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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**21/07/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

CLAIR ELIZABETH STELFOX

Petitioner

and

JOHN BRIAN STELFOX

Respondent

Ms A O'Grady QC (instructed by Caldwell & Robinson Solicitors) for the Petitioner
Mr M Bready (instructed by Reid Black Solicitors) for the Respondent

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O'HARA J

Introduction

[1] These proceedings involve a couple who were married for more than 20 years and have four children. On their divorce in March 2016 a financial settlement was reached and made a rule of court. It is the petitioner's case that the respondent has without cause failed to comply with the terms of the court order in that he has not paid her maintenance as he was obliged to do. At one point she sought to have the matrimonial agreement and court order set aside on the ground of material non-disclosure by the respondent but she has abandoned that application.

[2] Instead she seeks the committal of the respondent to prison for breaches of various court orders. She also seeks enforcement against him of the arrears of maintenance. For his part the husband seeks a downwards variation of the maintenance to zero on the basis that since 2017 he has not been in a position to pay it. He also seeks remission of all outstanding payments.

[3] These proceedings have been prolonged for a number of reasons including issues around legal representation of the respondent and his entitlement to legal aid

but mostly because of recurring concerns about the reliability and completeness of information and documents which the respondent has provided, or not provided, about his financial standing and assets. This has led to an unhappy proliferation of applications and adjournments.

[4] In order to rule upon the various applications from the parties it is necessary to scrutinise the respondent's finances and reach a conclusion on what money he has, and has had, access to. In order to satisfy me that there should be a variation of his maintenance to zero the respondent must provide satisfactory evidence to justify that course. On the other hand, if I am to commit him to prison for breaching court orders including the order made with his consent to pay maintenance, the petitioner must satisfy me beyond reasonable doubt that he has or has had assets which he has not disclosed or has diverted or has otherwise dealt with in a way which is deliberately contrary to his legal obligations.

[5] Over the many scattered days of hearing a significant volume of documents, bank statements and issues was put before me. I have considered all of them together with the affidavits, the oral evidence and the written submissions in reaching this judgment. However, it is neither helpful nor necessary to recite all of the minute details of the case in this judgment. Having said that I am indebted to both counsel and all legal representatives for their assistance in this long running case.

Background

[6] The petitioner and respondent married in 1993 and separated in 2013. They have four children who are now aged 26, 23, 21 and 19. The petitioner was granted a decree nisi on 2 March 2016 which was made absolute on 10 March 2016. On 2 March a matrimonial agreement which they had reached was made a rule of court by consent. As a consequence of part of that agreement, on 18 March 2016 a pension sharing order was made under which the petitioner effectively acquired all of the respondent's interests in a SIPP. In addition, the respondent agreed to pay £1,250 per month to the petitioner in respect of their three youngest children until they had completed third level education. The maintenance would therefore gradually decrease from £3,750 per month to £2,500 to £1,250 to zero.

[7] It is important to record at the start that it was known to the parties when they reached their agreement and consented to the orders being made that it was very likely that the respondent would be made bankrupt, sooner or later, as a result of a disastrous property investment some years earlier in the Republic of Ireland. This had led to a judgment against him for more than £3m. It was because of the prospect of bankruptcy that the decree nisi was made absolute barely a week later. Notwithstanding the imminence of bankruptcy the respondent had a well-established solicitor's practice in Derry and Limavady and the opportunity to continue to earn money to satisfy his obligations to the petitioner.

[8] In November 2016 the petitioner issued a summons to have the respondent committed to prison for his failure to comply with the agreement and court order to pay £3,750 per month. For some months the respondent had been paying the maintenance both late and short but in October 2016 he paid nothing and advised the petitioner that henceforth there would be no further maintenance payments.

[9] By affidavit dated 1 December 2016 the respondent averred that he had ceased practice as a solicitor from 1 November. He attributed this to his practice having become unviable due to the high number of staff employed and declining volumes of work as well as reduced payments from public funds (mostly criminal legal aid) which the practice depended upon. Furthermore, he expected to be in a position to file for bankruptcy within weeks. For these reasons he applied for a variation of the maintenance and the remission of the arrears.

[10] In a further affidavit dated 19 December 2016, resisting the committal application, he explained the matters above in greater detail. Part of that explanation was that many of his clients had left him from May 2016 onwards when one of the solicitors in his practice had left and opened her own practice, CMS Solicitors. He averred that he had approached her for temporary part-time consultancy work pending the resolution of his bankruptcy proceedings.

