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30/09/2005

IN THE HIGH COURT OF JUSTICE NORTHERN IRELAND

FAMILY DIVISION

McM

Petitioner

V

McM

Respondent

Master Redpath

In this application the parties were married on the 20 April 1989. It was the second marriage for both parties. The Petitioner husband had three children and the Respondent wife had one child who moved with her to live in the family home.

The Respondent wife was a teacher who held employment throughout the marriage and took some interest in the farm. There was much dispute about how much interest she took in the farm; but I take the view, having heard evidence, that she did most of the usual things that a farmers wife would do, and in particular had some sheep of her own in which she took a particular interest. The parties separated on the 19 May 2001 after a 12 year marriage. The bulk of the assets in the estate are made up of various farms, most of which were acquired through inheritance or purchased by the Petitioner prior to the marriage, and one farm purchased jointly with the Respondent.

It was agreed by the valuers that the lands were worth £1.9million to include the recent addition of dairy facilities. It transpired during the course of the hearing that the petitioner had acquired an overdraft of approximately £400,000, most of which had been run up since the separation much time and expense was taken up with

forensic accountancy evidence in this case but it would appear that most of the money was spent on setting up the Respondent's eldest son in a dairy business, to include building a dairy and the purchase of stock. It would appear that in addition to the lands there is stock in the name of the Petitioner's son for which the Petitioner provided finance of approximately £90,000 which I will add to the available pot for distribution giving a total after deduction of the overdraft of approximately £1.6million.

I have considered the position regarding inherited wealth at length in recent judgements and Mr Shaw QC for the Petitioner accepted that inherited wealth was best seen as an aspect of contribution for the purposes of the Article 27 checklist. As Lord Nicholls said in White -v- White [2000] 2FLR 981 at page 994: -

> "Plainly when present this factor [inherited property] is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The Judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, the time when and the circumstances in which the property was acquired are among the factors to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs can be met without recourse to the property."

Mr Shaw however also referred to the recent case of P –v- P (Inherited Property) 2004 [EWHC] 1364 in which Munby J attempts to distinguish between a farm and other types of inherited property. At paragraph 37 of the judgment the Learned Judge states: -

> "There is inherited property and there is inherited property. Sometimes as in White –v- White [2001] 1AC 516 the fact that certain property was inherited will count for little; see the observations of Lord Nicholls of Birkenhead at 615 and 995 respectively and of Lord Cooke of Thorndon of 615 and 998 respectively. On other occasions the fact may be of

> greater significance. Fairness may require quite a different approach if the inheritance is a pecuniary legacy which accrues during the marriage than if the inheritance is a landed estate that has been within one spouse's family for generation and has been brought into the marriage with an expectation that it will be retained in specie for future generations.
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> That said the reluctance to realise land and property must be kept within limits. After all, there is, sentiment apart, little economic difference between a spouse's inherited wealth tied up in the long established family company and a spouse's inherited wealth tied up in a long held family estate and as Coleridge J pointed out in N –v- N (Financial Provision; Sale of Company) [2001] 2FLR 69 & 80: -
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> > `There is no doubt that had this case been heard before the White decision last year the court would have strained to prevent a disruption of the husbands business and professional activities accept to the minimum extent necessary to meet the wife's needs.
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> > However, I think it must now be taken that those old taboos against selling the goose that lays the golden egg have largely been laid to rest; some would say not before time. Nowadays the goose may well have to go to market for sale but if it is necessary to sell her it is essential that her condition be such that her egg laying abilities are damaged as little as possible in the process. Otherwise there is a danger that the full value of the goose will not be achieved and the underlying basis of any order will turn out to be flawed.'"

It seems to me that the latter passage in the Learned Judge's judgment goes a long way to negating any argument which endeavours to show that inherited farms are a type of property that is in someway outwith the application in this case. In the case of P-v-P Munby J eventually awarded the wife a figure of £575,000 which when taking into account the wife's existing assets of £70,678.00 produced a percentage of 25% of the family assets.

