Ref:	**Master 40**

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

Delivered:	**06/10/06**

IN THE HIGH COURT OF JUSTICE NORTHERN IRELAND

FAMILY DIVISION

Between

P

Petitioner

V

P

Respondent

No. 2 of 2006

Master Redpath

In this most unhappy case, the parties married on the 11 June 1999. There was much debate as to the exact date of separation but the latest date that it was suggested the parties last lived together was 21 March 2002. Even allowing that as the applicable date; and as with every other aspect of the case that was not agreed, the length of the co-habitation after marriage was at best 2 years and 9 months approximately.

As I have already said, every aspect of the case was contested. The original divorce petition was contested although the parties subsequently agreed to proceed by way of 2 years separation with consent. The valuation of virtually every asset in the case was contested. In addition to that the parties failed to agree on almost every salient fact in relation to the history of the marriage.

Before proceeding to the body of the judgment, I feel it is proper that I make some comments about the way in which this case has been conducted. This was a

short marriage with no children where the assets in the general scale of ancillary relief applications could be described as relatively modest. The issues in the case, although not entirely straightforward, were by no means overly complicated. Despite this, there were no fewer than 22 hearings starting as long ago as the 18 August 2003. On the 10 March 2004 Master McReynolds (as she then was) heard an application for Maintenance Pending Suit that lasted almost the entirety of the sitting day, at the conclusion of which an order for £150 per month was made in favour of the Petitioner. The case ran before me at hearing over the course of eight days. As conduct was relied upon heavily by the Petitioner the matter had to be adjourned for the House of Lords Judgment to become available in Miller –v- Miller [2006] 1FLR 1186. The Respondent filed no fewer than 3 Affidavits to include the grounding affidavit in the application for Maintenance Pending Suit. Evidence had to be given by two estate agents and two accountants. The Petitioner was asked to produce her medical records going back to the time when she was a baby. The case was also marred by a regrettable degree of hostility between Counsel, characterised by constant interruptions with each other, which then fed back into their clients who on a number of occasions started to argue at the back of the Court. It is, in short, the worse case of its type that I have come across in almost 10 years of hearing ancillary relief applications and it is exactly the sort of case that the new Ancillary Relief Guidance Notes are designed to deal with.

To deal in writing with every detail of this case would require a judgment the size of a novella. As there is an untrammelled right to a rehearing from my decision in this case I will refrain from dealing with every single detail in the case and deal only with the most pertinent aspects of the factual and legal aspects of the matter.

Put in short, it was the Petitioner's case that she entered into this marriage with the view that it would last for her lifetime, that she made a significant contribution to the wellbeing of the couple for the period of time that they lived together; that the breakdown of the marriage was as a result of the Respondent's adultery and violence and that as a result of this she would no longer be able to work for the rest of her life. Accordingly, her case was that this was an unusual type of case and one where despite the shortness of the marriage and it's childless aspect, she was entitled to receive a very substantial capital sum.

The Respondent on the other hand alleged that the breakdown of the marriage was due to the Petitioner's adultery. He claimed that there had never been any domestic violence in the marriage apart from some holding, and that as a result of capital sums expended by him in relation to the matrimonial property, and sums expended by the Petitioner from sums she received following the separation, that she was not in law entitled to anything. It was suggested on his behalf in opening that a modest figure in the region of £10,000 to £12,000 might be considered suitable to buy off the case. In the opening of the case the Petitioner sought a total of £180,000, although as the case progressed her case became such that even that figure may not have adequately compensated her for what she was claiming.

I will deal first with the valuation of the disputed assets in the case.

1. Matrimonial Home

Evidence was given by two valuers in relation to the matrimonial home. The Respondent's valuer had been employed in the locality of the matrimonial home since 1973 and all of his experience was in the immediate area. He had sold the property in question twice previously. He produced a number of comparisons from the immediate area, none of which were quite the same as the property in question, and in

particular in my view, did not enjoy as good a site as the matrimonial home. He also pointed out that there was a difficulty with building regulations in the relation to the roof space conversion and valued the house at £240,000.

On cross examination it became apparent that this valuer had known the Respondent for a long time; he accepted over 20 years, and had known his father for even longer than that. He denied that he had ever worked for the Respondent or his father or that he had any social contact with them. He accepted that the property had a very special location and the site would have had considerable value. He pointed out however that there was a covenant in the lease that the property could not be altered without the consent of the head landlord. He also felt that the property had become somewhat rundown since the date of the purchase.

