

~~A P v P~~

1977 No. 264 Sp.

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964

AND IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT, 1976

AND IN THE MATTER OF R P I P S E AND  
N P , INFANTS

AND IN THE MATTER OF THE FAMILY HOME PROTECTION ACT, 1976

BETWEEN/

G P P

PLAINTIFF

-and-

I H P

DEFENDANT

Judgment delivered the 19th day of October, 1984, by O'Hanlon J.

I am satisfied that the Defendant in this case is engaging in such conduct as may lead to the loss of the family home at 85 Applewood Heights, Greystones

in the County of Wicklow, with the intention of depriving the applicant spouse

G P P of her residence in the family home. In the

course of an application made on his behalf to the Court in January

and February, 1984, he represented on oath to the Court that he

wished to raise money on the security of the family home for the purpose of setting up a business in the Shannon Industrial Estate, and thereby putting himself in a position to maintain his wife and children for the future. An Order was made by me on the 10th February, 1984, acting on the faith of these representations, authorising the Defendant to raise a sum not exceeding £20,000 on the security of the family home, and dispensing with his wife's consent to such transaction, pursuant to the provisions of Section 4(1) of the Family Home Protection Act, 1976. It was a condition of the relief then granted to the Defendant (1) that out of moneys so raised by him on the said security he would discharge a debt (stated to be in the region of £5,000) then owing by him to the Banque Internationale de Luxembourg, and (2) that all information as regards the mortgage liability of the Defendant in respect of the said family home be given at regular intervals to the Plaintiff's Solicitors.

It now appears, from correspondence which has been exhibited by the Plaintiff, that the Defendant subsequently raised a sum of £7,000 (being the maximum he was able to raise) against the security of the family home, and (a) applied the moneys for his own purposes, and not for the purpose of setting up the business referred to in his evidence given when applying to the Court for the said facility;

(b) did not discharge the debt due to the Banque Internationale de Luxembourg; (c) did not comply with his obligation to keep the Plaintiff's Solicitors informed as to the mortgage liabilities which were being undertaken by him.

I am satisfied that the Defendant is an untruthful and untrustworthy person, and that he is at present evading service of any court documents sought to be served on him. I believe he is engaged on a course of conduct designed to deprive the Plaintiff of the family home and to extract the maximum financial benefit from the premises for himself, without any regard for the needs of his wife or children.

In these circumstances it seems to me to be an appropriate case to grant the Plaintiff such relief as I can under the provisions of Sec. 5, sub-section (1) of the Family Home Protection Act, 1976 and I make the following Orders accordingly:-

(1) I propose to vary the Order already made by me in these proceedings, and dated the 10th February, 1984, by ordering and directing that the Defendant is not to be entitled to raise any further moneys on the security of the family home, No. 85 Applewood Heights, Greystones, Co. Wicklow, or the title deeds thereof, over and above such sums as may already have been advanced to him on the

security of the same as of the date of this judgment.

(2) I further order and direct that the Defendant do forthwith do all acts and execute all such documents as may be necessary for the purpose of transferring to the Plaintiff, for her own use and benefit absolutely, any interest now vested in the Defendant in the said family home, No. 85 Applewood Heights, Greystones, Co. Wicklow, to hold unto the Plaintiff for all the estate and interest of the Defendant in the said premises, subject only to such incumbrances or other liabilities as may now affect the said premises or any estate or interest therein.

(3) I further order and declare that as and from the date of the present judgment the Plaintiff shall be deemed entitled to the entire beneficial estate and interest hitherto held by the Defendant in the said house and premises, No. 85 Applewood Heights aforesaid, to the intent that no further arrangement entered into by the Defendant with a view to incumbering the said property, and no judgment registered against the Defendant which is sought to be converted into a judgment mortgage under the provisions of the Judgment Mortgage Act, 1850, and which has not been so registered as a mortgage prior to the date of this judgment, shall take effect as a valid incumbrance against the property.

(4) I allow the Plaintiff the costs of the present application against the Defendant.

(5) I reserve liberty to the Plaintiff and to the Defendant to apply, as may be necessary, in connection with the implementation of the judgment now delivered.

*R. J. O'Hanlon*

R. J. O'HANLON

19th October, 1984.