

Neutral Citation No: Master 61

Judgment: approved by the Court for handing
down

***Delivered:* 6.8.08**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

M

Petitioner;

and

M

Respondent.

No 1 of 2008

MASTER REDPATH

[1] This is an application on behalf of the Petitioner wife for Maintenance Pending Suit. The ongoing divorce proceedings are protracted and difficult. An answer and cross-petition has issued. It would appear that an attempt was made on the Respondent's behalf to agree cross decrees during the month of June but it seems that this was not acceptable and accordingly the divorce may not be listed for hearing for some time. There have also been protracted Children Order proceedings.

[2] The Petitioner wife now applies for maintenance pending suit. The husband had been paying the sum of £2,500 per month to include the rent of a privately rented dwelling house in which the Petitioner and the two children of the family aged 9 and 7 years reside.

[3] Prior to the separation the Petitioner and the children enjoyed a very high standard of living. In her affidavit, and this was not denied, she states that she would have spent up to £10,000 per month on clothes; that she had two vehicles; a BMW 5 series and a convertible Mercedes, and that the parties enjoyed numerous holidays together and with the children.

[4] Three months ago the Respondent unilaterally ceased paying the £500 per month for rent as he had come to the view that the Petitioner was having an affair with the landlord who it would appear is an old school friend of the Petitioner. The Petitioner denied that any such relationship had ever existed.

[5] The Petitioner is presently in receipt of Disability Living Allowance, Severe Disability Living Allowance and Child Benefit totalling approximately £840 a month. She sought to have this made up to a sum of £4,000 per month by way of a further payment from the Respondent of £3,150 per month to include rent.

[6] The husband had agreed to restore the rental payment but would not move on the £2,500 per month that he pays, and argued through his Senior Counsel that this is a case decided by need only and that what he was providing, together with the benefits received by the Petitioner, was sufficient for her present needs. This is an argument regularly advanced before me in cases of this type. It was not argued at the hearing that the wife's alleged relationship with her landlord was continuing.

[7] In any event a wife's adultery is not a bar to Maintenance Pending Suit see Offord - v- Offord {1982} 3FLR at 309 and therefore the issue in the case is the suitable quantum to apply.

[8] Although the Respondent's sworn affidavit and accounts were provided he chose not to give any evidence. In his affidavit he stated that his total monthly drawings were £3,150 and that his total monthly outgoings were £9,177. However; the last completed figures for his two businesses showed that in the year ending 2006, he drew no less than a figure in the region of £293,000, which I calculate as nett monthly drawings of almost £24,500 per month. The last set of accounts for the two businesses showed that they had a combined nett profit of a figure in the region of £575,000.

[9] Applications for maintenance pending suit in cases such as this are unusual. Duckworth notes at B2[8]:-

"Maintenance pending suit tends to be on the low side compared with post decree periodical payments, because the courts attention is focused on immediate needs. A pre-existing voluntary payment, such as regular housekeeping, will assist in setting the level; conversely, a parsimonious husband may find himself having to lay out more than he expected. The application is generally argued on budgets without oral evidence. It is not, however, the practice of the courts to look in detail at the payer's budget; what is important is that the maintenance is a fair proportion of his overall nett income".

[10] In the case of M -v- M [2002] 2 FLR at 123 at paragraph 122 Charles J states concerning cases above the usual income level:-

"I also accept in determining what is reasonable in a case such as this I should have regard to the standards of the very rich and not to be impressed by middleclass standards or any implication that periodical payments for maintenance should be judged by those standards.

[11] He goes on to state at paragraph 124:-

“Having said that I accept that the standard of living during the marriage is a very relevant factor but it seems to me that in determining what is reasonable in any given case the rival contentions of the parties both as to the interim and final position cannot be disregarded...”

[12] In the case of F -v- F (Ancillary Relief) [1995] 2 FLR at 45 Thorpe J states at page 49 in looking at a similar type of case:-

“So what considerations bear upon the exercise of my discretion? First, I think that it is very important to recognise that in measuring affluence, extravagance and reasonable needs there are no absolutes. All these concepts are comparative”.

[13] He then goes on to state at page 50 of the judgment:-

“Thus, in determining the wife’s reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people.... I think that it is necessary to establish a yard stick that more nearly reflects the standard of living which has been the norm for the wife ever since marriage and for the husband for considerably longer”.

[14] It seems clear to me that in most cases a close examination of the applicant’s budget and the disregarding of any excessive items is a useful exercise. In a case where you have a Respondent whose income on his last audited accounts was in excess £24,000 per month, a different approach can be taken.

[15] In this case the Petitioner was cross examined at length about such items as gym fees, a beautician for her eyebrows and computer use etc. In the normal run of case these might have been relevant and proper questions to ask. In this particular case I am not sure how relevant or helpful such information will be to the court.

[16] Given the income of the Respondent I think that the Petitioner's expectations are in fact modest, particularly as she has two children to look after, who would it would appear inter alia, have regularly spent hundreds of pounds on designer clothes on a trip to the clothes shop. It is also clear in law that the court can quite properly adopt a different approach to a case of this type than it would in a more modest type of case.

[17] Accordingly I intend to order that the Respondent pay to the Petitioner the sum of £5,000 on the 16th July to make up for the withholding of rental payments for the last three months and thereafter £3,500 per month commencing on the 16th August. payable by direct debit until further order of the court.

[18] I will reserve the costs of this application and consider them in due course when the costs of the ancillary relief application are being considered.