On cross-examination he also voiced the view that it would cost between £30,000 and £40,000 to rectify the difficulties with the house and once that was done that would add £40,000 to the value and bring the value up to £270,000 - £280,000. I note in passing that as long ago as 1999 the house was purchased for £190,000 with precisely the same problems, which this witness accepted had been pointed out at the time.

The agent called for the Petitioner on the other hand had worked in the Coleraine area for 14 years but only on an on and off basis. It was quite clear he had not sold anything like the number of properties in the immediate area as the valuer for the Respondent. He valued the property at £300,000 as it stood.

He was cross-examined on the various comparators that were provided by the Respondent's valuer which showed that properties in the area were not selling for that type of figure; but he stood by his valuation.

I have considered carefully the views of both agents and do not fully accept the opinions of either. The comparators clearly show that a figure of £300,000 is not viable. Equally I have some doubts about the evidence given by the Respondent's valuer and feel that the value of the house when this evidence was taken, which was in May 2005, was probably in the region of £260,000 and given the lapse of time I will value it for the purposes of these proceedings at £280,000 which after deduction of the mortgage leaves an equity in the region of £100,000 for division. I should say at this point that the Respondent made the case that he provided the deposit, paid for the legal fees and has maintained the mortgage since the date of the marriage. He therefore claimed a larger proportion of the equity than might otherwise be due to him. I will return to this in due course.

2. The Respondent's interest in X Limited

The Respondent was a partner in a firm which had been started by his father. He had been a partner for between 7 and 8 years. His interest in the firm had been gifted to him by his father although he had considerably developed the business himself. The business was valued for the Respondent who produced his valuation in response to a report prepared on behalf of the Petitioner which had been previously served on the Respondent's solicitors. His valuer valued the business on a nett asset basis and a multiple of sustainable earnings basis. His accountant valued the nett assets of the business at £564,135 leaving the Respondent with a share of £297,067. His accountant then discounted the shares by 40% essentially because they were shares in a family owned company and thus the Respondent would not be in a position to force the sale of the shares. Having allowed for that and assumed taxation of 10% he valued his interest in this company at £160,416.00 on a nett asset basis and multiple of sustainable earnings basis.

The Petitioner's accountant valued the business on a nett assets basis (or break up basis) with additions made on the basis of maintainable earnings. The value arrived at was £759,000 to which in his view had to be added a valuation of the trade of the business at £148,000 after tax to give a total of £837,000. It should be noted that the difference in the basic nett asset values as ascertained by the two accountants was made up largely of the difference in the valuation of properties owned by the business. The Petitioner's accountant had updated the 1999 valuation whereas the Respondent's accountant had not done so as he did not feel competent to put valuations on these properties. I can however take notice of the fact that properties in this area will have increased in value significantly since 1999, and that the assumption drawn by the Petitioner's accountant is not an unreasonable one, and is if anything an undervalue. I do however have concerns as to the additional value added to the valuation by the Petitioner's accountant based on the trading profit. This is indeed a profitable company, but when the profits are divided between the two directors the income produced is not huge. Furthermore, whilst there is rental income included in that income, the actual business is one that is very much personal to the Respondent and I would be of the view that it is such a personal business that it may not in itself be marketable without him as manager. Whilst I am disregarding certain aspects of the valuation of the trading profit for now I will return to this subject in due course.

I am of the view, having considered the reports and the oral evidence of the accountants, and the relevant law, which I will return to, that the value of this business is at least £759,000 giving the Respondent an interest in the business of approximately £380,000.

3. The Respondent's interest in Y Limited

Y Limited is a property development company presently developing a range of high quality apartments in a very desirable location. The Respondent is a 26% shareholder in this company. Again, on a nett asset basis, this company was valued by the Petitioner's accountant at £228,872.00 giving the Respondent an interest of £59,507, and accordingly the Petitioner's accountant added £60,000 to the Respondent's assets to reflect his assets in this company.

Again this interest was gifted to the Respondent by his father.

