

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

CHARLES RICHARD PANTRIDGE MONTEITH

Petitioner;

-and-

ROSMUND ELIZABETH EVANS

Respondent.

GILLEN J

[1] This matter concerns an interlocutory application for disclosure in the course of a claim for ancillary relief by the respondent who seeks a financial provision order pursuant to Article 29 of the Matrimonial Causes (NI) Order 1978 as amended. This substantive hearing has been fixed for determination in the near future and the usual affidavits exchanged. Due to the imminence of this hearing I gave a brief ex tempore judgment on the day of hearing and as is my practice in other cases I am now setting out my reasons in writing. For the purposes of the current application it is sufficient to say that whilst there are a number of capital assets in dispute they are not relevant to this application save for furniture in the former matrimonial home. In addition the earnings of the petitioner as a solicitor will be an important matter in determining any award of income to the respondent in the course of the proceedings.

[2] Disclosure has been a vexed area of dispute between the parties. The respondent has served a questionnaire upon the petitioner dated 25 August 2006 to which the petitioner replied dated 21 September 2006. The

respondent was not satisfied with a number of the replies provided. I directed on 22 September 2006 that further questions to the petitioner should be raised by way of correspondence. Accordingly further questions were posed by letter dated 27 September 2006 and to which the petitioner replied by notice dated 4 October 2006. The respondent remained dissatisfied with the responses and sought from this court an order for discovery on a number of issues. When the matter came before me several of the outstanding matters were resolved and for the purposes of this decision two matters fell to be determined .First ,disclosure of the petitioner's earnings since June 2005.Secondly disclosure of an inventory of furniture from the former matrimonial house .

(i) The respondent submitted that it was within the power of the petitioner to have accounts for the financial year ending June 2006 compiled and that the same should be provided in these proceedings.Self evidently the current and historic earnings of the petitioner are relevant issues in this case Mr Donaghy , who appeared on behalf of the respondent, relied upon G v G (1992) 1 FLR 40 for this submission. In that case a wife had sought from the court an order under r. 77(4) of the Matrimonial Causes Rules 1977 that the solicitor husband produce a letter confirming the terms of his partnership from a responsible person in the firm of solicitors which he had joined to corroborate his evidence contained in an affidavit made by him . Bracewell J concluded that although the wife was entitled to require from the husband such further information as was proper and necessary for this fair disposal of the matter, there was no jurisdiction to order a third party to provide the information sought. She varied the order of the court at first instance to the extent that the husband should use his best endeavours to produce the letter containing the information sought. In the instant case Mr Donaghy urged the court to make a similar order to the effect that Mr Monteith should use his best endeavours to produce a statement of accounts for the year June 2005 to June 2006. Ms Walsh QC who appeared on behalf of the husband, resisted that application on the basis that the court had no power to order a firm of accountants to draw up or audit the accounts of the petitioner and since the accounts for the year June 2005-June2006 were required by the Inland Revenue until 2007 the court should not accede to the application. I respectfully adopt the approach by Bracewell J that this court has no power to order a third party ie a firm of accountants to provide the information sought by way of preparing accounts. However the processing of this case before the court cannot be frustrated by the failure of one party to provide information relevant to his earnings for the financial year June 2005-June 2006.Fulfilment of his obligations to the Inland Revenue is quite separate from his obligation to make proper and fair disclosure to this court Were this not to be the case, the court determining the substantive issue would be left with historical information reaching back only as far as June 2005. The consequence of this would be that further costs might well be incurred by a further application to the court to vary the order once these accounts become

available. Apathy and/or lethargy whether consciously or subconsciously employed, cannot be allowed to provide an unnecessary hurdle for a fair and proper determination of an income award by arming the court only with out of date and historical information. An experienced solicitor, as this petitioner clearly is, must have been aware that the court would wish to have current and up-to-date information. It seems to me therefore that this respondent is fully entitled to all information relevant to the earnings of the petitioner in the financial year June 2005- June2006 so that she can, if she wishes, employ the services of an expert to prepare some accounts which will permit the court to ascertain this man's current earnings. Her reasonable needs cannot be dictated by or postponed to the requirements of the Inland Revenue. Since the petitioner has chosen not to have any such accounts prepared, notwithstanding his knowledge now for many months that this case was in the near future, the respondent must be permitted to have the necessary information in order to obviate that difficulty by employing her own expert if necessary. Ms Walsh argued that this would demand disclosure of a confidential nature involving details of the petitioner's clients. The petitioner could have obviated this by having accounts prepared even in outline form but insofar as he has not done so, it seems to me that some careful redaction of clients' names and details can quite easily be done in the case of any information provided. I have therefore come to the conclusion that an order should be made directing the petitioner to disclose to the solicitor for the respondent all information and documentation relevant to his earnings in the financial year June 2005-2006.

(ii) The second matter that arose was the claim by the respondent that the petitioner should identify the "petitioner's property" and provide a valuation of same. The response of the petitioner to this, was that items of furniture removed from the matrimonial home were the property of the petitioner's mother and were not relevant to the ancillary relief. He therefore objected to preparing inventories of such material or disclosing their whereabouts. It has been my experience through many years of practice, that one of the most vexing, time consuming and cost wasting aspects of ancillary relief can disputes over furniture and household materials. It is absolutely crucial that the courts, in order to make a fair determination, have clear inventories outlining and describing those items of furniture and household materials to which each party lays claim and identification of those items which it is alleged belong to third parties albeit in the matrimonial home. Failure to do this can lead to confusion and disarray in describing disputed items. Accordingly it is my view that the petitioner should disclose to the respondent a list of those items which he declares belong to his mother and which have been removed from the matrimonial home together with an inventory of those items which he declares are matrimonial furniture assets and remain within the home. Only by doing this can the court have a clear picture of those items which are in dispute and those which are not. The whereabouts of the items which have been removed require to be disclosed to

enable inspection if necessary to take place. Accordingly I have ordered that the petitioner provides an inventory of all items removed from the matrimonial home at Beech Park and which he alleges to be the property of his mother together with the present whereabouts of same. In addition, for the removal of doubt, there must be provided a further inventory of those items which he asserts are joint furniture assets.

[3] In coming to my conclusion on these matters I have borne in mind the principles laid down in Hildebrand v Hildebrand 1992 1 FLR 244 which dealt with the approach of the court in financial relief proceedings. The parties are under a duty to make full and candid disclosure of relevant documents voluntarily and to provide the court with information concerning all the circumstances. This is not to say that one party should be compelled to deal with interrogatories or requests which are oppressive, exceed the legitimate requirements of the particular occasion, represent an attempt by one party to cross-examine the other before trial or which would represent an abuse of the process. I am satisfied that the orders that I have made bear those principles in mind and that it is appropriate that they should be made in the circumstances of this case.