Ref:	**Master 52**

Judgment: approved by the Court for handing down (subject to editorial corrections)*	***Delivered:*** **26/11/07**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

H

Petitioner;

v

H

Respondent.

(No 1 of 2007)

MASTER REDPATH

I should commence this judgment by commending the parties and legal teams on both sides involved in this application for ancillary relief. The case was run in a most economical manner, with the value of all assets being agreed and the issues succinctly stated for the court. The main issue was largely a legal issue and only oral argument was required in respect of it. A subsidiary issue was the possible inheritance to be received by the wife in the case. During the course of the case she gave an undertaking that in the event that she did receive any inheritance from her father, who lived out of the jurisdiction, she was prepared to undertake to give the Respondent between 15% to 20% of that inheritance. I have accepted that undertaking as to 15% of any potential inheritance.

The assets in the case were as follows:-

(i) various banks accounts and shares owned by the Petitioner amounting to £13,573.00;

(ii) a Volkswagen Beetle car which was subject to finance which I have not taken into account;

(iii) the matrimonial home owned jointly with a net value of £599,757.00;

(iv) an endowment policy jointly owned to the value of £19,500.00;

(v) household contents;

(vi) the husband's half share in a Spanish apartment which share was valued at £66,500.00;

(vii) his shareholding in his business valued at £754,376.00 after Capital Gains Tax;

(viii) a share portfolio valued as of 13th April 2007 at £51,295.00;

(ix) Viridian shares disposed of in December 2006 to the value of £5,962.00;

(x) three bank accounts totalling £90,473.00;

(xi) a jaguar car valued at £20,000.00;

(xii) ground rents valued at £6,000.00.

This gave a total of assets worth just over £1.6 million.

In addition to this the husband had pensions valued at £175,276.00.

The income of the Petitioner is £953.00 per month plus maintenance of £1,835.00 per month paid to her by the Respondent. His income is in the region of £180,000.00 per year.

As I have said all valuations in the application were agreed and the issue, apart from the inheritance issue, related to the length of time of separation of the parties prior to the proceedings for ancillary relief being heard, the parties having separated as long ago as December 1996 having been married in 1974.

This marriage must be regarded as a lengthy marriage and accordingly the starting point in most such cases should be 50-50. The husband in this case argued that due to the length of the separation, and the fact that a number of the assets had accrued post separation, the Petitioner's share should be rebated to reflect those facts.

I note in passing that either of these parties could have petitioned for a divorce in 2001 on the basis of five years separation and immediately thereafter they could have applied for ancillary relief. The decree nisi in fact did not issue in the case until 21st December 2005.

The issue of applications for ancillary relief following lengthy separations has been considered by the courts in England and Wales on a number of occasions in recent years.

In the case of Cowan v Cowan [2001] EWCA Civ 679 Lord Justice Thorpe states at paragraph 58 the general principles that the court should apply in ancillary relief cases following the House of Lords Judgment in White v White [2001] 1 AC 596:-

> "[58] In summary thereof these seem to me to be the consequences of the House of Lords recent review of the ancillary relief cases in this court. Approved is the frequent theme of decisions in this court that the trial judge must apply such criteria as are to be found in section 25. Approved also is the almost inevitable judicial conclusion that the unexpressed objective of the exercise is to arrive at a fair solution. Disapproved is any discriminatory appraisal of the traditional role of the woman as a home maker and of the man as a bread winner and arbiter of the destination of family assets amongst the next generation. A calculation of what would be the result of equal division is a necessary cross-check against such discrimination. Disapproved is any evaluation of outcome solely or even largely by reference to reasonable requirements. Insofar as the yard stick of reasonable requirements was a judicially created tool to enable negotiators and judges respectively to predict and calculate conclusions it introduced an element of predictability and accordingly curtailed the width of the judicial discretion conferred by Parliament".