The Respondent's accountant on the other had took the view that the Respondent's interest in this company was valued at nil. The case was made on behalf of the Respondent that a number of apartments had been marketed, but not sold, and that this failure to sell meant that the Respondent's interest in the company was virtually nil. Having heard evidence from the accountant, and the estate agent advising on the sale of these properties, I came to the view that in all likelihood no great effort is being made to market them properly. I took the view that this was because of the ancillary relief proceedings relating not only the Respondent, but also to his sister who is also a 26% shareholder. This was at the date of the evidence as the sister's case has since been settled. I think however that the most important aspect of the valuation of this particular company is that the Respondent's father was owed a very substantial amount of money on foot of a debenture that he owned which greatly exceeded any residual value the company may have. Accordingly I value the Respondent's interest in this company at nil.

Having heard the evidence it is possible that once these proceedings are concluded, Y Limited will rise from the ashes and is likely to become a profitable company. I also doubt that the Respondent's father will ever seek reimbursement of

the full sum of interest due to him under the Articles of Association. However on the basis of the evidence available to me I have to conclude that were the Respondent's father to enforce his rights as debenture holder the value of the Respondent's interest in the company would be nil.

4. Z Limited

Both parties agreed that this company had no value.

5. Sums received by the Petitioner

The Respondent in his evidence pointed to a number of capital sums that the Petitioner had received during the course of the marriage and following the separation. These included £20,000 for a claim for sexual harassment (which was in fact £18,000 nett) and £12,500 compensation for an accident on a motor cycle. He argued that this and other smaller figures should be taken into account when the case was being considered. It was also alleged on the part of the Respondent that he had expended sums on the wedding, honeymoon etc which he felt he should have been given credit for. The Petitioner on the other hand alleged that the Respondent had also received lump sums and an income much greater than he was declaring. Considerable time was spent in court going into these matters in great detail. Consideration of who paid for a wedding or a honeymoon, or the dispersal of lump sums received for personal injuries are not usually of much value in a case such as this; and I shall return to this subject later.

That deals with the valuations in the case and I will now deal with some of the factual allegations.

1. Domestic Violence

There were serious allegations made against the Respondent by the Petitioner. These allegations were included in 28 separate allegations of conduct (not all of domestic violence) put to the Respondent in cross-examination.

The first really serious incident alleged took place in England on 10 December 2001. The parties had been at a work's Christmas dinner. The Petitioner alleged that she had only drunk two glasses of wine. She gave evidence that she went to the toilet and when she came back the Respondent was dancing with another girl, at which point she decided to leave to go back to the hotel room. She alleged that he followed her back, grabbed her by the throat and punched her in the mouth. She alleged she was bleeding, at which point he put a pillow over her head and kicked her. She said there were lots of marks and she was taken to hospital where a cut on her head had to be treated. She said she couldn't speak at the hospital even though she was not inebriated.

The Respondent's version of events was that he followed her back up to the room because she was drunk. He alleged that she threw a stool at him and then fell over backwards and cut her head on the headboard. He alleged, and this was not denied, that he called a taxi and took her to hospital.

The only independent evidence in relation to this allegation was contained in the hospital notes compiled upon the Petitioner's admission to hospital. It was not clear who provided the history as recorded but it reads: -

> "fall when jumping on bed after significant alcohol consumption, hit back of head on headboard"

The notes also record that the Petitioner was "drowsy but arousable" but states most tellingly at the bottom: -

> "unable to examine…due to alcohol + +."

Accordingly the only objective evidence available seems to indicate that the Petitioner's evidence in relation to her alcohol consumption was untrue and as a result of that, considerable doubt must be cast on her other evidence in relation to this alleged incident. It has further not been proven in my view on a balance of probabilities that the injuries sustained were compatible with the details of the violence alleged.

The second serious incident alleged appears to have occurred on 20 March 2002 when the Petitioner alleged that the Respondent had attacked her. The Respondent on the other hand alleged the Petitioner had attacked him and had lashed out at his head with a leather belt. His version of events was that he grabbed the Petitioner to restrain her.

On this occasion the Petitioner did go to the doctor. She made several other allegations of domestic violence where she had not made such a report. The Court can however take notice that often that will be the case where domestic violence has occurred. The Petitioner dealt with this issue on cross examination and sounded convincing as to her reasons for not seeking medical advice for each previous allegation of violence. The notes recorded her saying as follows: -

> "On Wednesday night husband allegedly held her, slapped her, hurt her left arm. Long chat, re-alleged husband's infidelity yet wife takes him back all the time. Wife states in the past he has held pillow over her face and beat her on the head and at that time was in hospital but didn't say what had happened. Apparently kicks her, calls her worse than [unreadable] all the time".

