

THE HIGH COURT

[2019 No. 51 CAF]

**IN THE MATTER OF THE JUDICIAL SEPARATION & FAMILY LAW REFORM ACT, 1989  
AND IN THE MATTER OF THE FAMILY LAW REFORM ACT, 1995, AS AMENDED BY THE  
FAMILY LAW (DIVORCE) ACT 1996 AND IN THE MATTER OF THE FAMILY LAW  
DIVORCE ACT 1996**

**BETWEEN**

**A**

**APPELLANT  
(FORMERLY RESPONDENT)**

**- AND -**

**B**

**RESPONDENT  
(FORMERLY APPLICANT)**

**JUDGMENT of Mr Justice Max Barrett delivered on 24th September 2020.**

**1. Introduction**

1. This is a profoundly sad case in which a Circuit Court order in relation to a mother (the appellant) who presents with a drinking problem has effectively seen her denied meaningful access to her two children for well over a year. One of the children has recently turned the age of majority. The other, younger, child to whom this judgment relates, is in her mid-teens, and it remains to be seen whether a relationship between mother and child can be salvaged.
2. The hearing of the application was a deeply trying one in which the appellant repeatedly and genuinely cried. It would be easy for the hard-hearted to say that the appellant has brought her woes upon herself through drinking; the court does not say that; after a while a dependent relationship with drink becomes one in which one is not properly oneself. More than once the appellant indicated to the court that the person depicted in the pleadings is not the real her, that she is a good person who has always worked hard until, latterly, her life has 'nosedived'. The court accepts that the person in the pleadings may well not be the appellant as she once was; drink changes a person. Regrettably, however, the facts recounted by the appellant's ex-husband (the respondent) and the two children that he and the appellant had together ring true, the court has to act on what has historically occurred over a prolonged timeframe, and some of what has occurred has been most unpleasant for the respondent and, more particularly, the two children.
3. In this appeal, the appellant seeks greater access to the younger of her two children, who remains a minor. That child is referred to hereafter as 'X'. The expert recommendation from the experienced psychotherapist who gave evidence in this case has been that it is in X's best interests that only a very limited form of access be allowed between mother and child. The order to be made by this Court accords fully with the detail of that expert recommendation. Of course, the instinctive sense of likely all of us would be for a mother to enjoy the fullest access to her children. Unfortunately, having regard to the expert evidence of the psychotherapist and the other evidence before the court, the only comfort that might be offered to the appellant in this regard is that if she but acknowledges her problematic relationship with alcohol and seeks further treatment – the psychotherapist

indicates that residential treatment may be necessary – it is possible (though the court can make no promises in this regard) that an application for variation of the access arrangements now being put in place, on the recommendation of the psychotherapist, might in the future be successful. However, that is an issue which would fall to be decided by some future judge on all the evidence then presenting and one cannot know what her/his then decision would be.

4. The appellant indicated a few times to the court that she is suffering from anxiety and depression. The court is greatly sorry that this should be so. However, while the appellant should continue whatever treatment she is on for anxiety and depression, the court would respectfully suggest that she ought also to prioritise the seeking of treatment, even residential treatment, which expressly focuses on her relationship with alcohol.

## **2. Legal Background**

5. On 27 June 2019, the Circuit Court, made an order in judicial separation proceedings commenced by the respondent against the appellant. In its order, the Circuit ordered:

- "1. *...that the Applicant [now the respondent] have sole custody of the dependent children;*
2. *...[that the] Applicant...return photographs and any other personal items to the Respondent [now the appellant];*
3. *...that the Respondent is entitled to all medical information and school reports in relation to the children;*
4. *...that the Respondent...not attend at the children's school during school hours;*
5. *...that [the younger of the two children of the appellant and the respondent]...decide if she wants to text her mother once a month to let her mother know how she is getting on and [have her]...mother reply to this text*
6. *...that [the] costs of the report...be borne by both parties on a 50% basis...*
7. *Liberty to Apply ".*

