

Neutral citation : [2009] Master 69

Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **22/4/09**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

PROBATE AND MATRIMONIAL

BETWEEN:

Martin Manning

Petitioner;

and

Patricia Manning

Respondent.

Master Bell

[1] In this application the Petitioner applies for ancillary relief pursuant to a summons dated 4 June 2008. The order he seeks is one on terms similar to those set out in an agreement which he and the Respondent allegedly entered into in November 2006. As a preliminary point the court was asked to consider whether or not the parties had entered into such an agreement.

[2] At the hearing on 20 March 2009 I determined that there had been an agreement between the parties and I said that I would furnish the parties with written reasons for my decision.

THE HISTORY OF THE MARRIAGE

[3] Mr Manning is aged 59. Mrs Manning is aged 53. The parties were married on 6 September 1972. They separated in or around 1999. There are five children of the marriage, all of whom are now aged over 18.

[4] A Decree Nisi was granted on 6 September 2006. Mr Manning was then, and is now, represented by Miss Jordan instructed by Agnew, Address,

Higgins Solicitors. Mrs Manning was then represented in the proceedings by Mr Edmondson instructed by Karen Fox Solicitors but now appears as a personal litigant.

[5] Following the Decree Nisi there was an exchange of correspondence between the solicitors, together with an exchange of financial information, in preparation for a joint consultation between the parties and their legal teams. That consultation took place at the Royal Courts of Justice on 27 November 2008. It is the outcome of that consultation which is disputed between the parties.

EVIDENCE OF MR EDMUNDSON

[6] Mr Edmondson was called as a witness for Mr Manning. He adopted as his evidence an affidavit which he had sworn on 9 January 2009. His evidence was that at the joint consultation he had spent some time speaking to Mrs Manning, who was accompanied by her sister, Deirdre Dougal. He formed the impression that Mrs Manning had an anxious disposition and so sought to put her at ease. He explained the purpose of the joint consultation and the possible outcomes. He explained that it was always preferable if the parties could agree a reasonable settlement without recourse to the cost and potential acrimony of a full court hearing. He explained that sometimes it was not possible to agree but that the final decision was the client's. He explained that, if matters were agreed, these would be reduced to writing by way of Heads of Agreement. These would later be engrossed in a full financial settlement which included all the statutory references and provisions regarding claims on each other's assets and suchlike matters.

[7] Mr Edmondson gave evidence that he then had discussions with Miss Jordan. She made an offer on behalf of the husband (one that she considered overly generous). Mr Edmondson recommended the offer to his client, advising that she might not do so well if the matter went to a full hearing. Mr Edmondson stated that, after some further discussion, he suggested that Mrs Manning and her sister take some time to discuss the offer privately. Mrs Manning and her sister then went outside to the front of the Royal Courts of Justice to discuss it. Some time later they returned and Mrs Manning indicated that she would accept the offer.

[8] Mr Edmondson gave evidence that, at this point, Miss Jordan prepared Heads of Agreement. He stated that he then took Mrs Manning through the document and explained its meaning.

[9] The Heads of Agreement is a two page handwritten document on A4 pages. It is headed with the names of the parties followed by the heading "Heads of Agreement" and three paragraphs. These are ;

- “1. Mr Manning shall transfer his estate and interest in the former matrimonial home...to Mrs Manning.
2. Mr Manning shall retain all his pension lump sum and redundancy sum.
3. This agreement is by way of a clean break settlement between the parties and is in full and final settlement of all claims either party may have against the other for any form of ancillary relief or any other claim against the other whether now or at any time in the future.”

[10] Mr Manning signed the Heads of Agreement with his signature being witnessed by his solicitor Mr Robb. Mrs Manning also signed the Heads of Agreement. Mr Edmundson stated in his evidence that Ms Dougal acted as the witness to Mrs Manning’s signature. He is, however, incorrect in this assertion as an examination of the document shows that Mrs Manning’s signature is witnessed by Miss Fox.

[11] In his oral evidence Mr Edmondson was asked to comment on paragraph 9 of Mrs Manning’s affidavit where she had stated that she was assured “the piece of paper I was signing was not a legal document and that I could change my mind at anytime up until the real document was signed”. He gave evidence that he did not give that advice to Mrs Manning and indeed had never given that advice to any client. His view was that, once a client had signed a document setting out Heads of Agreement, they had entered into a legal agreement.

EVIDENCE OF MISS FOX

[12] Miss Fox was also called to give oral evidence on behalf of Mr Manning. As her evidence to the court she adopted the contents of her affidavit sworn on 7 January 2009. She had seen Mr Edmundson’s affidavit and concurred with its contents as to what had occurred at the joint consultation.

[13] She gave evidence that Mrs Manning was given advice that this was a financial settlement between the parties and after court a comprehensive version would be drawn up for signature.