There is no doubt that the recorded marks on the arms and leg of the Petitioner showed some degree of violence. It was put to her by Counsel for the Respondent that these marks were consistent with the Respondent's version of events that he was

holding her to restrain her. This might apply to the bruises on the arm but to me seems less likely to apply to the bruises on the leg recorded by the GP.

I have had the opportunity to observe, at considerable length, both of the parties in this case. I have no doubt that this was a most volatile relationship, which on occasions, in all probability, overspilled into a degree of violence on both sides. However, having had the opportunity to see the parties, it is crystal clear to me that the Respondent, who is an ex-rugby player of some standing, was a much stronger individual than the Petitioner. As a result of this, even a minor encounter between the pair could lead to quite serious bruising and pain to the Petitioner. I have also come to the view that the Respondent in his evidence presented at times as an aggressive and difficult individual. I was also unimpressed with his reasons for not defending the application for a full Personal Protection Order brought against him by the Petitioner, which reasons I found (that his lawyers had advised him not to contest the matter because it would cost him money) frankly unbelievable. I have no doubt that he was guilty during the course of the marriage of violence towards his wife and this violence may have been regular and persistent. Equally, I am of the view that from time to time she was probably guilty of violence towards him, the difference being that she would never have been able to inflict the sort of damage on him that he could quite easily have inflicted upon her. I am not however satisfied that the full extent of this domestic violence was as alleged by the Petitioner. I am of the view that it was probably restricted to pushing, shoving, holding etc. However, as I have already pointed out, given the stature and strength of the Respondent, such pushing, shoving and holding could well have produced bruising, other injuries, and a considerable degree of distress to the Petitioner.

2. Future Earning Capacity of the Petitioner

I will turn now to the case made on behalf of the Petitioner that because of the injuries, both emotional and physical, sustained by her during the course of this short marriage, she is no longer able to work and will not be fit to do so for the foreseeable future as a result of which she must be entitled to a greater proportion of the matrimonial aspects than would normally be the case.

This aspect of the case was flagged up from quite an early stage in the proceedings. Despite my asking on a number of occasions whether medical evidence would be produced to sustain this very substantial aspect of the case no such evidence was ever produced. One would have expected, at the very least, evidence from a consultant psychiatrist and appropriate GPs notes and reports. All that was offered to the court (in addition to the medical notes relating only to the few allegations of violence) was a letter from the Social Security Agency dated 11 October 2005 which states: -

> "Thank you for your letter of 8th October 2005 regarding your Incapacity Benefit Claim.
>
> I can confirm that you are receiving Incapacity Benefit due to your illness which is stress and depression. You have been receiving Incapacity Benefit from December 2002.
>
> We trust this information is satisfactory and if you require any further details please do not hesitate to contact us."

This court could not possibly, on the basis of a letter of that type, conclude that the Petitioner will never be able to work as a result of the behaviour of the Respondent in this case and accordingly I would be of the view that she has fallen well short of proving that aspect of the case on a balance of probabilities. That said, I

have no doubt that she has been suffering from depression and it may be some time before she is able to work.

I will now turn to the consideration of the legal aspects of this case.

1. Valuation of minority shareholdings in family businesses.

This is an issue that comes before me in virtually every case of any substance. In a number of judgments I have adopted the line that I will not readily take on board discounts which I regard as artificial which depress the value of a business, which is almost invariably (but not always) owned by the male partner of the marriage. If I have no intention of ordering the sale of any of the shares in the business I have taken the view that such discounts are artificial and irrelevant. I frequently quote in this regard, Coleridge J who states at page 1151 in G –v- G (Financial Provisions; equal division) [2002] 2FLR1143: -

> "I cannot seriously envisage a situation where the husband in this case would be forced to sell his interest in this company on the open market in circumstances in which a discount would be forced upon him. It would be just conceivable that he would sell to a friendly purchaser but in those circumstances I am sure he would get full value. Accordingly I think it is artificial to apply any discount to the husband's shares in this company or for that matter the wife's and I shall not do so."

