to chase Mr McKavanagh for years to recoup arrears by virtue of the Reciprocal Enforcement of Maintenance Order ("REMO"), which incidentally we were told has worked quite well as a system of debt collection.

[18] This court is not blind to the bigger picture. However, we have seen no updated schedule of assets. When we asked what the actual equity was in the matrimonial home, no one could tell us with any degree of certainty save reference to a past estimate of roughly £90,000. Similarly, when we asked what the current debts were Mr McKavanagh's side maintained the debt currently owed was no more than £19,843 (the amount specified in Master Sweeney's order of September 2017). By contrast, Ms Brewster estimated the debt for maintenance arrears to be in the region of £75,000, but we were not able to reliably ascertain or quantify the actual amount from the information available to us.

[19] We pause here to observe that the Court of Appeal is not an appropriate forum to resolve factual disputes or, for that matter, historical gripes between the parties. We are, in the first instance, simply being asked to extend time for an appeal brought by Ms Brewster against the order made by McFarland J in 2018. With that in mind we turn to Ms Brewster's grounds of appeal.

This Appeal

[20] The appeal notice filed by Ms Brewster contains a number of grounds as follows:

(i) There has been procedural irregularity.

(ii) In conducting a balancing exercise the judge has taken into account matters which were irrelevant, ignored matters which were relevant and came to perverse and irrational findings on matters which could have been proven to have been false had proper procedure been used.

(iii) In the written ruling the judge made perverse and irrational findings on matters that were material to the outcome.

(iv) The judge failed to give reasons or any adequate reasons for finding some material matters.

(v) The judge failed to take into account and/or resolve conflicts of fact or opinion on material matters.

(vi) The judge gave weight to immaterial matters.

(vii) The judge made a material misdirection of law on the decision to hear the case on the first mention without correct service being applied.

(viii) The judge permitted a procedure and other irregularity which was capable of, and which did, make a material difference to the outcome of the fairness to proceedings.

[21] The appeal notice was accompanied by an affidavit filed by the appellant, Ms Brewster, on 6 December 2021. This short affidavit alleges that the decision came about through fraud. In it, the emphasis is clearly focussed upon an allegation of procedural irregularity at the hearing before McFarland J, as a result of which Ms Brewster contends that she was taken by surprise at the matter proceeding as quickly as it did and that she therefore did not have a proper opportunity to prepare or to seek or obtain relevant discovery. (The background to how the matter came to be dealt with at that hearing is complicated and need not be set out for present purposes). During the case management phase of proceedings, this court pointed out that a proper affidavit needed to be put before the court to explain the reasons for delay in bringing the present appeal. This requirement has belatedly been attended to by Ms Brewster, who has filed a more comprehensive affidavit dated 25 February 2022.

[22] From that affidavit it is clear that all of the history between the parties which is summarised above remains front and centre in the mind of Ms Brewster. Putting that fact aside, she makes the case that she did not get advice from court staff in relation to appealing and also that she did not have sufficient funds to appeal the order. We are unimpressed by the blame being laid at the door of court staff. The responsibility to ensure that an appeal is lodged correctly and within time ultimately remains with the litigant. In addition Ms Brewster could as a personal litigant have applied for a fee waiver. She has belatedly – after judgment was handed down – made the case that she did so but that a number of such applications were ignored by court staff or not dealt with properly by them, which caused further complications when she later secured employment again. In light of the way in which, and the time at which, these issues have been raised, it is impossible for us to properly enquire into them or resolve them. In any event, given our conclusion on the lack of merit in the substance of the appeal (see paras [37]-[43] below), it is unnecessary and would be disproportionate (in terms of court time and cost) to embark upon an attempt to resolve these issues.

[23] In her skeleton argument Ms Brewster also raises the following substantive points in support of her appeal. First, she maintains that the judge changed Master Redpath's court order dated 18 February 2013 at the first mention of Mr McKavanagh's application requesting permission to be heard out of time, in circumstances where it was only proper to deal with the application for an extension of time at that point. Second, she argues that in re-opening the decision of Master Redpath, McFarland J changed the end date of the court order based on an incorrect opinion about her son's education or capacity for third level education. Third, she argues that the judge "omitted to address gaps in child maintenance liability." Finally, the argument is made that the judge did not deal with the impact of Mr McKavanagh's non-compliance with court orders.