[11] In an affidavit dated 4 February 2017 a private investigator, Mr Alan McGowan, averred that at the instigation of the petitioner who did not believe the respondent's assertion about ceasing practice, he had phoned Stelfox Solicitors by calling a number ending …7200. He had been able to arrange an appointment to see Mr Stelfox on 10 January 2017 at his office at 14 Main Street, Limavady. Mr McGowan pretended he wanted the respondent to act for him on the breakdown of his marriage. During the course of their meeting the respondent explained that he had "handed the practice over to three of his lawyers" and that "now I am working for them but part of the reason is I pay my ex £5,000 a month and decided not to pay her anymore." He confirmed that he continued to work in both the Limavady and the Derry offices. Further, he suggested that the three solicitors who he had "handed over" his practice to knew from his sister, also a lawyer, that they would have to pay money back to him when he called on them for it.

[12] Ms Gillian Wilson, a cousin of the petitioner, averred in an affidavit dated 3 February 2017 that on 5 December 2016 she too had rung the number ending in …7200. It was answered as "CMS Solicitors." When she asked for an appointment (not using her own name) with the respondent she was given one in the Derry office. On 9 December 2016 she rang again, using another name different to her own, and was given an appointment with the respondent on 12 December in the Limavady office.

[13] In light of these affidavits orders for discovery were made against the respondent on 10 February and 16 March 2017. This discovery was to include

documentary evidence of his income, proof of his employment relationship with CMS and bank statements. He was also ordered to file an affidavit responding to the allegations made by Mr McGowan and Ms Wilson and to explain his arrangement with CMS.

[14] The respondent was adjudicated bankrupt on 1 June 2017, on his own application. He was discharged from bankruptcy on 12 September 2018. By then he had discharged in April 2017 the arrears of maintenance. Since spring 2017 he has however paid no maintenance at all to the petitioner.

[15] On 16 June 2017 the respondent swore an affidavit about his employment since 1 November 2016, the date on which he had previously sworn he had ceased working. In this affidavit he averred that from "in or about 1 November 2016" he had successfully obtained employment with Ms Kerry Connolly trading as CMS Solicitors at a monthly salary of £2,000 net. He claimed however that his relationship with her had "disintegrated" to the extent that after only 6 months he had no option but to terminate his employment on 12 April 2017. He swore that he had received nothing more from her than his monthly salary and that "despite strenuous efforts" he had been unable to find gainful employment since 12 April. At no point in the affidavit did he explain his failure to refer to this employment in his affidavit of 19 December 2016 nor did he seek to explain his various comments to the private investigator including those about his ex-wife.

[16] The respondent's position is made worse by the fact that he withheld in discovery as being irrelevant a written contract of employment with CMS solicitors which he had signed. This showed that he had agreed a 5 year contract. In the first year he was to be paid £25,000 plus expenses to include the running of a car. In the second year he was to be paid £40,000 net plus 30% of the net profits of the practice. After that his salary was to be indexed linked, year on year.

[17] The respondent's oral evidence that he regarded the document as irrelevant can only be regarded as a lie, especially coming from an experienced solicitor. He tried at all times to hide this employment relationship and the income he received from it as part of his efforts to deceive the court and deny the petitioner her maintenance. The contract was only produced when Ms Connolly of CMS was subpoenaed by the petitioner to attend the High Court as part of these proceedings. It also emerged in evidence that despite the suggestion that he was only an employee of CMS, he had paid to them over £50,000 in three payments between December 2016 and March 2017.

[18] When questioned by Ms O'Grady QC about what he had said to the private investigator, the respondent claimed that he spotted immediately that this person was a fraud and that he talked nonsense to him in that context. That too is a lie. What he is recorded as saying to the private investigator is entirely consistent with his efforts to mislead the court by making false averments and withholding relevant documents.

[19] The Law Society of Northern Ireland is the regulatory body for solicitors in this jurisdiction. In a letter dated 14 August 2018 Ms McKay of the Society set out to the petitioner's solicitors details of its interaction with the respondent since 31 October 2016 when he informed the Society that he was closing the practice of Stelfox solicitors the next day. The details include the following:

- 23 November 2016 – CMS advised the Society that the respondent started employment with them on 1 November.

- 20 April 2017 – the respondent advised the Society that he had left CMS.

- 21 April 2017 – CMS advised the Society that the respondent left on 13 April 2017.

- The respondent's practice certificate was suspended automatically upon his adjudication of bankruptcy on 1 June 2017.

- 28 June 2017 – the respondent applied to the Society to have the suspension of his certificate lifted.

- 28 June 2017 – Thomas Taggart & Son Solicitors also wrote in this regard.

