Neutral Citation No: [2017] NIFam 17	*Ref:*	**KEE10637**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**20/11/2017**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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v

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KEEGAN J

Ex-tempore Ruling

[1] I have decided to list this case for mention to give the parties a preliminary ruling as to my views in relation to this matter which is really by way of assistance in terms of procedure. Briefly, the application is for leave to appeal out of time. That is in relation to an ancillary relief settlement and order of the court. The matter came before me on 5 October 2017 and I heard submissions on that date and adjourned to allow the parties to consider two cases emanating from the Supreme Court namely *Sharland v Sharland* [2015] UKSC 61 and *Gohil v Gohil* [2015] UKSC 60.

[2] I then received supplementary arguments and I have considered all of those in reaching this preliminary ruling. The context of the case may be briefly summarised as follows:

(i) It is an ancillary relief case.

(ii) The parties were married on 15 September 1990

(iii) They separated in May 2010.

(iv) The Decree Nisi was granted on 14 September 2010.

(v) An ancillary relief application was issued by the petitioner, Mrs C, on 14 September 2010. The usual affidavits and discovery exchange occurred.

(vi) An FDR was listed on 9 June 2015 and a full and final settlement was reached, which was approved by the court on the same day. I note in relation to that that the usual procedure was followed and core issues were filed and I have read those.

(vii) The petitioner brought an application for consequential directions to the Master in and about April 2016 in relation to the transfer of lands. That application was withdrawn in October 2016.

(viii) On 19 January 2017, the petitioner issued a summons seeking leave to appeal a consent order out of time.

[3] I am not going to recite the history in any further detail suffice to say that the issue really relates to whether the respondent husband provided full disclosure as to his interest in wind turbines and the income he could receive thereon at the date of the FDR on 9 June 2015, which led to the full and final settlement. Put another way, should the agreement comprised in the consent order be re-examined and potentially set aside.

[4] As I have said at the outset, I have been concerned about finding the correct procedure for this type of application. It is not a straightforward matter and experienced Family judges in England & Wales, in particular the President, has described this area as "a procedural quagmire".

[5] In terms of what I have to decide within this jurisdiction, I consider that this case raises an important procedural issue which I wanted to draw the parties' attention to, and it is this:

(i) This type of application which I have before me for leave to appeal is in my view, on the basis of the documentation I have, procedurally wrong. I say that because there has not been on anybody's case, particularly the petitioner's case, who wants to re-litigate, a new event since the Order was made. This is therefore unlike the case of *McG v McG* [2009] NI Fam 6 which Mr Justice Morgan, as he was, decided nor is it like the *Barder* line of decisions.

(ii) This case relates to alleged non-disclosure or misrepresentation at the time when the agreement was finalised and that, it seems to me, must be challenged by way of an application to set aside the order.

[5] Upon reading the Supreme Court jurisprudence, *Gohil v Gohil* is actually, notwithstanding the factual differences, on point. It is interesting that if this route is taken, the time limit does not apply to appeals although obviously it is relevant in

relation to overall evaluation. Also, the *Ladd v Marshall* principles do not apply. Now the one thing I would say is that there are elaborate rules in England & Wales in relation to set aside, which obviously do not apply here. In terms of referencing the procedure at the moment, all I have to go on is counsel providing me with the extract from Valentine of paragraph 12.10 which says that you can have a set aside on the traditional grounds of fraud, misrepresentation and non-disclosure. The procedure must then emanate from the Rules of the Court of Judicature in Northern Ireland.

[6] I also would have thought that any application should be made to the Master in the first instance as that preserves the appeal rights as well, which the parties should reflect on. I have not closed my mind to this and the parties can reflect on whether I should hear the case if a correct summons is issued. I also want to make the point that the case being made here comes down to credibility in relation to the alleged non-disclosure and misrepresentation and it seems to me that oral evidence would inevitably be required. Broadly, this is an issue of practice that the Family Bar Association may be interested in because there is not very clear guidance on the way forward and I certainly will issue some in due course if needs be. But in the first instance, I am going to allow the parties an opportunity to correct the procedure and reflect on what, if anything, they want to do, given that there are obviously costs implications in this case.

[7] The one judgment that I have discovered myself on this issue, which is in relation to a matrimonial agreement and a 12(2) application, is the case of *H v H* [2001] NIMaster 15 of Master Redpath and I will give the parties a copy of that. It also refers to some procedural guidance in this area set down by Mr Justice Girvan, as he then was, in a case of *McCourt v McCourt* [2000] NIJB 577. But broadly, this case needs some attention in terms of procedural regularity. I am happy enough to adjourn this matter generally to allow a consideration of the correct procedural course unless the parties suggest anything else.