This subject was recently reviewed in detail by Mr Justice Charles in the case of A –v- A [2006] 2FLR115. In that case the accountants' approached the valuation of the wife's shareholding on a capitalisation of earnings method. Even allowing for that agreed approach, one accountant used the profit/earnings ratio method and the other used the enterprise valuation method. One can immediately begin to understand how the introduction of such evidence complicates a case and adds substantially to the cost of it. The cost of the accountants in A-v-A exceeded £60,000. At paragraph 60 the Learned Judge states: -

> "At the risk of being accused of seeking to revisit issues in Parra v Parra, I make the general comment that it seems to me in ancillary relief proceedings it is important for the parties and their advisors to look at issues concerning private companies through the eyes of both:
> a) persons with experience in and of matrimonial litigation; and
> b) persons with experience in and of business and business litigation;
> For example, if this is done, it may quickly become apparent that:
>
> > (a) that there is a wide bracket of valuation; and
> > (b) that there may be a viable and pragmatic business solution which would avoid either or both of the uncertainties and difficulties of valuation and the raising of finance, albeit that it may not involve a clean break."

This is of course a very sensible approach allowing for flexibility and the tailoring of solutions to best suit the circumstances of individual cases. It applies most naturally however to cases where it is felt "interference" with the business, if it could be so called, provides the fairest result. The Learned Judge goes on to comment at paragraph 66 of his judgment: -

> "I am very conscious of the need to seek to do broad justice in ancillary relief proceedings and to minimise expense, and thus the need to avoid ancillary relief proceedings being converted into company litigation."

At paragraph 69 the Learned Judge considers the situation were Mrs A to retain her shares there being no 'interference' with the business:: -

> "If Mrs A were to retain the shares in determining the orders to be made under the MCA 1973 the overall value and benefits (both as to income and capital) of the shares in her hands should probably be brought into account as opposed to a capital valuation of the shares as a minority holding."

As is already clear from the earlier part of this judgment, I do not intend to interfere with Mr P's shareholding in his companies. A –v- A is a much more complex case than this one and the lengthy judgment needs to be read in full, but in

short the Learned Judge preferred the evidence of Mr A's accountant to that of Mrs A, who obviously was the one advocating the reduction in the value of her shareholding. In particular he states at paragraph 98: -

> "Also I am confidently of the view that if the situation arose in which the wife had a pressing need to raise capital through selling her shares her family would assist her by way of a purchase of her shares by a shareholder, or the company and I prefer the view of Mr Walton that such a purchaser would reasonably and justifiably regard a purchase at a price around £2million as being a good buy."

That is precisely the position in this particular case. Apart from anything else, as a shareholder Mr P has all the rights given to him by Article 102(g) of the Insolvency (NI) Order 1989 and Article 452 of the Companies (NI) Order 1986. There should be no need for Mr P to have recourse to sell any of his interest in the company, but even if that were to be the case, in the particular circumstances of these companies, I can't see how he would have to sell at a discount.

Before leaving this subject I would like to quote Charles J who states at paragraph 70 in the case of A –v- A: -

> "To my mind an accountant (or accountants) could have been asked to consider the value of the shares in broad terms on the alternative basis mentioned earlier. Indeed with access to the accounts, it seems to me that accountants might not be needed to get a broad idea of the range of values that this exercise would produce. But in any event accountants could provide this broad information without providing long reports which are expensive and much of which one sees in similar reports."

Most experienced solicitors and counsel should be capable of looking at a set of accounts with relevant property valuations for a small family company and coming to a broad view of what it is worth on whatever appropriate basis is chosen. In small companies often the nett asset basis is the easiest way to approach the case,

particularly where much of the value lies in property. Broad valuations only are required for ancillary relief except in exceptional circumstances, and it appears to me that much time, effort and money are expended contesting valuations which are of a degree of precision not required by the court in cases of this type.

2. Assets from outside the marriage

It is clear that the bulk of the assets in this case came to the marriage by way of gift from Mr P's father. The law in relation to inherited and gifted assets and assets arising from outside the marriage is now much clearer than it was as a result of the judgments of the House of Lords in White –v- White [2001] 1AC596 and Miller – v- Miller [2006] 1FLR1186. Lord Nicholls of Birkenhead states in paragraphs 22 and 23 of his judgment in Miller: -

> "22. This does not mean that when exercising his discretion, a Judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or by gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties common endeavour, the latter is not. The parties' matrimonial home, even if this is brought into the marriage at the outset by one of the parties usually has a central place in any marriage, so it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.
>
> 23. The matter stands differently regarding property ('non matrimonial property') the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage would be highly relevant. The position regarding non matrimonial property was summarised in the White case [2001] 1AC 596 at 610: -