- 28 June 2017 – the Society resolved to terminate the suspension.

- 10 October 2017 – Thomas Taggart & Son advised the Society that the respondent had never been employed by them and they were not in a position to offer employment.

- 22 November 2017 – Mr R Martin of Proactive Law Limited, Solicitors, wrote to the Society regarding an offer of employment to the respondent.

- 3 January 2018 – the Society agreed to uplift the suspension on conditions including the respondent only being salaried and working under supervision.

- As of August 2018 the Society's records showed the respondent still employed with Proactive Law.

[20] On 17 and 18 September 2018 I heard evidence from Mr Martin of Proactive Law Limited and from Ms F Faulkner, the respondent's partner of some years, about the respondent's recent employment and financial history.

[21] Mr Martin testified about the respondent working for him in Proactive Law from January 2018 on a salary of £18,000 per annum. It has to be said that this episode is rather murky and unsatisfactory. The Law Society intervened in that firm

because of its links with an accountant, Mr Dickenson, who had a mandate to sign cheques. But even before that intervention, Mr Martin said he discovered to his surprise that on 4 February 2018 Mr Dickenson had advanced a "loan" to Mr Stelfox by way of a payment of £1,000 to his son Callum. It then appeared that the respondent lodged £3,500 in the firm's account. There were further irregular episodes with the firm.

[22] As Mr Martin acknowledged, he fell out with Mr Dickenson, with the respondent and with another solicitor, a Mr Gareth Magee. Mr Magee then opened Proactive Lawyers Limited in late summer 2018 in the same building which Mr Martin had run Proactive Law from. The respondent had been dismissed by Mr Martin on 3 September 2018.

[23] Proactive Lawyers continues to be relevant to this case because at court on 17 September 2018 it was the respondent's case that he was no longer employed by Mr Martin (a fact agreed by Mr Martin) or by anybody else. Not surprisingly the petitioner was suspicious about this. Accordingly, she rang Proactive Lawyers from the courthouse on 17 September and asked to speak to Mr Stelfox who she knew was in court at the time. She was told that he was not in the office that afternoon but he would be in tomorrow. As it happened the evidence did not finish on 17 September so the case was relisted for 18 September. Mrs Stelfox rang Proactive Lawyers again and was told by Mr Dickenson that the respondent would not be in the following morning but would be in during the afternoon. That timeline matched the expected duration of proceedings before me.

[24] The respondent was cross-examined about this on 29 January 2019 when he came to give evidence. His explanation was that he was not working in Proactive Lawyers in September 2018 "in the sense of being financially on the books." Rather, he was trying to get this practice up and running with a view to earning a living from it. He claimed that he had only started to receive a salary from December 2019 of £1,000 a month although Mr Magee had given him a loan of £3,500 in September 2018. The terms of the loan are not defined anywhere.

[25] It was the respondent's evidence that his employment with Proactive Lawyers continued during the hearing before me and that he was still on a salary of £1,000 per month. This was his assertion as to salary despite the fact that in his name an advertisement was placed in January 2019 for a para-legal at a salary negotiable between £17,000 and £23,000 "for our offices in Derry and Limavady." The respondent denied any knowledge of this advertisement.

[26] Mr Magee provided a remarkable written statement to the court in October 2019 and gave evidence on 19 November 2019. He asserted that shortly after he employed the respondent he decided it may be a good plan to "open a small office in the Londonderry area." To that end he placed the advertisement. Having done that he spoke to the respondent and decided not to proceed with the plan. His

explanation in his oral evidence for the salary level for the para-legal was that that person would work full-time whereas the respondent only worked part-time.

[27] He was also asked about accounts which showed that he had advanced money to Callum Stelfox three times in 2019, a total of £2,700. Mr Magee said that these were loans which the respondent would repay at some undefined point in the future. There is no document which sets this out.

[28] While I accept entirely that lawyers can be as lax as anyone else in arranging their business affairs in a coherent way, I do not accept that I have been told anything approaching the truth by the respondent and Mr Magee about when their business relationship started or what its terms are. The respondent works in the Belfast office but also covers courts in the Derry area. According to both him and Mr Magee he brings clients in to Proactive Lawyers. Some of that work is legitimate but he was also fined £9,000 by the Law Society for removing files from the offices of Proactive Law.

[29] Accordingly, while I accept that the respondent is employed by Mr Magee and has been since at least December 2018 I am sure beyond any doubt that he earns more than has been disclosed to the court.

