

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between

EJ

Applicant

and

DJ

Respondent

O'HARA J

Introduction

[1] This is an application made by a wife for a variation of a Mareva Injunction which was granted on 8 October 2009. The wife was represented by Mr Alan Kane QC with Ms Adele O'Grady. The husband represented himself but was assisted by Mr John Junk acting as his McKenzie Friend.

[2] The terms of the injunction have already been varied once by consent, on 8 June 2011. It is the wife's case that a further variation should be permitted for three main reasons. The first is that her husband has stopped paying her the maintenance which was agreed in June 2011. The second is that she needs money to discharge debts and obligations which have accrued over the years, particularly a significant and mounting legal bill. The third is that the husband has enjoyed the benefit of money to which he is not entitled because contrary to the injunction he has had access to money or accounts improperly.

[3] The husband resisted the application. He presented an entirely different version of the 2011 variation which, he contended, meant that the wife had received broadly what she was entitled to by way of maintenance. He challenged any

suggestion that she needed any release of funds, least of all to pay her lawyers against whom he made various allegations. Finally, he denied the suggestion that he had gained access to any money or accounts in any improper way or contrary to the terms of the injunction.

[4] Before dealing with the details of this application I must record the fact that it is unacceptable that the dispute between the parties over the financial resolution of their affairs has gone on for so long. They married in 1988, separated in 2007 and divorced in June 2010. For seven years they have been in and out of court on a range of issues. In February 2013 Master Redpath gave a judgment against which the husband has appealed. That appeal is still outstanding. While the husband complains that he has been willing for a long time to settle their affairs, the wife's position is that this cannot be done until she can be assured that she has access to all relevant information about their assets. I do not have to deal with the issue of outstanding discovery in this hearing but it is clear the disputes could be resolved quickly if information was shared fully and properly. By way of example, each side appears to have given the other closing balances of accounts without giving the full details of those accounts which would show money going in and money going out. While each party seems to have done that, the accounts which the wife has not had access to seem much more substantial than any accounts to which the husband has not had access.

[5] In addition the husband complains that the wife wrongly believes in the existence of what he describes as a "phantom" £750,000. If he is right and her belief is misplaced he can demonstrate that very quickly by disclosing the full activities of the accounts to which, as he knows, she has been pressing for access. That would pave the way for agreement between them or alternatively for a short focused hearing on any disputed issues.

Submissions

[6] Mr Kane QC based his application primarily on the proposition that the injunction was granted to his client to protect her from the husband dissipating or hiding matrimonial assets. While it is in force to protect her, she is entitled to apply for the release of some of the assets if she proves the existence of need and the extent of that need. He further submitted that if the husband had been shown on the available evidence to have been accessing funds and accounts contrary to the injunction, the wife should be allowed an equivalent sum in order to restore the balance which the injunction was put in place to maintain. The funds in question are joint assets which should be divided between them in the near future when the case is finalised. Given the long marriage and the fact that the two children live with the wife there will inevitably be a substantial payment to her which will take account of any payment ordered on foot of this application.

[7] The husband challenged the fact that an injunction was granted in the first place. However it appears that he has not pursued an application to discharge it at

any time since 2009 even though he has been legally represented at various times by a number of different lawyers including senior and junior counsel. He contended that the very existence of the injunction had proved costly in that it had impeded him and his wife from making the best use of their assets.

[8] The matrimonial assets of the parties are considerable. They run into millions of pounds though it is not clear exactly what their total value is. For the purposes of deciding this application, I do not need to explore that nor do I have to resolve every issue which was raised during the hearing. I do note however that the concept of “need” for a couple with the wealth of these parties is different to “need” for many other people. I will now deal with the three issues summarised at paragraph 2 above.

Maintenance Arrears

[9] The wife’s case is that until the June 2011 variation of the injunction she was to receive €3,000 per month, an amount which was set in March 2010. From June 2011 that figure increased to €5,000 per month. Also from June 2011 the husband was entitled to receive £4,500. This is set out, along with other details, in the signed June 2011 variation to the injunction. The wife states that this monthly payment was to come to her in addition to rental income she received directly from a property in London and another in New Zealand. The London rental is currently a little in excess of £3,000 per month (less commission, maintenance etc). The New Zealand property brings in much less and is currently under renovation. The husband suggested that its rental value was in the region of £200 to £250 per month.

[10] The husband’s case, advanced at this hearing for the first time, is that the June 2011 variation was intended by him to mean that he would pay his wife €5,000 per month **less** the total of the income from the two rental properties. He is unable to provide any evidence to support his contention which I reject entirely. Indeed, it is undermined by his own actions in that €5,000 per month was paid by him from June to November 2011 and then from January to June 2012. This is entirely inconsistent with his so-called understanding of the June 2011 agreement.