The next subject I wish to deal with is the effect that the length of the marriage has on the case.

Earlier authorities such as Churchill v Churchill [1981] Fam Law 179 dealing with a three year marriage allowed nothing for the wife from the pot of the husband's inherited wealth. It is questionable if this approach would be followed today.

In G W v R W [2003] 2FLR 108 Nicholas Moston QC in discussing the issue of the length of the marriage states at page 121: -

> "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 criterion of the duration of the marriage. The failure of the judge in L v L (Financial Provisions: Contributions) [2002] 1FLR 642 to give sufficient weight to this factor was specifically criticised by the Court of Appeal. It seems to be that the assumption of equal value of contribution is obvious when the marriage is over 20 years. For shorter periods the assumption seems to me to be more problematic."

Such a case was Foster v Foster [2003] 2 FLR at 299. That involved a childless marriage that lasted four years. What the District Judge did was to essentially return the property each of the parties had brought into the marriage. Baroness Hale says at page 301:

> "The district judge's approach was that, as this is a short marriage 'essentially so far as possible' taking into account the other aspects of s.25 … the parties should be returned more or less to the position that they were in before the marriage was celebrated'. What she did, therefore, was to return to each party what they had brought into the marriage and what had been contributed to the outgoings on the property after the separation but divide the profits made during the marriage equally". (The parties were engaged in property development.)

This approach was approved by the Court of Appeal.

However in that case each party had brought sufficient into the marriage to ensure that the result was a fair one with the husband receiving 39% and the wife 61% out of an estate of £394,813.

Baroness Hale continues 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 in money or money's worth, towards the recognition of marriage as a relationship to which each spouse contributes what they can in their different ways".

Accordingly Foster v Foster should not be taken as authority for the proposition that in a short marriage that a spouse who brings nothing to the marriage should take nothing from the marriage.

Applying all of this to the facts of this particular case, it is clear that the substantial assets in this case should be taken into account; but what also must be taken into account is that much of this property was inherited, and inherited a long time ago, and that the inherited property forms a major part of the case.

This is what might be described in this jurisdiction as a big money case. At B3 [13] Duckworth teases out 9 principles emerging from White –v- White: -

> "(1) Although the Matrimonial Causes Act 1973, Section 25 is couched in terms of the widest discretion guidelines are needed to ensure consistency of judicial decision making and to limit peoples' exposure to costs.
> (2) The implicit objective of Section 25 is to achieve a fair outcome, giving first consideration to the welfare of any children.
> (3) Fairness is a flexible concept that can move with the times but in current conditions, it means at the very least, there can be no discrimination between husband and wife and their respective roles.
> (4) The mere fact that one spouse stays at home while the other goes out to work (whilst any other division of labours agreed upon) is immaterial.
> (5) Fairness generally implies equal division, although not invariably so. There will be many situations where having

carried out the Section 25 exercise, the Judge's decision means that one party will receive a bigger share of the assets.

(6) There is however no presumption of equality as there is the Scottish system.

(7) Moreover, there is no warrant on the statute for elevating needs above resources; in so far as earlier authorities limited a wife's claim to the ceiling of her reasonable requirements, they were wrong to do so.

(8) There is no rule of law that a party's wish to leave property to the next generation is irrelevant under Section 25. On the contrary the court should respect the wishes of both parties in this regard.

(9) It follows that the Duxsbury calculation (which amortises a wife's income needs over her assumed life expectancy) has limited relevance in the family division, other than to capitalise an income stream where that is strictly required."

This is a somewhat unusual case for this jurisdiction in that it is a second marriage for both parties and there are no children of the marriage. Nevertheless, the beginning point in this case as with most others should be equality. In the recent case of G -v- G& J Gillen J states at paragraph 48 of this judgment:

> "In summary therefore these authorities make it clear that the court has a very broad discretion to make financial awards under Article 25, and has, in big money cases, increasingly chosen to guide the exercise of this discretion by the overarching objective of fairness. The courts have chosen to measure fairness of outcome by adherence to the principle of equality unless there is good reason for variation such as wholly exceptional contributions by one party to family welfare".

