

THE HIGH COURT

001849

C M C B

AND

S B



Judgment of Mr. Justice Barron delivered the 17th day of May 1983.

The parties were married in London on the 30th of December, 1964. They lived in London until 1970 when they returned to this country. From then until 1977 the parties lived in Dublin. In 1977 the husband went to London for 2 years returning in 1979. The marriage ran into obvious difficulties in 1980 and proceedings were issued. These were compromised by the parties entering into a separation agreement dated the 31st July, 1980. This was followed by a reconciliation and a final breakdown in the marriage in the Spring of 1982. The proceedings were re-entered and a further Consent Order was made on the 23rd April, 1982 whereby the husband agreed to pay £100 a week maintenance to his wife and children and to

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keep up the mortgage repayments on their home in T
R . There are three children of the marriage, A who
was born on the 27th November, 1965, S born on the 10th
April, 1969 and P born on the 9th September, 1980. During
the first year of their marriage the parties lived in a flat.
In 1965 they purchased a house. This was sold when they left
England. On their arrival in Ireland they purchased a house
in T R , . It is at the present the home of
the wife and the three children of the marriage.

The first issue which I have to determine is the extent
of the beneficial interest, if any, of the wife in this
property. The evidence on this issue is relatively uncontested.
While in England the husband had several employments including
a business of his own which he was running at the time of
the family's return to Ireland. I don't think that the husband
was particularly successful in this business nor did he seem
to earn large sums in his other employments. I suspect that
his failure in this business was a contributory factor to their

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return home. During the same period the wife was in constant employment. While the evidence is very sketchy mainly because with the massive inflation over the years the parties are unable to remember how little in money terms their earnings were. I feel that the wife's earnings were not far short of those of her husband over this period.

On their return to Ireland the pattern of employment and earnings was roughly the same. The husband and wife were both earning and both contributing to the family budget. However, again the husband's work record seems to have been varied. Certainly over the entire period of their married life it doesn't seem that the husband stayed in any particular employment for any great length of time.

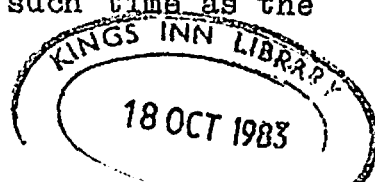
Now the evidence as to the purchase of the house in Wembley is that £550.00 was obtained from the joint resources and that the balance was from borrowing. When the parties left England they again purchased a house over here and basically the position was the same. They used the balance of moneys they

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had from England to finance the purchase of their house here and they made up the balance by borrowing.

Now there is no evidence of the actual amount of earnings, either in England or here in this country and I take the view that in the absence of any firm evidence to that effect that I must take it that the amounts that they put up and the amounts that they contributed were equal. Certainly when they left England they had £3,000.00 left over. At that stage the wife says that the husband was extravagant in that he expended half this sum on his own affairs, I don't altogether accept that fully. But it is perhaps significant that the husband thought he had earned the right to be extravagant through his hard work but made no suggestion that his wife had a similar right.

Anyway whatever the amount of the expenditure away from the family the remaining moneys were certainly impressed with the same trust as they had been in England and when used as a deposit on the house in this country the same beneficial interest was created as had been existing in the ownership of the English property and I think until such time as the



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instalments fell into arrear, i.e. the August 1982 that the same situation existed and as of that date I take the view that the beneficial interests of the parties would have been the same.

Clearly the contributions made by the wife towards the purchase of the home in W and towards the purchase of the home here were made with the intention to provide a home for both of them and with the intention of having a common ownership in it. Now even if I am not right in my view that a resulting trust would have been created it seems to me that it would be unfair to deny the wife a beneficial interest having regard to all the circumstances merely because her husband's name appeared solely on the title documents. It seems to me that the circumstances would be sufficient to create a constructive trust in her favour.