[11] In the course of argument the husband asserted that he had never known what income the wife got from the London property and that he had stopped payments in June 2013 when he found out that the London rental should be in the region of £4,000 to £5,000 per month. Unfortunately, that assertion does not stand up to scrutiny. He had paid nothing at all in the month of December 2011 and between July 2012 and June 2013 he only paid either €2,000 or €3,000 per month. There is no paper or email trail which shows that he was stopping or reducing the monthly payments on the basis now alleged.

[12] For the purpose of this application I accept the figures provided by the wife which are that up to and including October 2014 the arrears and maintenance due to her are €117,000. She has received no monthly payments whatever since June 2013.

They should resume immediately. In the interim I order that she is to receive the sterling equivalent of €117,000 which I put at £92,400 based on a rate of €1.277 to the pound.

Outstanding debts and obligations

[13] The wife's case is that since the monthly payments stopped, and even before then, she has had increasing difficulty in paying bills which were formerly under control. For instance her home in Spain where she lives with their two children is in need of some repair. She also presented emails indicating that two friends have lent her a total of €13,000 though I note that these loans date as far back as 2008. The husband disputes this indebtedness and suggests that the wife leads a comfortable life with the children having gone on a holiday to Africa in the summer at the cost of about €2,000 each.

[14] Since I will order a payment to be made to settle the arrears of maintenance I do not intend to make an additional order for repairs to the home or repayment of loans to friends. This leaves the important outstanding issue of legal fees. A draft Bill of Costs dated June 2010 has been provided for a total of £333,076.31. The husband has attacked this bill and effectively accused the wife's lawyers of unnecessarily protracting the case in order to maximise fees when they should be working towards a settlement or at least a narrowing of the issues between him and his wife.

[15] I note the following points:

- (i) The husband himself has engaged a series of lawyers at different times, including senior counsel.
- (ii) This is a case which clearly warrants the engagement of senior counsel.
- (iii) The family's substantial assets are scattered across at least three continents.
- (iv) The tracking of money, accounts and policies has been problematic and protracted as will be illustrated later in this judgment.

In all the circumstances I accept that the wife has acted entirely reasonably in engaging and relying on her legal team to advance and protect her interests. They are entitled to be paid for what they have done and continue to do. It is well established that all of this gives rise to a need on her part to pay them - see G v G (Child Maintenance: Interim Costs Provision) [2009] EWHC 2080 (Fam). I have discretion to order a payment to be made in respect of this need: I am satisfied that this is a case in which I should exercise that discretion and I now do so.

[16] The draft Bill of Costs is not broken down or fully detailed in respect of either counsel or solicitors but given the complexity of the case and the amount of the

assets it does not appear to me to be prima facie excessive. When the draft was prepared in 2010 it is unlikely that all the subsequent events, delays and controversies were built into the estimate. At this stage I will order a payment of £200,000 so that the wife's need to pay a substantial proportion of her legal fees can be met. That is not the full amount sought but it will be sufficient for the wife to secure legal representation to the end of the case. At that point costs can be measured and apportioned as appropriate. The normal approach in matrimonial cases is for each side to bear its own costs but where one party has unreasonably added in any substantial way to costs, that party can expect to be ordered to make a contribution to the costs of the other party. It does not fall to me at this stage to measure or apportion the overall costs of this dispute but the conclusions which I have reached in this judgement will undoubtedly be relevant at that time.

Breaches of the Injunction

[17] The third and final element of the application to vary the injunction to allow a payment out to the wife turns on whether the husband has been in breach of that injunction in any or all of seven ways. I will deal with each in turn below:

- (a) The wife says that in May 2011 the husband encashed a Prudential policy in his sole name for £161,865. After paying off a loan from the Bank of Scotland for about £66,000, the money was directed elsewhere. It went to a Generali International offshore account. The wife seeks a payment of £93,000 because the husband has dealt with assets without approval contrary to the injunction. He accepts that approximately £93,000 went to the Generalia account which he described as an "investment structure" but he says it was then moved to a Scandia bond jointly held by the parties. He asserted that this was done after his wife had refused to co-operate with the company acting in their joint interests and that the movement of money was conducted by another company (WMG) with whom he and his wife have a general discretionary management agreement. In the absence of paperwork to support these contentions I accept the wife's proposition that this money was moved in breach of the injunction on his instructions and more than once.
- (b) The wife contends that the husband opened two accounts with Lloyds in June 2010 in breach of the injunction and closed them in October 2011, also in breach of the injunction. An amount of £87,258 was withdrawn on 27 September 2011 from one of the accounts. The wife seeks an equivalent payment to be made to her. The husband accepts that these accounts were opened and closed in breach of the injunction. He says this was done for good reason i.e. to avoid bank charges on monthly maintenance payments. The money from the accounts was then returned to the original account. This episode discloses the husband's complete disregard for the injunction. It does not automatically follow that the £87,258 was used for some improper purpose but the fact that the injunction was breached, as effectively admitted by the husband, and the fact that he has not given full disclosure of the

accounts in HSBC and Lloyds so as to allow the trail to be followed persuades me at this hearing that he has manipulated money and accounts in breach of the injunction to his own benefit.