[14] Miss Fox also addressed the question of whether Mrs Manning had been advised that, once she had signed the Heads of Agreement, she could change her mind. Miss Fox said Mrs Manning had not been advised either by herself or by counsel that she could change her mind.

EVIDENCE OF DEIRDRE DOUGAL

[15] Ms Dougal had not sworn an affidavit but had instead provided a signed statement. At the hearing of this matter she read her statement into the record as her evidence. In terms of her perceptions of what was occurring at the joint consultation, she said she did not perceive the discussions as “a legal conversation” since there had been no quotations from legal texts. Ms Dougal stated that being in a legal environment, surrounded by people was pressurising. She was shocked by the fact that pension documentation in relation to Mrs Manning’s son was contained in counsel’s papers. She felt that counsel did not have the proper documentation.

[16] She described how Miss Fox and Mr Edmundson advised Mrs Manning that she was getting a good deal. She stated that:

“At one stage her barrister had scribbled something on a piece of paper and both he and Karen Fox continued pressing Patricia into signing it. I never read what was written on the paper”.

[17] Ms Dougal described the Heads of Agreement as “a scrap of paper” and stated that its appearance led her to conclude that it was not a legal document. She conceded that it had been explained to Mrs Manning that she was getting Mr Manning’s share of the house.

[18] Ms Dougal described the discussions as having been going “round and round”. Mrs Manning was being advised by her legal team “This is a good deal. You need to sign it.” She could see that Mrs Manning was being “seriously pressurised”. She described Mrs Manning as having become “emotional” and as needing to get away and calm down. She therefore suggested that she and Mrs Manning go outside. Once they had taken a break outside the Royal Court of Justice, Ms Dougal said to Mrs Manning “Just sign it and let’s get out of here.”

[19] Ms Dougal gave evidence that she and Mrs Manning then came back into the Royal Courts of Justice and there was a discussion with counsel regarding costs. The expression “this is a good deal” pervaded all discussions. Ms Dougal gave evidence that Mr Edmondson did not advise that it was a binding legal document. She also gave evidence, however, that she did not hear anyone advise her sister that she could change her mind at a later stage.

EVIDENCE OF MRS MANNING

[20] Mrs Manning adopted as her evidence to the court the affidavit which she had sworn on 10 October 2008. According to her evidence the joint

consultation lasted approximately 20 minutes. She initially placed significance on the fact that a copy of her son's pension plan was amongst counsel's papers. She said counsel told her not to worry about this. She conceded, however, in oral evidence that she had furnished her solicitor with this document.

[21] Mrs Manning gave evidence that she did not know what was going on at the joint consultation. She said she had been in a stressed state and remembered being very nervous. She said that there had been times that she had been physically shaking. She gave evidence that she could not remember everything in sequence. In her view it seemed everyone was making decisions for her. She did not feel she was receiving advice. Lawyers were just talking out loud to her.

[22] Mrs Manning stated in her affidavit that she was told that she would sign the "official" Heads of Agreement later at Miss Fox's office after it had been properly typed up. She stated that she was assured "the piece of paper I was signing was not a legal document and that I could change my mind at anytime up until the real document was signed". Mrs Manning expressed the opinion in oral evidence that, if she had been purchasing a washing machine, she would have had two weeks to change her mind about the purchase. She also drew a comparison with having a six weeks period after the *decree nisi* was granted before the decree absolute could issue. She nevertheless conceded that she knew the importance of signatures on documents, stating that "you're signing your life away with your signature".

[23] She conceded in cross examination that in fact no one had told her that she could change her mind once she signed the Heads of Agreement. She maintained, however, that that was the implication she had drawn from being advised that the legal papers would be drafted and that she would be invited to her solicitor's office to sign them.

[24] Mrs Manning was emphatic that no one told her that the Heads of Agreement was a legal document. She said that she thought it was the start of a discussion where the parties were going. In cross examination she replied to Miss Jordan regarding the document : "How could you take it seriously ?" However she offered the court no alternative explanation as to what the Heads of Agreement could have been other than a formal, binding agreement between the parties.

THE LAW REGARDING AGREEMENTS

[25] The issue in this hearing, whether or not there was an agreement, is not a new one. Duckworth's "Matrimonial Property and Finance" states at paragraph D1[12] :

“A difficulty often found in practice lies in discerning precisely when and whether an agreement has come into existence. Does *everything* have to be agreed ? Or is it sufficient that there is *substantial* agreement, leaving the detail to be sorted out later ? On this question may turn the whole future of the litigation.”