Other Issues

[30] As I indicated at the start of this judgment I heard a significant amount of evidence on a range of issues. Having dealt with the most important issue about the respondent's income from employment as best as I can, I now turn rather more briefly to other matters.

A. Ms Faulkner

[31] A number of concerns emerged during the course of Ms Faulkner's evidence which persuade me that she has been deliberately used by the respondent as a means of channelling money over a period of time. The extent of her awareness of the way in which she has been used is an issue which I am unsure of.

[32] It was agreed or conceded in evidence that as the respondent's own practice was closing down in 2016/17 his then office manager gave him substantial amounts of cash which were lodged in Ms Faulkner's account e.g. £5,000 in January 2017, £8,000 in February 2017. Between 2016 and 2018 Ms Faulkner lodged £34,750 in her account, a huge amount for a lady on a modest income from her employment as a manager of a mobile phone shop.

[33] Some of this money was used to pay the arrears of maintenance owed to the petitioner in April 2017, with a payment going to the respondent's then solicitor from Ms Faulkner's account. Other sums were given to the respondent's sons either

as cash or in other forms. Almost nothing was paid to his daughters. Nothing at all was paid to the petitioner.

[34] This evidence satisfies me beyond any doubt that at certain points in time, and certainly around 2016 and 2017, the respondent had access to funds, probably significant funds, which he attempted to hide or wash by putting them through Ms Faulkner's account. It is however relevant to note that it was not just the petitioner he owned money to – he had a huge judgment against him and creditors were owed money by his practice.

B. Property Issues

[35] The effect of the maintenance agreement was that the petitioner effectively became the owner of 2 Columba Terrace in Derry. I am satisfied that the respondent behaved at least shabbily, if not dishonestly, over that property to the extent that the petitioner found that the respondent had accrued rent arrears of £22,000 against the property which he had not disclosed at the time of the ancillary relief hearing. It was this issue which prompted the application to set aside the maintenance agreement, the application which was then abandoned.

[36] The respondent retained ownership of No.1 Columba Terrace which he sold to Ms Faulkner at a very low price. Ms Faulkner then sold it on at a healthy profit. Issues were raised about the sequence of events but not to my mind sufficiently strongly to justify me in finding any dishonesty, notwithstanding the respondent's other dishonesty.

[37] A third property issue was raised by the petitioner in December 2019 after the case appeared to have concluded. In short, the issue was that Ms Faulkner had recently bought a property at Crocus Road in Derry. She was only able to do so because in addition to securing the maximum mortgage available to her on her salary, she had been advanced £50,000 by a Mr Brian Guy, a long term associate of the respondent.

[38] The issue explored in evidence was why Mr Guy would advance any money, never mind £50,000, to Ms Faulkner. Mr Guy contradicted himself on whether it was a gift or a loan. Ms Faulkner testified it was a gift but then said that she would agree to a charge against her title if Mr Guy asked for one.

[39] Mr Guy and Ms Faulkner had a very limited business relationship at the time of this advance being made. The petitioner's not unnatural suspicion was that the respondent has an interest in this property which could be considered as an asset and used to help pay the arrears of maintenance to the petitioner. Mr Guy accepted that the advance and whole affair must look odd but he denied having received the £50,000 from Mr Stelfox when Ms O'Grady raised that with him as a possible explanation.

[40] Discovery was ordered, and provided, of various accounts in Mr Guy's name or relating to him but nothing emerged from those.

[41] The submission advanced by Ms O'Grady is that the explanation from Mr Guy advancing this money is laughable and that I should conclude that the only plausible explanation is that Mr Guy is in effect a front for Mr Stelfox. While I have grave doubts about this whole episode and believe I have not been told the honest truth I cannot conclude that Mr Stelfox is in any identifiable way the owner or part owner of the property.

C. Other loans and income

[42] I heard evidence about money obtained from a Mr O'Gorman, a solicitor in Co Donegal, who on the basis of an asserted long-term friendship and relationship with Mr Stelfox advanced money to Callum Stelfox in 2018, a sum of €3,000. Once again there was uncertainty about whether this was a gift or a loan to the respondent. While the respondent's undoubted dishonesty causes me to be suspicious of just about everything he does, I cannot conclude from the evidence that there is anything sinister about this episode.

[43] Evidence was also given about the sale of a fishing boat and firearms. These were the subject of a witness statement from Christian Stelfox, the parties' oldest son. He is clearly unaware of his father's dishonesty. I make no finding of any irregularity in these sales but note again that none of the proceeds was shared with the petitioner.