- (c) The same applies to a second Lloyds account for £2,500 which was opened and closed in the same timescale as is set out above.
- (d) The wife alleges that the husband opened a further account with HSBC in March 2012 and lodged approximately £65,000 in it. She says that she does not know where this money came from. He asserts that this represents the closure of another account, the "888" account and the payment over of money left in it. Again this involves him in having breached the injunction.
- (e) The wife says that in February 2012 the husband provided his then solicitors with a banker's draft for £10,000 for costs, which draft was drawn on a HSBC account. When this was drawn to the Master's attention, he wanted to know the source of the funds. The lawyers indicated that they understood it was drawn on funds held by the husband's employers. He says instead that the £10,000 was a combination of money which he held from his £4,500 per month, topped up by loans from his sister and father. He went on to claim his wife's solicitors suggested to his then solicitors that the £10,000 should be split on a 50/50 basis between them. Mr Kane submitted that this allegation was false, that no split was ever suggested and that what in fact happened was that his solicitors ceased to act for him and came off the record. On the evidence before me I do not believe the husband's version of events. Rather I believe that there has been yet another breach of the injunction.
- (f) The wife claims £45,518 on foot of a Zurich account, known as "401" for the purposes of this hearing. This was encashed and paid into the Hong Kong Citibank account. Zurich has confirmed the existence of the policy and that it was cashed but says that this was not a breach of the injunction on its part because the relevant actions were taken by Zurich in the Isle of Man which had not been served with a copy of the injunction. The husband's response to this issue is intriguing. He did not dispute the £45,518 but said that he did not sign the relevant documents. Then he said "I don't say I didn't receive the money" and that the money may have been transferred but that he was not in breach of the injunction. He suggested impropriety on the part of his wife and/or her representatives by pointing out that the photocopied papers before the court were redacted at the point where his signature would have appeared. In reply Mr Kane read an email from Zurich confirming that it had redacted the signature before providing the documents, apparently to reduce the risk of fraud from signatures being copied. On this issue I do not believe the husband at all. I believe that he signed the documents to cash the policy and accepted the £45,518 in flagrant breach of the injunction.

[18] The total figures involved in the preceding paragraph amount to £303,276. Since I am satisfied that the husband has repeatedly breached the injunction by moving or obtaining money to this extent the question is whether I should in the exercise of my discretion vary the injunction to order a payment to the wife of an equivalent figure. The question here is not so much need on her part – the main proposition advanced for the wife is that since the injunction was put in place to hold the status quo between the parties and since it has been flouted by the husband, the wife should receive an equivalent amount to restore the status quo. The husband has no answer to that beyond denying the breaches of the injunction, a denial which I reject. Implicit in this application is a fear that more assets may have been moved (and put beyond reach) than has been discovered so far. Of course it does not follow that she should automatically receive a payment of an equivalent sum. I can order that she receives a lesser amount or none at all at this stage. In this case I will order a payment of £200,000, a significant portion of the full amount because I believe the husband's breaches are serious, repeated and deliberate and also because any money paid now will be taken into account when the final division of assets is calculated.

[19] In conclusion therefore I am satisfied that in light of the need established by the wife and in light of the husband's breaches of the injunction I should exercise my discretion to ensure that her needs are met and the balance between the parties which the injunction was to maintain is restored. Accordingly, I order a variation of the injunction to provide for a payment to the wife of £92,400 for maintenance arrears, £200,000 for legal fees and £200,000 in respect of breaches of the injunction. This represents a total of £492,400.

[20] The application dated 23 May on behalf of the wife was for a lump sum payment to be released to her from two specified sources, a Norwich Union policy and a Prudence Bond. The husband submitted that if I was against him on any of the issues he would seek to raise the amount ordered other than by reference to these specific sources. I agreed that he would be allowed 10 days after judgment was delivered to specify how any relevant amount would be raised. To that end he and his wife signed authorities, which are now held by the court office, covering a range of policies and accounts. It is now up to the husband to suggest which of them should be encashed to raise the total payment which I have ordered. He should understand however that the money has to be raised within a reasonable time. If necessary I will hear the parties on that issue and on the costs of this application.

[21] Finally I emphasise again the urgent need to bring an end to this protracted and expensive litigation. That cannot be achieved until the parties are confident that they have full disclosure of financial matters. During the course of the exchanges before me many of the areas in dispute were emphasised or highlighted again. I indicated what precisely should happen, particularly in respect of those accounts where full statements have been withheld and only closing balances have been provided. In order to ensure that progress is made I will review the case on a date to be agreed in approximately four weeks so that any final orders for disclosure can be

made and so that a date for the hearing of the appeal from the Master's order can be set.