> "Plainly when present this factor 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 and the time when and circumstances in which the property was acquired are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight if any, in a case where the claimants financial needs cannot be met with recourse to the property." "

Clearly therefore in this particular case I have to treat the matrimonial home quite differently from the businesses which the husband has been gifted by his father. Equally though, I must take into account any contribution that the wife made to that business during the short course of the marriage. Her case was that she made a clear contribution. Unsurprisingly in this case, the Respondent's case was that she made no contribution. I am of the view that she did provide help and assistance to the Respondent in his business but that it was of a limited nature and for a limited duration. However despite the fact that it was limited it cannot be entirely left out of the equation.

3. Length of the marriage

The law of ancillary relief in this regard, as with many other aspects of the law of ancillary relief has changed with the times. At one stage the courts took the view that in a short marriage a wife was only entitled to take out of marriage that which she had brought to it. That is clearly no longer the case, and was properly best described by Baroness Hale in the case of Foster –v- Foster [2003] 2FLR at 299 where the Learned Baroness 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 as a relationship to which each spouse contributes what they can in their different ways."

In Miller –v- Miller Lord Nicholls expands on this theme. He states at paragraph 17 of this judgment: -

> "This principle is applicable as much to short marriages as to long marriages see Foster –v- Foster….a short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will effect the quantum of the financial fruits of the partnership.

He expands on this in paragraph 24 of his judgment where he states: -

> "In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the others' non matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of short marriage."

Clearly this was a very short marriage and given that that the bulk of the Respondent's interests in the companies come from outside the marriage and by gift, then a very significant departure from equality will be appropriate in this case.

4. Conduct

The issue of conduct was also one that was recently considered in Miller –v- Miller. I found as a fact in this case that there had been an element of domestic violence although it may have been partly two way with the caveats that I have already expressed. By virtue of Article 27 (1) g of the Matrimonial Causes (NI) Order 1978 the court must have regard to:-

> "The conduct of each of the parties, if that conduct is such that it would in the opinion of the court would be inequitable to disregard it."

As Lord Nichols states in Millar –v- Millar at page 65 of his judgment: -

> "Parliament has drawn the line, it is not for the courts to redraw the line elsewhere under the guise of having regard to all the circumstances of the case. It is not as though the statutory boundary line gives rise to injustice. In most cases fairness does not require consideration of the parties conduct. This is because in most cases misconduct is not relevant to the bases upon which financial ancillary relief is ordered today. Where, exceptionally, the position is otherwise so it would be inequitable to disregard one parties conduct, the statute permits that conduct be taken into account."

It is a regrettable feature of the work of this court that allegations of domestic violence are made regularly, and I have no doubt that many, if not most, are sustainable. It is a distressing feature of the work of this court that the allegations involve allegations of physical, emotional and sexual abuse, not only of spouses, but also of children. Given the nature of the allegations that come before this court it has to be said that the violence alleged in this case is towards the lower end of what is often proven.

It is clear that conduct in ancillary relief cases is by law regarded differently than it might be in a case under The Children (NI) Order 1995. In particular the law deems to require that the allegations should relate to the financial aspects of the case. Duckworth's 'Matrimonial Finance and Property' states at B3 [50]:

> "Severe assaults may lead to the reduction or extinction of a share in the former matrimonial home, particularly if the other party is, as a result, disabled from exploiting an earning capacity. Psychological harm deliberately inflicted, or arising as a by product of physical wounding, may affect the outcome for similar reasons."

In Jones –v- Jones Fam. 8 the wife had been the victim of a razor attack by the husband, severing the tendons of her right hand, thereby disabling her from work and accordingly the husband's interest in the matrimonial home was extinguished.

Another case quoted in Duckworth is A –v- A (Financial Provision: Conduct) 1995 1FLR 345. In that case the husband, whilst clinically depressed struck the wife in the chest with a kitchen knife. Although the wife was only superficially injured she had deeper psychological damage. In that case the husbands share was reduced from one half to one third.

