Ref: **Master49**

Judgment: approved by the Court for handing down Delivered: **26/6/07**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE OF NORTHREN IRELAND

FAMILY DIVISION
PROBATE & MATRIMONIAL

BETWEEN:

DONNA FREEMAN

Petitioner;

and

TERRY FREEMAN

Respondent.

Master Bell

[1] This matter concerns an application for ancillary relief made pursuant to a Summons dated 22 December 2005.

[2] Both parties swore affidavits for the proceedings: the petitioner wife swearing hers on 28 December 2005 and the respondent husband swearing his on 3 April 2006. At the hearing both parties gave oral evidence. In addition to the oral evidence I also had the benefit of submissions by Miss O'Grady on behalf of the petitioner and from the respondent on his own behalf.

[3] The petitioner has no assets of any significance. She lives in rented accommodation. Funds in her bank account are nominal.

[4] The respondent, jointly with his girlfriend, owns a house in Liverpool. The valuation of the property was a matter of some dispute. In his affidavit the respondent stated that it was worth "about £175,000.00" with a mortgage of £59,573.80. In his oral evidence he said it was worth £180,000.00 in August 2006 but did not know what it was worth now. On behalf of the petitioner Miss O'Grady said that a valuation had been attempted (unsuccessfully) and

that her client valued the property conservatively at £200,000.00". Miss O'Grady submitted that the equity in the property was therefore approximately £145,000.00 and that the respondent's share of this was approximately £72,000.

[5] The respondent's other assets were in the form of two pensions. Firstly, he has a Health Service pension through his current employer. Given his very short period of employment with this employer, I was not asked to attach a value to this pension. The respondent also has a pension following his employment with the Northern Ireland Prison Service. In October 2006 this had a CETV of £76,709.99.

[6] The petitioner is, as a result of poor health, currently unable to work. She receives state benefits which are spent soon after they arrive. The respondent currently works in the security department in a hospital in Liverpool. The respondent's income is approximately £1,500.00 per month.

[7] On behalf of the petitioner Miss O'Grady applied for:

(i) A Pension Sharing Order.
(ii) An Order for a lump sum.

THE HISTORY OF THE MARRIAGE

[8] The petitioner is aged 47. The respondent is also aged 47. The parties were married on 27 January 1979. They were separated in December 1993 and a Decree Nisi was granted on 25 October 2005. There are two children of the marriage: a daughter born on 12 September 1979 and another daughter born on 3 February 1983. A third child, now sadly deceased, was born in 1986. This is a long marriage in ancillary relief terms, lasting some 25 years. The evidence was that the parties adopted "traditional" roles. The respondent described himself as "the breadwinner". The petitioner worked at home with the children.

[9] The respondent initially worked as a porter in the early years of the marriage. He then joined the Northern Ireland Prison Service in 1986 where he stated he "fell into a drinking culture". He then began to run up a number of debts. At this point he left the marital home.

[10] In December 1993 the petitioner obtained a separation order whereby the respondent was ordered to pay the sum of £500.00 per month in respect of the petitioner and the sum of £300.00 per month in respect of the children. The petitioner's evidence was that the respondent disappeared and stopped paying maintenance in December 1998. The maintenance arrears were currently £18,000. The respondent's evidence was that, with paying £800.00 per month, he had "no money". At the time he was living in a room at

Maghaberry Prison. His evidence was that he had thought that, if he left his job, he did not have to pay the maintenance and that he was shocked when he discovered that he nevertheless had an obligation to pay maintenance arrears. The respondent accepted that he had not seen his children for eight years, nor contributed towards them.

[11] Upon his voluntary retirement from the Prison Service, the respondent received a lump sum of £72,121.00 in 2000. He retained all of this and neither his wife nor children received any of it. The respondent gave evidence that he spent the redundancy money on clearing debts, buying a house, discharging his girlfriend's debts, giving some money to three friends and furnishing his new house.

THE ARTICLE 27 FACTORS

Financial needs of the child

[12] Article 27 of the Order provides that first consideration must be given to the welfare whether a minor of any child of the family who has not obtained the age of 18. Both surviving children of the marriage are over 18.

Income and earning capacity

[13] The petitioner has not been able to work due to ill health. No evidence was given to me that this position is likely to change. The respondent earns approximately £1,500.00 per month.

Financial needs, obligations and responsibilities of the parties

[14] There was no evidence given to me of unusual financial needs in respect of the parties. The respondent had intended to marry his current girlfriend but now doubted whether he would be able to afford to. He has a bank loan to pay debts.

The standard of living enjoyed by the family before the breakdown of the marriage

[15] No evidence was given to me that the standard of living engaged by the family before the breakdown of the marriage was anything other than modest.

The age of each party to the marriage and the duration of the marriage

[16] As stated previously, the petitioner and respondent are both 47 and the marriage lasted 25 years.

Any physical or mental disability by the parties of the marriage

[17] While the petitioner receives Disability Living Allowance, there was no evidence that either party suffered from any disability which should be taken into account in this context.

The contribution made by each of the parties to welfare of the family

[18] The evidence before me was that the contribution made by each of the parties to the welfare of the family was unequal. The concept of "welfare" must be understood in a broad sense. In *G v G (Financial Provision: Separation Agreement)* [2000] 2 FLR 18, Connell J spoke of the "emotional contribution" to the welfare of a family. Welfare clearly also involves social support as children confront the educational and social challenges involved in adolescence. The petitioner has effectively cared for and brought up both children on her own since the parties separated. As stated, the respondent accepted that he had not seen his children for eight years, nor contributed towards them. During this period therefore, to use the terminology adopted by Lord Nicholls in *White v White* [2001] 1 AC 596, it is only the petitioner who has performed the role of child-carer.