The decision of McFarland J

[24] The gravamen of McFarland J's decision is found from para [16] of his written ruling where he discusses the previous orders made. His conclusions are found at paras [17] and [18] as follows:

> "[17] I propose to deal with the mesher order first. It is unclear from Master Redpath's ruling why he considered it necessary to delay the realisation of the matrimonial home, although as the children were 17 and 14 at the time, the wife was unemployed, there was clearly a need for stability within that family unit, and this would be provided with the security of the home. The focus was on the suggested determining event when the children finish third level education. Master Redpath considered that would be 'in approximately seven years' ie on or about March 2019.
>
> [18] The daughter has undertaken third level education reading medicine and will graduate at the end of this academic year – the summer of 2019. There was a dispute as to whether she was to finish in June 2018 or next year, but relying on the hearsay evidence produced by the mother in the form of a text message from the daughter as to the length of her course, I find this a fact that she will graduate in 2019. The son appears to either lack the ability or motivation to undertake third level education. There was some dispute as to the circumstances of his leaving secondary education. Since then he has attempted to obtain university entry grade qualifications but these have proved elusive."

[25] The judge continued by considering the purpose of the Mesher order and issues as to the state of the house. Then at para [22] he states his conclusion in relation to the date for activation of sale of the former matrimonial home. He says this at para [23]:

> "I propose to amend the terms of the mesher order to now establish the determining event date as 30 June 2019 (or the death of the wife should that be sooner)."

[26] McFarland J then refers to the lump sum order made by Master Sweeney in the sum of £19,843. In determining the appeal from that order he states that he does not accept the husband's argument that this should be credited against indirect payments made to the children. Therefore, the judge decided, in Ms Brewster's favour, that that lump sum should remain in place. In relation to the other ongoing maintenance orders he determined as follows:

> "[28] With regard to spousal maintenance, (the order by which the husband is to contribute towards the maintenance of the wife), I consider that this should now cease. In coming to that decision I take into account the length of the marriage, the period since divorce, the respective needs of both the husband and the wife, and the current earning ability of both the husband and the wife. The husband has not been able to maintain the same level of employment given certain changes in the relationship with the employer. He does not have the same level of remuneration. The wife is now in employment and is receiving remuneration from that source. In the circumstances to require the husband to make these payments from now on would be unfair.
>
> [29] The maintenance the husband was directed to pay to the wife in relation to the maintenance of the two children has to be looked at separately. The 2013 orders were made at the time the daughter was still either commencing or had just commenced her medical studies. Those studies shall continue and are likely to end in June 2019. The wife continues to have caring responsibilities for her daughter, and these will continue until June 2019. No evidence has been placed before me to suggest that those payments should not continue. I therefore decline to alter this order, but will direct the payment should cease on 30 June 2019 when her full-time education was planned to cease.
>
> [30] The situation in respect of the son is different. He is over 18 years of age, and is unlikely to commence third level education. He is now 21, and could properly be said to be no longer the financial responsibility of the wife. It would be inappropriate to require the husband to continue to make monthly payments to the wife for the son's maintenance given all of the circumstances relating to him."

[27] At this point it is useful to refer to proceedings which have been taken before Master Sweeney *subsequent* to McFarland J's order. These proceedings were brought by Mr McKavanagh on foot of a summons dated 13 April 2021 for consequential directions and relief. The application was effectively to enforce the mesher order terms and to have the house sold because the determining event date of 30 June 2019 (as substituted by Judge McFarland) had passed.

[28] A written judgment was provided by Master Sweeney as a result of which she reached a conclusion that the property should be placed on the market for sale within 12 weeks. She made certain directions as to who should market the property and at para [47] of her judgment says this:

> "I direct that the balance proceeds of sale after discharging the mortgage and any relevant charge in relation to the proceedings before the Chancery Master, and also after discharge of the selling agents and solicitor's costs of sale shall be retained by the solicitor with carriage of the sale pending further order of this court in relation to distribution. The court will adjourn this case to a date to be fixed for the hearing of submissions from the parties."

[29] In her conclusion, at para [53] the Master also said this, which we endorse:

> "It is desperately sad that less than six years of marriage should have provoked so many years of bitterness thereafter. If anything, this case is testament to the ever developing judicial school of thought which encourages clean break resolutions thus freeing parties and their children from negative festering bonds which keep them tied and allowing them to instead focus on a positive and productive future."