The issue of domestic violence in ancillary relief cases has been most recently considered in the case of H –v- H (Financial Relief: Attempted Murder as Conduct) [206] 1FLR 990. In that case the husband was convicted of attempted murder of the wife, who was a serving police officer who had been unable to work since the attack. The Court held, not surprisingly, that this was conduct that it would be inequitable to disregard. There had, in addition, been a previous conviction for common assault.

The Learned Judge (Coleridge J) considered the applicable law in relation to conduct in ancillary relief cases and stated as follows at paragraphs 44 to 46 of his judgment: -

> "[44] How is the court to have regard to his conduct in a meaningful way? I agree with Ms Jacklin that the court should not be punitive or confiscatory for its own sake. I, therefore, consider that the proper way to have regard to the conduct is as a potentially magnifying factor when considering the wife's position under the other subsections and criteria. It is the glass through which the other factors are considered. It places her needs, as I judge them, as a much higher priority to those of the husband because the situation the wife now finds herself in is, in a very real way, his fault. It is not just that she is in a precarious position, which she might be for a variety of medical reasons, but that he has created this position by his reprehensible conduct. So she must, in my judgment and in fairness, be given a greater priority in the share-out.
>
> [45] Obviously, as well as the conduct impact on the wife's life, it has had direct effects. It is, as I say, not only the backdrop to the S25 exercise; some of the consequences that will impact on her life are these. First, it has very seriously affected her mental health.

> Who knows what the long-term will bring, or how it will affect her life in the future? Secondly, she has to move home and uproot from the area where she has lived; not only herself but her children and her parents. Thirdly, it has more or less destroyed her earning capacity, and in particular destroyed her much-loved police career. Fourthly, it may affect the children in years to come. Fifthly, she will receive no support from her husband, either financially in the next few years, or with the upbringing of her children. Sixthly, it may impact on her relationship with the man with whom she has been associating now for some 2 years. If she moves away, which she intends to do, he may not follow.
>
> [46] Those are the ways, in my judgment, in which this conduct has impacted directly on the wife's life and it is against that I turn now to consider the needs of the parties, and first the needs of the wife and the children. It seems to me that so far as practical she should be free from financial worry or pressure. So far as housing is concerned, by far the most important aspect of her security is a decent and secure home for herself and the children. If she feels she is in a nice, new home of her choosing that will be beneficial therapeutically to her. She seeks a three bedroom bungalow in an area well removed from the former matrimonial home, where property prices are said to be similar to the area where she now lives. Her parents, as I have indicated, will move too but will not live with her."

I take no issue with the Learned Judge's analysis of the law but would emphasise in particular the relationship between conduct and the financial aspects of the case. Accordingly, having taking the relevant law into account I am of the view that although, as I have already said, there probably was a level of domestic violence in this case, it does not constitute conduct which it has been proven would be inequitable to disregard in the light of the relevant law applicable to this type of case.

5. General Principles

In the case of C v C [2006] EWHC 1879 (Fam) Coleridge J states at paragraph 58 of his judgment:

> "Matrimonial Causes Act 1973 S.25 rules the day. And despite the endless judicial gloss which is applied to it year in and year out at every level it is always best to start and end in that familiar section."

In Miller Lord Nicholls expands upon S.25. Counsel for the Respondent in his closing submissions relied heavily upon the judgment of Lord Mance which he contended diverged in substance with the views voiced by Baroness Hale and Lord Nichols. I cannot agree with that contention. The opinion of Lord Mance was not a dissenting judgment and whilst he shows differences in detail in his approach he does not challenge the general principles as stated by Lord Nicholls and Baroness Hale. Close inspection of the judgment shows that even Lord Nicholls and Baroness Hale take different approaches in relation to details of the particular case.

Lord Nicholls states in paragraph 4 of his judgment: -

> "The requirements of fairness
>
> Fairness is an illusive concept, it is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values. These values, or attitudes can be stated. But they cannot be justified, or refuted, by any objective process of logical reasoning. Moreover, they change from one generation to the next. It is not surprising therefore that in the present context there can be different views on the requirements of fairness in any particular case."