Conduct

[19] Miss O'Grady submitted that, in conducting the Article 27 exercise, I should take into account the respondent's financial conduct. At the beginning of the marriage the parties lived in rented accommodation, subsequently buying their own house. However this was repossessed after only a few months because the respondent caused a default on the mortgage. The petitioner's evidence was that she knew nothing of the debts and that the respondent dealt will all the money matters. She described this state of affairs as "he did it his way" and she just received money for groceries. The respondent in his evidence accepted that the marital home was repossessed due to his debts. It was apparent that he is a poor money manager. While he stated he was no longer drinking excessively, his current financial position could not be described as stable. He gave evidence that he was overdrawn by £1,000.00 with his bank; that he had a credit card debt of £4,500.00; that he owed £5,000.00 to HMRC in respect of tax on his redundancy payment and that the Child Support Agency sought £426.00 per month in respect of a daughter whom he had fathered to another woman. The respondent pays a nominal CSA award of £25 per month in respect of that child who is now aged 8.

[20] Article 27 of the 1978 Order provides that the court shall in particular have regard to the conduct of each of the parties if that conduct is such that it would in the opinion of the court be inequitable to disregard it. In *Primavra v Primavera* [1992] 1 FLR 16 Butler-Sloss LJ observed :

> "Speaking entirely for myself, the conduct of a spouse in relation to financial matters, both those during the marriage and those taking place subsequent to the marriage, are capable of being considered as conduct which comes within s 25(2)(g). The question is whether or not this is in fact conduct which should come within that section, in that it should be inequitable to disregard it."

In *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618 Lord Nicholls observed that it was implicit in this provision that conduct outside this description was not conduct which should be taken into account. He had detected signs that courts were beginning to depart from the criterion laid down by Parliament for the taking into account of conduct. He therefore emphasised the limited circumstances in which conduct should be taken into account in ancillary relief decisions :

> "In most cases fairness does not require consideration of the parties' conduct. This is because in most cases misconduct is not relevant to the bases on which financial ancillary relief is ordered today. Where, exceptionally, the position is otherwise, so that it would be inequitable to disregard one party's conduct, the statute permits that conduct to be taken into account."

[21] I do not think it is appropriate to take into account the fact that, during the time the parties were living together, the respondent was inadequate as a money manager, or the fact that the matrimonial home was repossessed due to the respondent's debts. It is, however, appropriate in my opinion to consider the way in which he disposed of the lump sum of £72,121.00 which he received in 2000 upon his voluntary retirement from the Prison Service. As stated earlier, the respondent gave evidence that he spent the redundancy money on clearing debts, buying a house, discharging his girlfriend's debts, giving some money to three friends and furnishing his new house. The petitioner therefore received none of it and I conclude that this was conduct which it would be inequitable to disregard.

<u>Value of any benefit which by reason of dissolution of the marriage the party will lose</u>

[22] There were no such matters which I was asked to take into account.

<u>Other matters taken into account</u>

[23] Article 27 of Order requires the court to have regard to 'all circumstances of the case'. There are therefore matters which not fall within the ambit of Article 27(2) (a) to (h) but which may unquestionably be relevant

in a given case. In these proceedings there were no such matters which fell to be considered.

CONCLUSION

[24] It was submitted on the petitioner's behalf that an appropriate decision was :

(i) a lump sum of £54,000. This would reflect 50% of the respondent's equity in the property in Liverpool and the £18,000 arrears of maintenance.

(ii) A Pension Sharing Order in the amount of 50% of the CETV of the respondent's pension with the Northern Ireland Prison Service.

[25] The respondent gave evidence that he had previously made an offer of £33,000 to the petitioner. He made no submissions in respect of the petitioner's application for a Pension Sharing Order.

[26] On the facts presented to me, I conclude that it is appropriate that :

(i) the respondent pay a lump sum of £50,000 to the petitioner. This includes an offset against the arrears of maintenance and I discharge the maintenance order herewith.

(ii) there be a Pension Sharing Order in favour of the petitioner in respect of 50% of the respondent's pension. As the respondent is a personal litigant, I direct counsel for the petitioner to draft a pension sharing order and to seek the agreement of the trustees of the draft order within six weeks.

[27] In *M v M* (Financial Provision: Evaluation of Assets) (2002) 33 Fam Law 509, McLaughlin J stated:

> "Where the division is not equal there should be clearly articulated reasons to justify it. That division will ultimately represent a percentage split of the assets and care should be exercised at that stage to carry out what I call a 'reverse check' for fairness. If the split is, for example, 66.66/33.3 it means that one party gets two thirds of the assets but double what the other party will receive. Likewise, if a 60/40 split occurs, the party with the larger portions gets 50% more than the other and at 55/45 one portion is 22% approximately larger than the other. Viewed in this perspective of the partner left with the smaller portion – the wife in the vast majority of cases –

> some of these division may be seen as the antithesis of fairness and I commend practitioners to look at any proposed split in this way as a useful double check."

[28] Applying the reverse check commended by McLaughlin J., I consider this to be a fair division of the assets in the light of a consideration of the Article 27 factors despite the departure from equality.