[26] In *Xydhias v Xhdhias* [1999] 2 All ER 386, a complex case involving multiple properties worth an estimated £2.25 million, a joint consultation took place and there were negotiations between the parties for some six hours. A number of different drafts for a possible agreement were exchanged between the parties. After a fourth draft was exchanged (which had not been signed by the parties), the three day hearing date was vacated. There remained some residual issues still to be agreed between the parties. Subsequently Mr Xhdhias sought to resile from the deal. At a hearing before the district judge as to whether or not there was an agreement, the judge found in favour of Mrs Xhdhias. Mr Xhdhias appealed unsuccessfully to the County Court. He then appealed again to the Court of Appeal where he was again unsuccessful.

[27] Experienced matrimonial practitioners are well aware both from experience and from *Xhdhias* that there are often two stages of negotiation. As Thorpe LJ noted the first stage is to establish what the applicant for ancillary relief is to receive. That may be expressed in simple terms in Heads of Agreement signed by the clients and their lawyers. The formality marks the conclusion of that part of the negotiating process which the parties dominate. The subsequent task of expressing the Heads of Agreement in the language of an order of the court is one to which the clients ordinarily make little contribution and, although it generally precedes the presentation of the agreement to the court for consideration, it can as well be done after the court has determined the issue.

[28] Duckworth identifies at paragraph D1[12] the propositions that may be derived from *Xydhias*. They include:

- (i) What the court is looking for is a broad indication that the parties are *ad idem*. This is more likely to be found in the way they have conducted the proceedings, rather than in a detailed analysis of the correspondence or negotiations. For instance, if the trial date has been vacated, or counsel’s briefs have not been delivered, or the court has been informed the case has been settled, this may be good evidence of an agreement.
- (ii) A party will not be allowed, arbitrarily or unilaterally, to resile from a ‘done deal’.

CONCLUSION

[29] As with any set of circumstances in respect of which four witnesses give evidence, there are a number of issues in respect of which the witnesses differ in their accounts. A number of these, such as who suggested the break outside the Royal Courts of Justice and whether the Heads of Agreement had been drafted before or after the break outside, are not relevant to the central issue before me. The differences in the various accounts do not reflect adversely on the credibility of particular witnesses and they are of little importance in determining what occurred, in legal terms, between Mr and Mrs Manning.

[30] This is a case where honest witnesses differ in their recollection of events which took place in an environment which was, for some of them, an emotional one and for others a routine, professional one. Thorpe LJ observed in *Xydhias* :

“Litigants in ancillary relief proceedings are subjected to great emotional and psychological stresses, particularly as the date of trial approaches.”

It is therefore not surprising that the recollection of witnesses, particularly those emotionally involved in the outcome, differs significantly. I conclude that the emotional context of the event had a damaging impact on the accuracy of Mrs Manning’s and Ms Dougal’s recollections and perceptions.

[31] Mrs Manning and her sister had entered an unfamiliar world. They were trying to making sense of it. The mental maps of Mrs Manning and her sister did not accurately describe the legal territory they were in. This case illustrates the difficulties with human communication. All the right words may be spoken but the recipient may not appreciate what is being communicated. It is clear that Mrs Manning did not appreciate that she was signing a legally binding agreement. However I find that she was, in fact, advised of this.

[32] Both Mrs Manning and her sister gave evidence that they knew “a deal” had been proposed and that Mrs Manning was asked whether she was prepared to accept it. The word “deal” according to the Oxford Shorter English dictionary is defined as “a business transaction, a bargain, an arrangement”. It is not reasonable for her to argue that there is a difference between “a deal” and “an agreement”.

[33] It is a frequent practice in an ancillary relief context that parties are asked to sign Heads of Agreement. The previous decisions of the courts encourage this practice. This is because once clients reach a point of

agreement it is important to obtain their signatures on a document to record the fact of the agreement lest there be a later dispute as to what has occurred. As there may be difficulties in drafting a final agreement then and there, due either to other professional commitments or to lack of a computer and printer to produce a final agreement, a Heads of Agreement approach is often adopted.

[34] Both Mrs Manning and her sister had little regard for the Heads of Agreement. It was, in Ms Dougal's words, merely "a scrap of paper". I have little doubt that this affected what they heard in relation to it.

[35] In respect of the crucial question of fact as to whether Mrs Manning was told that she could change her mind about the contents of the Heads of Agreement, I find that she was not told this. She conceded this in cross examination. It was an incorrect inference which she drew from the fact that she was being invited to sign a fuller, typed version of the agreement at a later date in Miss Fox's office.

[36] Mrs Manning knew she was attending a consultation to discuss the division of marital assets. She was legally advised by experienced matrimonial practitioners. She knew that "a deal" had been proposed by Mr Manning. This deal was incorporated into Heads of Agreement which she was invited to sign. She understood the importance of signatures. She did sign the document. As a matter of fairness to Mr Manning it would not now be appropriate to allow her to resile from the agreement which she entered into.