That is the approach, as refined by the House of Lords in Millar and Millar that should be the starting point for any application for ancillary relief.

The case of Rossi v Rossi [2006] EWHC 1492 (Fam) considered the issue of assets required post separation. In it Nicholas Mostyn QC sitting as a Deputy High Court Judge states at paragraph 10.

> "[10] In all cases now a primary function of the court is to identify matrimonial and non matrimonial property. In relation to property owned before the marriage by inheritance or gift, there is little difficulty in characterising such property as non matrimonial (provided it is not the former matrimonial home). The non matrimonial property represents all unmatched contribution made by the parties who brings it to the marriage justifying, particularly where the marriage is short, a denial of an entitlement to share equally in it by the other party: …
>
> [11] But what of money or property acquired by one party after separation? This gives rise to a number of conceptual problems which I have to say have not been altogether resolved in Miller …".

The learned Deputy Judge continues at para 13:-

> "[13] It has always been the case that, where a party has by virtue of his own industry created further assets after separation, such sole unmatched contribution should be recognised and reflected by the court in its award. On the other hand, if a matrimonial asset has

> simply increased in value during the period of separation as a result of passive inflationary economic growth (such as the increase in the value of a house) then it would seem obvious that such growth is an accrual to the original matrimonial property".

In Rossi the learned judge indicated that any court dealing with the issue of post separation accrual of assets should take into account whether litigation has been unduly delayed and, whether the parties have been financially linked throughout and whether or not the Respondent, usually the husband, has failed to make adequate interim provision. He goes on to state at paragraph 24:

> "[24] In deciding whether a non matrimonial post separation accrual should be shared and, if so in what proportions, the court will consider among other things whether the Applicant has proceeded diligently with her claim; whether the party who has the benefit of the accrual has treated the other party fairly during the period of separation; and whether the money making party has the prospect of making further gains or earnings after the division of the assets and, if so, whether the other party will be sharing in such future income or gains and if so in what proportions, for what period, and by what means"

Dealing first with delay Jackson Matrimonial Finance and Taxation (7th edition, 2002) in paragraph 5.7 states:-

> "Whatever the length of the marriage, a claim may fail if it is left dormant for too long, in which case one factor may be that the husband's assets have been built up with another woman. It has been said that after a long lapse of time a party to a marriage should be entitled to take the view that there would be no revival or initiation of financial claims against him; the longer the lapse of time the more secure he should feel in the re-arrangement of his financial affairs and the less should any claim be encouraged or entertained".

As Nicholas Mostyn QC pointed out in Rossi v Rossi the authorities for these propositions are all quite old. He goes on to state in paragraph 29 of his judgment:-

> "Further, with the change in property values and with inflation as it is in our present economic situation, as well as with the changes in the parties' own situation and the commitments they take upon themselves, the whole case can be materially altered and the ability of the parties to cope with any orders that the court might otherwise have properly have made upon the merits of the case may be put in jeopardy. Indeed, delay can put the court in the simple position of not being able to do justice between the parties according to the merits of the

> case. Unless it can clearly be shown that one party bears the greater responsibility for the delay than does the other, the court may be left with no alternative but to make an order which does not reflect the merits of the case".

As regards the delay in this particular case I think it is important that the court should distinguish between delay post the issue of the decree nisi and delay pre the issue of the decree nisi. As I have already stated in this particular case the parties had from 2001 to issue proceedings and either of them could have done so. Accordingly I am not sure that I could say in this case that any blame attaches to either party for the delay in the bringing of this application. Any party has a statutory right to wait for five years before bringing divorce proceedings and accordingly I do not feel that delay is an issue in this case.

Another issue is the extent to which the court should take into account assets that have been accrued post-separation as they do not fall necessarily within the category, strictly speaking, of matrimonial assets.