These findings, of course, follow from the view I take of the evidence as a whole and my acceptance of the truth or otherwise of the evidence adduced. The main witnesses were the parties themselves. I find that very largely the breakdown of the marriage must have had its roots in the difference in

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their basic characters. The wife is a level headed hardworking sensible woman with a strong capability for adapting to her circumstances. The husband on the other hand has been unable to so adjust, he has a weaker character in that respect than his wife. He is I am sure a hard worker but I wouldn't think throws too much of his energies into lost causes. Unfortunately since the final break-up of their marriage the financial position of the husband has become apparently hopeless. While the parties were together this was not so readily apparent. His wife's earnings and her ability to manage helped to conceal the flaws in the family's financial security. What has happened is that the husband found himself unable to cope with his agreement to pay his wife £100 per week. He has gone from one financial folly to another and regrettably has put his obligation to his wife and children at the bottom of his list of priorities, so much so that he has actively indulged in conduct which could only have been calculated to achieve the end of paying her nothing and ultimately of losing his interest in the family home. The purchase of a trailer in order to trade in sales of

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hamburgers and the like was ill-advised. However, when this was damaged by fire the husband made no effort to recoup what he could and move to some more secure method of obtaining finance. Even now with this trailer destroyed by fire for the second time he still talks of carrying on business in it.

Prior to the break-up the husband had been in the building industry for a short time in which he accumulated funds even if these funds were not profits. He blames his wife for the collapse of a job which he had by refusing to pass on telephone messages. Throughout he has claimed to have had his plant and machinery in the garage of their family home and to have been prevented from obtaining access to it. However, the reality is that there was no business left and little plant but it was his insistence of his right to go the garage when ever he wanted despite a barring order which has caused his downfall. An alleged contract in E. and an allegation of loss of this because of his inability to obtain his plant is a repeat of earlier allegations. Now the evidence in relation to that does suggest that there was some arrangement to do work in E

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but it is quite clear from the documents produced and the fact that much was obtained in Dublin that the failure to get any plant which he may have had in the garage was at best a very small and minor contributory factor to the debacle if in fact there was ever a contract. I am quite sure that if the husband had wished he could have continued his building business. The reality painful though it may be lies in his own character, he is just unable to organise his own affairs. The taking of a house in Sandycove for £325.00 a month with the intention of getting back some of this rent by making sub-lettings which may or may not have been permitted is but an example of this unfortunate failing.

The wife is permanently employed and can if she can retain her home fend for herself by taking in lodgers. She has been supported financially by her husband's sister and the latter's partner who run a boarding house in the city. The husband has accused these three women that is his sister and her partner and his wife of spites against him. There may be something in what he says but essentially they are

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reacting to his insistence on getting his own way at the expense of his wife and children. I have no doubt that they have done things which on reflection they would not do again. I do not accept for example there was any need for the wife to sell part of the husband's plant, particularly as it had been made clear to her that she had no right to do so and must not do so.

There is much in the husband's evidence as I have indicated which I am not prepared to accept. However in relation to matters in which he is in direct conflict with his wife I prefer the evidence of his wife and I accept it, and it is really this latter evidence which is material to my decision in relation to the beneficial interest in the family home. In relation to the allegations that he is taking steps to endanger deliberately his interest in the family home, to some extent I am influenced by the fact of the evidence itself which he has given and which I am not prepared to accept fully. In all the circumstances I

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feel that Section 5 (1) of the Family Home Protection Act has been shown to apply in the present case.

The remaining matter to be determined is that of access to the children. A is eighteen and should not be disturbed pending the completion of the Leaving Certificate Examinations, after that it is a matter for him. However his mother must try to persuade him to keep in touch with his father and to see him from time to time. S is in a particularly vulnerable position, I am sure that she feels that her father has let her mother down and that she totally identifies with her mother's position, however this is bad for her and potentially even more harmful. She must be persuaded to establish a relationship with her father even if it means no more than a short walk in Phoenix Park or the like at the start. This problem is beyond the wife though she can help considerably. She should seek professional advice from the Eastern Health Board and co-operate so far as she can with her husband to achieve a solution. P 's position is perhaps not so bad as that of S at present although potentially

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it may be worse. He cannot be allowed to be brought up without a father and again the Eastern Health Board should be asked to assist. It is essential that the husband should co-operate. He would like to see P in T R. Obviously this would be best, however, the reality of the relationship between the parties makes this a practical impossibility. The Orders which I propose to make are as follows:

I declare that as of the date the instalments fell into arrear i.e. August 1982 each of the parties had a 50% beneficial interest in the property in T R subject to the existing mortgage. And I will declare that a good title to the hereditaments has not been shown in accordance with the particulars and conditions of sale.

Henry Dorman
2/6/83