Time limits for appeal

[30] As noted at para [19] above, the first issue for us is to determine whether the appellant, Ms Brewster, should be allowed to maintain this appeal at all, notwithstanding that it has been brought well out of time. Order 58, rule 1 of the Rules of Court provides:

> "(1) Without prejudice to Order 44, rule 23, and except as provided by rules 2 and 3, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, or of a circuit registrar in the exercise of any probate jurisdiction.
>
> (2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.
>
> (3) Unless the court otherwise orders, the notice must be issued within 5 days after the judgment, order or

decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought."

[31] Order 59, rule 4 provides:

"(1) Subject to the provisions of this rule, every notice of appeal must be served under rule 3(4) within the following period (calculated from the date on which the judgment or order of the court below was filed), that is to say:

(a) in the case of an appeal from an interlocutory order or from a judgment or order given or made under Order 14 or Order 86, 21 days;

(b) in the case of an appeal from an order or decision made or given in the matter of any proceedings under the Bankruptcy Acts (NI) 1857 to 1980, Part XX and XXI of the Companies (NI) Order 1986 [now Part 31 of the Companies Act 2006] or the Insolvency (NI) Order 1989, 28 days;

(c) in any other case, 6 weeks."

[32] The court has a discretion whether to extend time and may do so if circumstances demand it. In ancillary relief this discretion must be exercised with great caution to guard against the reopening of cases unnecessarily. The lead authority on extension of time is *Davis* v *Northern Ireland Carriers* [1979] NI 19. This authority refers to the following factors relevant to the exercise of discretion, namely: (1) an application made before expiry of the time will be more favourably received, if the reason is good; (2) if the time has expired, the extent of the default; (3) the effect on the respondent and whether he can be compensated in costs; (4) whether there has already been a hearing on the merits or refusal of an extension would deny it; (5) whether there is a point of substance which will not be heard if refused; (6) whether there is a point of general, not merely particular importance; and (7) that the rules are there to be observed.

Discussion

[33] The time for an appeal from a decision of a judge of the High Court to the Court of Appeal in a case such as this is six weeks, as per Order 59, rule 4(1)(c). We

have listened carefully to the reasons for a late appeal being brought to us and having done so we cannot find anything by way of substance in relation to why this court would entertain a late appeal in an ancillary relief case such as this. We make allowance for the fact that Ms Brewster is a personal litigant. However, she is also an experienced litigant who we think understands the basics of the court system and is well able to pursue applications (given that she has done so on many occasions). It is also important that personal litigants are not, by that reason alone, given undue advantage over their litigation opponents when it comes to the procedural requirements of the Rules of Court (see *Magill v Ulster Independent Clinic & Others* [2010] NICA 33, at para [16]).

[34] In our view it is no coincidence that this appeal was lodged the day before the hearing for consequential directions on sale of the house brought by Mr McKavanagh. This approach seems clearly to have been a strategic decision taken by Ms Brewster to delay matters.

[35] In response Ms Brewster may say that Mr McKavanagh was permitted to bring an appeal against the order of the Master well out of time. However, that was in different circumstances where the Mesher order and maintenance arrangements clearly needed reconsideration and amendment. Matters have moved on since then in that Master Sweeney has acted on, and made an order for sale subsequent to, the order of McFarland J. In these circumstances it would in our view be invidious to effectively start again.

[36] The length of the delay in this case between the order appealed against and the bringing of the appeal is also egregious. The application to extend time was not made within time; and has not advanced any convincing reason which justifies the delay. There has been a hearing before McFarland J in this case at which the appellant made submissions and gave evidence and in which the judge sought to deal with all issues, some in the appellant's favour. There is no point of general importance requiring to be dealt with in this case, which turns largely on the judge's assessment, at the time when he was called upon to consider the issue, of the parties' son's educational prospects. We acknowledge that Mr McKavanagh's legal representatives did not 'take the time point' against the appellant, on the basis that they wished the substance of the appeal (and the ongoing disputes between the parties) to be dealt with finally. Nonetheless, it is a matter for the court to determine whether time should be extended and we decline to do so.

[37] In any event, even if we were minded to extend time, we see no merit in this appeal. First, as to Ms Brewster's primary claim of procedural unfairness Ms O'Grady has convinced us that this is without merit by taking us through the history of the several directions hearings before the court. There was clearly a problem with having a sworn affidavit from Mr McKavanagh put before the court, given that he was living in Switzerland, which resulted in the application formally being made some time after the materials grounding it had, as a matter of

practicality, been disclosed to Ms Brewster and been discussed at a number of review hearings in related proceedings between the parties.