In the case of M-v- M, McLaughlin J states at page 39 of his judgment: -

> "Where the division is not equal there should be clearly articulated reasons to justify it. That division will ultimately represent a percentage 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 – 33.3, it means that one party gets 2 thirds of the assets but double what the other party will receive. Likewise if a 60 – 40 split occurs, the party with the larger proportion gets 50% more than the other and in 55 – 45, one portion is 25% approximately larger than the other. Viewed in this way perspective of the

> partner left with the smaller portion – the wife in the vast majority of cases. Some of this divisions may be the antithesis of fairness and I commend practitioners to look at any proposed split as a useful double check."

It seems to me that there are sound reasons for a departure in this case. Some of the farms in question has been in the name of the Petitioner's family for some generations. Furthermore, and crucially, there is sufficient in the estate to meet the reasonable needs of the Respondent while still departing from the principle of equality.

Another very important aspect of the case is that this is a medium length childless marriage. In P –v- P referred to above the wife was awarded 25% of the value of the farm after a nineteen year marriage with two children with special needs. Precedent is not always helpful in Ancillary Relief, however in a small jurisdiction such as ours, consistency is very important. In the case of C –v- C (No 2 of 2005) earlier this year I awarded a wife 15% of an estate valued at over £2.7 million, the vast bulk of which was inherited by the husband from his mother. That involved a six year marriage.

In the recent case of M v M (Short Marriage: Clean Break) 2005 2FLR 2005 a wife who was married 3 years was given approximately 20% of an estate of £25Million. Singer J states at page 544:

> "H gave W a legitimate expectation that she would on a long term basis be living on a higher economic plane than the rented flat and £85,000 p.a. job had afforded her when she left them to live with him as man and wife at the house he bought for that purpose:

No such consideration arises in this present case. The Learned Judge also states at page 546:

> "I draw attention to the analogous problems which can arise in relation to acquest by inheritance. It now seems to be well established that the extent to which such

> extraneous accretions should be taken into account or disregarded, treated as impenetrably ring-fenced or vulnerable to invasion, must depend on the circumstances of each case and the extent to which the essential needs of both spouses can be met without such an invasion. I agree with that what Bennett J had to say on this topic at paras [59]-[68] in Norris v Norris [2002] EWHC 2996 (Fam), [2003] 1 FLR 1142.
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> If no dogmatic 'one-size-fits-all' treatment can in fairness be promulgated for inheritances then why, I ask myself, should the courts submit to or apply any rigidly theoretical approach to the treatment of pre-acquired assets, and accretions thereto? The statute contains no such imperative whether we like it or we loathe it. Its foundations are deeply settled into what some may regard as the uncertain quicksand of judicial discretion, to be exercised within a reasonable ambit. This does, however, have the merit not only that when the parties cannot reach agreement the court can tailor-make the solution, but also (as recent jurisprudence shows) that the trend and blend of solutions chosen can adapt to reflect and sometimes even to anticipate that social and economic change of which Thorpe LJ spoke."

The Respondent in this case does have some modest assets of her own. She is the joint owner of a house with a value of £75,000 in August 2003 and a number of other small savings accounts. Both parties in this case wish to have a clean break.

The Respondent's needs are for housing and for capital to start preparing for her retirement.

Taking into account the length of the marriage, and and the inheritance aspect of the case, I intend to Order that the Petitioner pays to the Respondent a sum of £400,000 with the Petitioner retaining her own assets in full and final settlement in this case. The Respondent will also assign her interest in the jointly owned farm comprised in Folio 5135 County Down to the Petitioner. This leaves her after a 12 year marriage with a figure somewhat in excess of 25% of the joint nett matrimonial assets.

Once the parties have had an opportunity to consider this judgment I will hear argument as to costs.