Conclusion

[44] No maintenance has been paid to the petitioner by the respondent since spring 2017. As indicated at earlier parts of this judgment I am sure beyond any doubt that the respondent withheld documents on discovery, that he made false averments about his employment and income and that he has not disclosed the true relationship between him and Mr Gareth Magee.

[45] I find that there was a single period when he was unemployed, between leaving CMS in April 2017 and starting with Mr Martin in January 2018.

[46] What is much harder to define is what the respondent's true income and assets have been at any particular time. For instance, the CMS contract appears to set his salary at £25,000 net for the first year but there must be more to the agreement since he was contributing to his paper employer over £50,000 in lodgements. It is even harder to form a view of his actual income with Proactive Lawyers.

[47] I must take into account the probability or inevitability that the respondent's employment prospects were significantly reduced by his bankruptcy. The Law Society imposes conditions on bankrupt solicitors being allowed to work. Notably it

requires them to be supervised by others along the lines set out in the CMS contract and the Law Society letter of 14 August 2018. The damage that the bankruptcy did to the respondent's reputation and future prospects is not to be ignored.

[48] The respondent is overwhelmingly responsible for the issues which have been explored in this case. It is reasonable to be suspicious of everything he says on the basis of the cash given to him by his office manager alone, never mind his false averments and withholding of documents. I believe that he revealed his true self to the private investigator – the transcript reveals a boastful, dishonest man denigrating his ex-wife to a complete stranger. And contrary to what the respondent asserted to the private investigator, the petitioner has found work in Scotland as a lawyer but has struggled to get by because of the complete denial to her of any maintenance since spring 2017.

[49] The respondent seeks to have his maintenance reduced to zero and the arrears since 2017 remitted entirely. In my judgment that would be a reward for his determined efforts to defy the court orders to which, I emphasise again, he consented at a time when he knew he would be made bankrupt.

[50] It is however unrealistic and potentially unhelpful to the petitioner to order him to pay everything because I doubt whether, even on the most positive interpretation of events, that is possible. Doing the best I can, in all the circumstances, I reduce the ongoing maintenance which he is required to pay by half from the next payment date and I reduce the arrears he should pay by half. If necessary I will hear the parties in due course on what those figures are and what time should be allowed to the respondent to pay.

[51] That leaves the question of committal for breach of court orders in respect of the maintenance and discovery and filing of affidavit evidence. In his written submissions of 22 October 2019 Mr Bready helpfully drew to my attention a series of relevant authorities and set out the principles which apply in these circumstances. So far as the failure to pay maintenance is concerned he submitted on behalf of the respondent that the non-payment of maintenance was not a wilful act on his part but was an inability to pay due to bankruptcy and the associated consequences which followed from that. He further submitted that it cannot be accepted beyond reasonable doubt that the court could be sure that the respondent had or has had at any point after his bankruptcy the means to discharge the maintenance arrears and wilfully chose not to do so. On the other hand Mr Bready conceded that the respondent had not complied with court orders in relation to the filing of affidavits and the provision of relevant discovery. However, he submitted that it had not been proved beyond reasonable doubt that he did so deliberately to frustrate any applications by the petitioner.

[52] On the first point I accept that it is at least possible that the respondent could not pay the maintenance in full at various times during the last four years but I do not accept that he could not pay any maintenance at all at any time during that

period. I believe it was his choice not to pay anything at all. Therefore, his actions were a deliberate and continuous refusal to honour any part of the order.

[53] So far as the breaches of court orders for discovery and affidavits are concerned, they too were deliberate and, in my judgment, were undoubtedly designed to mislead the petitioner and the court and therefore to skew the outcome of the case. For example, if the respondent's false averment about being unemployed in December 2016 had been accepted by the petitioner, rather than probed, there may well have been a different attitude on her part to pursuing any litigation. It is as a result of her tenacity and the admirable commitment of her legal representatives that the respondent's lies were exposed despite his best efforts.

[54] The respondent's conduct in this case is all the more despicable because he is an experienced practising solicitor. If he is not punished for contempt, who will be? Nobody knows or should know better than practising lawyers what the consequences of disregarding court orders are.

[55] In fixing a sentence for this contempt I have considered whether the sentence should be suspended, partly because I feel constrained by the prospect that the longer the respondent is imprisoned for, the less likely is the petitioner to receive any of the payments which I have ordered. At no point however has the respondent accepted or apologised or shown any remorse for his actions. Rather he has tried to brazen out the case. In the circumstances I cannot impose a sentence shorter than 3 months in prison. The respondent should present himself to officers at Laganside Courthouse at 10am on Monday 2 August to be taken into custody in accordance with the current practice dictated by the coronavirus epidemic.