[38] We are satisfied that Ms Brewster was on notice of the application being made and of the hearing. She was not taken by surprise in relation to the case being made, although the first appeal was before the court for a longer period. Ms Brewster was not prejudiced at the hearing as she gave evidence, as did Mr McKavanagh. Ms Brewster is clearly immersed in the facts of this case as litigation has occurred over many years. The extent to which the historic matters raised by Ms Brewster required to be delved into (or were appropriate to be pursued by way of discovery) were matters within the learned judge's discretion. She could also have submitted further written material after the hearing as she has done before (including before this court) if she thought some mistake had been made or she had something more to add.

[39] Overall, we are satisfied that the hearing was fair and if there were any procedural deficits they were remedied by virtue of the hearing which was conducted by way of oral evidence and written submissions. (This included Ms Brewster, after the hearing, having the facility of providing a detailed written response – which she described as an affidavit but which contained a variety of representations, tables of payment schedules and exhibited documents – in reply to the 'schedule of payments' submitted by Mr McKavanagh's counsel on his behalf at the hearing before McFarland J.) In truth, the issues were crystal clear and needed judicial determination. Therefore, this ground of appeal cannot succeed.

[40] We are similarly unconvinced by any of the other substantive grounds of appeal that have been raised before us. We do not see anything wrong with the court fixing a determination date for the house sale, given the time that had elapsed between the original order, the fact that the order did not have a fixed determination date and this was causing difficulties, the impasse which was likely to persist and the need to bring finality to a tortuous ancillary relief process.

[41] We do not consider that McFarland J's order was without evidential foundation. He applied the correct legal principles and neither party has raised a legal point before us for us flowing from this. The judge plainly set out to, and did, consider in the round all of the relevant matters he was required to take into account. When McFarland J made his decision the position as we understand it was that the parties' son was not in education, notwithstanding that the point had been reached where he might have been expected, in the ordinary way of things, to have concluded his third level education or to have been very close to doing so.

[42] The fact that the situation has changed is another matter. The parties' son is to be commended for his ongoing efforts to pursue university-level education and his more recent success in doing so; but the judge had to make an assessment of the situation as best he could at the time when the matter came before him. Viewed

with hindsight, the judge's assessment may seem to have been uncharitable but that does not of itself give rise to any ground of appeal.

[43] The dispute about maintenance arrears is beyond our remit in this appeal. We therefore form no conclusive view. However, we express our surprise that this issue is not clear given the proceedings before Master Sweeney which resulted in the lump sum order and the REMO collection process. We query the feasibility of any claim at this remove for arrears of child maintenance for the eldest child between the Child Support Agency payments and the Domestic Proceedings Order explained at para [6] herein, which (aside from unpaid arrears) was the main issue raised by Ms Brewster as to why she considered she may be due further maintenance payments. However, such arrears as remain due and unpaid can be enforced in other proceedings; and McFarland J was entitled to proceed on that basis.

Conclusion

[44] For the reasons given above, we decline to extend time and dismiss the appeal.

[45] We conclude by observing that matters have again moved on since the order of McFarland J fixed the determination date as June 2019. That fact also highlights the artificial nature of this appeal and the lack of utility in it.

[46] One ray of light in this otherwise gloomy case radiates from the fact that during these proceedings Mr McKavanagh voluntarily made an open offer to extend the determination date for sale of the house further and to waive the occupation rent which has accrued. He has also said that the £19,843 which he acknowledges that he owes should be offset against his share of the equity. Following from this development (which we specifically record) we enjoined Ms Brewster to make a counter-offer to try to bring matters to a close. We hope that she will do this.

[47] Our clear view is that this case cries out for some realistic focus on what is left to resolve by way of enforcement and consequential directions. It is quite clear that Ms Brewster would like to stay in the house. That may or may not be possible. It will depend upon the exact amount of current debts including maintenance arrears. It also occurs to us that Ms Brewster may need some capital up front to achieve her aim rather than simply offsetting the £19,843 debt owed by Mr McKavanagh. We make this point in Ms Brewster's favour particularly as there are extant repossession proceedings and Ms Brewster's bankruptcy, which need to be overcome.