In the case of N v N (financial provision: sale of company [2001] 2 FLR 69 Coleridge J states at page 77 and 78:-

> "Mr Mostyn urges me to reject this argument completely because, as he rightly points out, traditionally these applications have always been

> approached on the basis of the values existing when the hearing takes place.
>
> I am quite sure that even now in most cases that is the correct date when the valuation should be applied but I think that the court must have an eye to the valuation at the date of separation where there has been a very significant change accounted for by more than just inflation or deflation … In this case the increase in value is attributable to the extra investment of time and money by the husband since separation and I do take into account the exceptionally steep increase in the turnover figures since the date of separation …".

The largest asset in the case was the Respondent's interest in his business which was largely in turn reflected in the value of the premises owned by the business which had been purchased, as I understand it, in 1991. This has clearly significantly increased in value post-separation. Some of that increase is likely to be in the nature of an inflationary increase but some of it must also be attributed to the husband's continuing work in the business.

It is also clear to me that the affairs of the husband and wife have been intrinsically interlinked since the date of separation and the wife has always been dependent on the husband, and to be fair to him, he has continued to maintain her. I have to say however that the degree of maintenance by the husband at a figure of

£1,835.00 per month to include payment of bills falls somewhat below what one would have expected him to pay given his income, and accordingly, there is an element in the assets acquired post-separation, which was acquired as a result of this under provision for his wife.

The aim of the court in ancillary relief proceedings is to try and produce a fair result. Taking all matters into consideration I feel that the Petitioner is entitled as follows:-

(1) 50% of the equity in the matrimonial home £300,000.00;

(2) 100% of the endowment policy valued at £19,500.00;

(3) 40% of the husband's interest in the business which equals £301,750.00;

(4) 33% of the husband's half share in the Spanish apartment which equals £21,945.00;

(5) 33% of the husband's First Trust deposit accounts which equals £26,730.00;

(6) 33% of the husband's shares which equates to £15,041.00;

(7) 33% of the husband's ground rent holdings which equals £2,000.00.

This gives the wife a total of £686,966.00 which I will round up to £700,000.00. If we add to this the wife's own assets of £13,573.00 that produces a figure of £713,513.00 out of a total of assets of £1.6 million without taking the pensions into account. Whilst this gives the wife less than 50% of the total assets it does reflect the fact that many of the assets were acquired post-separation. It also takes into account fairness and the fact that in some respects it can be argued that the Respondent under provided for his wife, given his very large income. Accordingly the wife should receive assets totalling £700,000.00 from the jointly owned or solely owned assets of

the husband and should retain her own assets including her car and 85% of any potential inheritance from her father. I have not taken either of the cars into the equation. Accordingly; I intend to order that this figure should be arrived at by the matrimonial home being transferred to the wife. This is worth £650,000.00 after the mortgage has been settled which I will direct the husband should clear. In addition to this the husband must also pay the wife a lump sum of £30,000.00 and the Zurich Endowment Policy. Taking into account the £50,000.00 required to clear the mortgage and the wife's solely owned assets this leaves the wife with approximately £713,000.00 out of the matrimonial pot.

There will be also be a 50% pension share. It could be argued that as a good deal of this pension was acquired post separation there should also be a departure from equality here. I take the view however that, when split, the fund will be relatively modest and that in the interests of fairness, given that the Petitioner's income after her husband retires will be drastically reduced, there should be a 50/50 split.

This is clearly, as I have already pointed out, a case where the parties have been financially interlinked for many years, and clearly a case, given the very modest income of the Petitioner, and the very substantial income of the Respondent, that is suitable for ongoing periodical payments. Accordingly I intend to order that the Respondent pay to the Petitioner periodical payments of £2,500.00 per month until further order or until the retirement date of the Respondent as specified in his partnership agreement. This should also permit the Petitioner to build up her pension.

As I stated at the start of the judgment all of this is based on the Petitioner's undertaking to provide the husband with 15% of any inheritance that she may receive at some stage in the future from her father's estate, no details of which were made available to the court.