

Master 34

24/11/2005

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between

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Petitioner

And

L

Respondent

Master Redpath

In this matter the Petitioner applies for the full range of Ancillary Relief available to her. In many ways it is an unremarkable case but two issues arose in it which I felt made it necessary for me to give written judgment in the matter.

The assets in the case could be succinctly described as: -

1. Matrimonial home agreed at £100,000.
2. A boat valued at £95,000.
3. Two Northern Bank savings accounts totalling £13,500.

The unusual aspects of the case are that virtually all of the assets were acquired by the Respondent many before the marriage and the fact that the Petitioner is now 44 of age and the Respondent 73 years of age.

The parties were married on 26 March 1983 and have no children. The decree nisi was granted on 29 September 2004 so accordingly this is a 21 year marriage. The Respondent is retired and receiving approximately £1,500 per month by way of a pension and £103.00 State Pension. The Petitioner remains in work and at the date of

the swearing of her affidavit was earning £1080.00 per month. Her evidence was that she is presently living with her mother.

The Respondent gave evidence that the matrimonial home was purchased in 1971 when the Petitioner would have only been 10 years old. The mortgage has now been paid off. When he retired he received a lump sum with which he purchased a boat. He also accepted that there has been a significant decrease in his savings which he attributed to the purchase of a car and legal expenses. Miss O'Grady argued strongly for the husband that all of the assets were premarital, that there were no children and that as the basis for the family's prosperity came from the Respondent's wealth, there should justify a significant departure from equality. She also argued that the Respondent's future earning capacity was very limited and that his health (he has heart trouble) was not good.

Miss Creighton for the Petitioner argued that post White -v- White [2001] 1AC596 after a lengthy marriage equality should be a starting point in deciding how the matrimonial assets should be divided. She also argued that by entering into this marriage the Petitioner had been led to believe she would get financial security both in terms of income and housing.

There is no doubt that on any argument, this must be regarded as a lengthy marriage. In GW-v-RW [2003] 2FLR1008 Nicholas Mostyn QC in discussing the issue of the length of the marriage states in page 221: -

“I do not shrink from saying that this is a difficult issue, the logic deployed by Mr Pointer has obvious force. But on the other hand it seems to me that to adopt it requires me to put a blue pencil straight through the statutory criteria of the duration of the marriage. The failure of the Judge in L -v- L (financial provisions; contributions) [2002] 1FLR642 to give sufficient weight to this factor was specifically criticised by the Court of Appeal. It seems to me that the assumption of equal value of contribution is obvious when the

marriage is over 20 years. For shorter periods the assumption seems to be more problematic.”

In a number of judgments starting with C –v- C No.1 of 2005 I have considered the issue of inherited wealth and wealth brought to a marriage at considerable length and do not intend to rehearse all of the arguments in this judgment.

Lord Nichols in White –v- White states at page 605: -

“Before making a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should only be departed from only to the extent that there is good reason for doing so. The need to consider and articulate reasons from departing from equality would help the parties and the Courts to focus on the need to ensure the absence of discrimination.”

White –v- White was of course a big money case, this is not such a case. In smaller money cases very significant departures from equality can be made where for instance a party has responsibility for bringing up the children of the family and has housing needs in order to accommodate them. This is not the case here. In this case each party has a reasonable income but the Petitioner clearly requires money to fund the purchase of a house.

We should not forget that the Petitioner in this case, although not providing anything significant by way of a capital contribution, has worked throughout the length of marriage and has contributed to the running of the household during the course of it to the extent that she has very few capital assets of her own.

Under Article 27 (d) of the Matrimonial Causes Order (Northern Ireland) 1978 one of the matters that I must take into account is the age of the parties. Although there is no doubt that in this case there is a very significant disparity in age between the parties, this does not translate into a disparity in earning capacity, as

given the Respondent's pensions, it seems clear to me that he is always likely to be earning a greater sum of money than the Petitioner. Accordingly in this case I do not feel that the age of the Respondent or his future earning capacity is an issue.

It was also argued before me that the Respondent suffers from ill health
Duckworth states at B3 [42]: -

“Poor health on the part of one spouse may create a need for greater capital, for example to adopt the home or to finance nursing care. However, the court must always perform a balancing exercise and the point may be reached in some cases where it is not reasonable to expect the spouse to underwrite the healthcare of the other spouse.”

See in this regard Seaton –v- Seaton [1986] 2FLR398

It does not seem to me that the nature of the Respondent's ill health is likely for the foreseeable future to require the adaptation of the home or the financing of nursing care.

Accordingly it seems to me that the only argument to which should really concern me is the question on contribution. I frequently quote in these judgments the remarks made by McLaughlin J made on page 39 of the judgment in M –v- M where he states in relation to long marriages: -

“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 66.6 to 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 portion gets 50% more than the other and a 55/45, one portion is 25% approximately larger than the other. Viewed in this way from the perspective of the partner left with the smaller portion – the wife the vast majority of cases – some of these problems may be the antithesis of fairness and I commend divisions to look at any proposed split in this way as a useful double check.”

It is also useful to bear in mind the words of Baroness Hale in Foster –v- Foster [203] 2FLR299 where she states at page 304: -

“The Matrimonial Causes Act 1973 was designed to move away from the application of strict property law principles with their dependence upon evaluating contributions of money or money’s worth towards the recognition of marriage is a relationship to which each spouse contributes what they can in their different ways.”

As I have already said, this was a long marriage and the Petitioner contributed financially fully to it during the course of their 22 year marriage. Is it right therefore that she should walk away from this relationship with a significantly reduced entitlement because she moved into a house that was purchased before she was married? I do not believe that it is I feel that some discount can be given for contribution in this case and will order that she receives 45% of the nett assets in the case. Valuing those assets as £210,000 this leaves her with the entitlement of a lump sum of £84,500.00 which I will round up to £85,000.

I will now hear argument as to costs.