[48] By way of final word we also say this. If the parties do not actively try to resolve outstanding issues there will likely be little by way of tangible assets left for division and yet more acrimony. Both parties should recognise that these proceedings have reached their final stage. The case remains subject to review before Master Sweeney, and in our view that specialist ancillary relief court is the appropriate forum for determination of any consequential issues.

[49] We will hear the parties on the issue of costs but – in light of the fact that we have refused to extend time for the appeal to proceed and that the time point was not taken on Mr McKavanagh's behalf, as well as the general history of the proceedings and the fact that (in our view) Mr McKavanagh was himself the beneficiary of a relatively generous approach to delay when he appealed against the order of the Master – our provisional view is that the most just way to deal with costs is for each party to bear their own costs of the proposed appeal. Mr McKavanagh's representatives have one week to make any contrary submissions on costs.

Postscript [27 September 2022]

[50] As noted at para [1] above, after judgment hand-down we permitted the parties the opportunity to identify any typographical errors or uncontentious factual errors in the judgment in order that these could be corrected before final publication. This practice is now common in this jurisdiction, as in others. It is *not* intended to provide parties with an opportunity to seek to re-argue the case, nor to re-open the merits or the conclusions reached by the court. Rather, it is directed towards mere editorial correction. For judicial observations on a similar practice in the UK Supreme Court, although there adopted in advance of judgment hand-down, see paras [66] and [73] of the opinions in *R (Edwards) v Environment Agency & Others* [2008] UKHL 22, *per* Lord Hoffman and Lord Hope, in conjunction with para 6.8.4 of UKSC Practice Direction 8. Other than the invitation to make submissions in relation to the issues of anonymity and costs, in this case the parties were neither invited nor permitted to make wide-ranging submissions, much less to seek to introduce new evidence.

[51] Ms Brewster provided a lengthy commentary on the judgment, which we have considered. However, in large measure this commentary amounted to an attack on the court's reasoning or conclusions, sometimes by reference to arguments or evidence which had already been presented to the court but also, in significant part, by reference to factual contentions which were not dealt with in the evidence. A variety of these factual contentions relate to the actions of third parties, in particular court security officers, a number of Court Service staff and Mr McKavanagh's legal representatives, against whom a range of serious allegations of various types of misconduct are made. Many of Ms Brewster's suggested amendments also involved inserting additional factual observations into the judgment in order to paint her in a more sympathetic light or Mr McKavanagh in a less favourable light. Many of these suggestions are likely to be highly contentious and many, even were they not contentious, are irrelevant to the narrow issues raised in this appeal and/or unnecessary for an understanding of the court's judgment. We consider this attempt to re-open the case or to re-write the judgment in more favourable terms to be an abuse of the court's process, as did the House of Lords in the *Edwards* case referred to above.

[52] On the basis of Ms Brewster's commentary, we have made some modest amendments to the text of the judgment which was handed down to the parties on 1 August 2022, where we consider this to be warranted and where it is in keeping with the spirit of the court's invitation to the parties.

[53] Otherwise, we have treated the content of Ms Brewster's observations as an application for leave to appeal our judgment. We refuse that application since we do not consider that the issues she has raised involve a point of law of general public importance.

[54] Ms Brewster's further comments make the case that she has consistently and simply been seeking *enforcement*, particularly through the REMO process, of orders which have already been made in her favour. We emphasise again that our judgment in the present appeal is merely in respect of the order made by McFarland J and Ms Brewster's ongoing entitlement as from the date of that order. Insofar as there are arrears of payments due and owing to Ms Brewster, she remains at liberty to seek enforcement of those through the available processes; and, indeed, to also make any further first instance applications in relation to maintenance that she may wish to make. It was not the function of this court in the present appeal to conduct an all-encompassing enquiry into every historic issue between the parties as to payment and enforcement under previous court orders.

[55] A recurring theme in Ms Brewster's commentary is an alleged failure on the part of court office staff to provide stamped or certified copies of court orders made in the course of her proceedings in this jurisdiction which she considers to be required in order for her to pursue enforcement of those orders against Mr McKavanagh in Switzerland. We are surprised to hear that these have not been provided, if indeed that is the case. In any event, if Ms Brewster sets out in writing within 14 days of provision of this updated judgment to her a list of the certified orders she requires for that purpose, we will direct that they should be furnished to her within a further 14 days along with any appropriate certificate to permit enforcement.

[56] There was no objection on the part of Mr McKavanagh to the court's provisional view on the issue of costs, set out at para [49] above. Accordingly, we make no order as to costs between the parties.