Lord Nicholls continues at paragraph 8: -

> "For many years one principle applied by the Court was to have regard to the reasonable requirements of the claimant, usually the wife, and treat this as determinative of the extent of the claimant's award. Fairness lay in enabling the wife to continue to live in the fashion to which she had become accustomed. The glass ceiling which was put in place was shattered by the decision of Your Lordships House in the White case. This has accentuated the need for some further judicial enunciation of general principles.
>
> The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind

> that fairness generates obligations as well as rights. The financial provision made on divorce by one party to the other, still typically the wife, is not in the nature of largess. It is not a case of taking away 'from one party' and giving 'to the other' property which 'belongs to the former'. The claimant is not a suppliant. Each party to the marriage is entitled to a *fair* share of the available property. The search is always for what are the *requirements* of fairness in the particular case.

Lord Nicholls goes on to state at paragraph 11:-

> "This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money earner, homemaker and childcarer. Mutual dependence begets mutual obligations of support. When the marriage ends, fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter."

Lord Nicholls therefore identifies the first principle to be applied is the search for fairness. He continues at paragraph 13: -

> "Another strand, recognised more explicitly now than formally, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicaped so far as her own earning capacity is concerned. Then the wife suffers a double loss; a loss in her earning capacity and the loss in a share of her husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as a homemaker and childcarer."

The final strand is dealt with by Lord Nicholls at paragraph 16 of his

judgment:-

> "A third strand is sharing. This equal sharing principle derives from the basic concept of equality permeating a marriages as understood today. Marriage, it is often said, is a partnership of equals…this is now recognised widely, if not universally. Parties commit themselves to sharing their lives, they live and work together. When that partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase, unless there is good reason to the contrary. The yardstick of equality is to be applied as an aid, not a rule."

In this case, obviously the wife is entitled to a fair share of the matrimonial assets. I have already indicated that I have decided that the equity in the matrimonial home is in the region of £100,000. I have already indicated that it was argued on behalf of the husband that he had maintained the house, paid the mortgage paid the rates etc since the date of separation, in addition to which he had paid the deposit and paid the legal fees. It was pointed out on behalf of the wife that whilst this was true, on occasions he had deliberately paid the mortgage late, so that legal proceedings had been threatened, and extra costs had been run up, which would have to be repaid to the Building Society, and of which the wife would have to bear her fair share. She also pointed out that he had enjoyed the benefit of the property since 2002 whilst she had either rented a property or relied on her parents. Again much time and effort was spent on showing exactly what financial contribution the husband had made to maintaining the property. Whilst some of this could be done with certainty, this did not apply of course to many other aspects of the case, where certainty was almost impossible. I have already noted in this judgment that I have taken no account of the value of the business generated by the husband's companies. I have noted that because of the personal nature of the involvement of the Respondent in X Limited it may not be appropriate to take all the income into account. Some of the income of

the company is rental income and that is certainly going to continue irrespective of whether or not the Respondent is involved in the business. I have also noted that I have put no value on Y Limited. I have also pointed out that since separation, the Respondent has had a much greater earning capacity than the Petitioner.

Taking all these matters into account I do not intend to discount the Petitioner's interest in the matrimonial home either in relation to money spent by the Respondent on maintaining it or in relation to the capital sums expended by herself. I bear in mind in particular that for much of the last few years the Petitioner has been out of work and would needed to have recourse for her capital.

For the time being the Respondent will continue to earn a good salary, and it is likely that the Petitioner may not be able to work. One of the matters I have to take into account in this case is set out in Article 27(1)a of the 1978 Order which requires me to take into account: -

> "a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future."

I must also, of course, take into account the other matters referred to in Article 27 of the 1978 Order, in particular the length of the marriage, the contribution made by the parties to the financial assets in issue, and the health of the parties. I must in particular endeavour to produce a result based: -

> "…on a judge's instinct for what is fair when he weighs a gamut of circumstance and produces his or her result out of the hat of fair outcomes" (per Singer J in Miller – v- Miller [2005] 2FLR533 (at first instance)

This was a very short marriage even though the exact duration of it could not be agreed and the bulk of the assets are not a product of the marriage. In addition to allowing the Petitioner a figure in the region of £45,000 from the value of the

matrimonial home (allowing for any costs of conveyancing etc) I intend to increase her total award to £75,000 to take into account the other assets of the Respondent and the various considerations to be taken into account under article 27 of the 1978 Order. It can be seen that this figure allows for a very heavy discount in favour of the Respondent as a result of circumstances in which he acquired his assets and the length of the marriage.

Even though the Petitioner was latterly entitled to legal aid in this case, I am of the view that costs are an important issue in this case and I will hear arguments as to costs on a date to be agreed between the parties.