6. On 28 June 2019, the appellant and the respondent were divorced by order of the Circuit Court. Their marriage appears to have been blighted by the excessive drinking on the part of the appellant. Certainly, the respondent avers in his affidavit grounding the divorce application that "[T]here have been serious difficulties in our marital relationship for a number of years as a result of the Respondent's misuse of alcohol...and resulting behaviour."
7. On 5 July 2019, the appellant filed an appeal against the judgment of 27 June 2019; however, her primary focus has been on the access dimension of that judgment.
8. On 8 September 2020, the matter came on for hearing before this Court. It is regrettable that it took the time it did to come on. That it did is due solely to the continuing

Coronavirus pandemic and the consequently limited provision of court services earlier this year, i.e. the delay presenting is not the fault of anyone. However, one consequence of the delay is that one of the two children of the appellant and the respondent has now attained the age of majority and hence this appeal, though originally concerned with two children is now only concerned with X.

9. When this matter came on for hearing, the appellant, who represented herself, indicated that she had only belatedly been advised of the hearing-date. With every respect, it does not appear to the court that this is so; yes, the *last* notice given to the appellant of the hearing-date was the evening before the proceedings and seems to have been done as much by way of courtesy as anything else; however, the appellant had already previously been told that the proceedings were to come on for hearing on the hearing-date. In any event, the appellant indicated to the court that she was satisfied for the matter to proceed to hearing, and so it did.

### **3. The Appellant's Principal Contentions**

10. The following are the principal points of relevance urged upon the court by the appellant:
- (i) She does not get to see X (*"I don't get to see my kids. There's no phone calls....He was [told]...in the Circuit Court that he had to make communication. He's not doing anything about it. There's no phone calls, nothing going through. It breaks my heart...[T]hey're my children"*).
  - (ii) Her mother (the maternal grandmother) does not get to see X (*"He won't let me see my children. He doesn't even let my mother. He doesn't encourage them....They have family. It's not just all his family. I'm here too. My family is here too. It breaks my heart."*). At a later stage in the hearing the appellant indicated that there are a number of grandchildren in her mother's family and that X has not had the opportunity to engage with these children either. The appellant appeared to consider this an especial loss in circumstances where X has no cousins on the respondent's side of the family.
  - (iii) She has not sought to embarrass X at school. (*"The reason why I went down to the school was to leave them birthday presents because this man barred me from the road....I couldn't go up near the house....I'm afraid to send letters because he'll take them"*).
  - (iv) The respondent has been telling lies and X has been schooled in what to say to the authorities (*"I believe they are tutored. Big time....There's fabricated lies going on as well"*).

[Court Note: The court would respectfully observe re. point (iv) that the children, father, and witnesses have all told a consistent tale. The interactions between the psychotherapist who gave evidence in these proceedings and the children suggest the children to be recounting personal histories that chime but do not seem coached. Obviously the psychotherapist and the Gardaí have no interest in telling

lies, nor does the court believe for a moment that they did. What has been presented on the respondent's side, the court finds, is a series of persons all speaking to the same truth, no fabrications, no lies, and no 'tutoring', certainly none that has been discerned].

- (v) She would like more up-to-date medical and school reports ("I would like to know personally, on a basic level, how my child is doing. She is my daughter").
- (vi) For a 2 ½ year period post-familial breakdown, she was paying financially towards her children without getting access ("I...feel 'Why should I be paying and I don't see my children?").

[Court Note: In fairness to the appellant, the point she was likely trying to make in this regard, in the course of what was a trying morning, was not that she should be able to buy access – access cannot be bought – but more that she had behaved in a good way and that goodness should be rewarded. However, as the oral evidence (summarised hereafter) will show, the applicant, regrettably, has not, with respect, always acted in a commendable manner, and it is to the full picture of all the facts presenting to which the court must have regard.]

#### **4. The Oral Evidence Given**

11. Three people gave evidence at the hearing: Garda C, Ms L (a psychotherapist), and the respondent.

##### *a. The Evidence of Garda C*

12. Garda C's first involvement with the appellant and the respondent (then a married couple) commenced in January 2016 when the Gardaí were called to a dispute at the family home. When the Gardaí arrived at the then family home, Garda C found the appellant to be intoxicated and abusive. In the end, she was arrested for public order offences. Thereafter, she was convicted of three offences, two under the public order legislation and also breach of a court order (it seems a barring order that was later obtained against the appellant). A protection order was also subsequently ordered in favour of the respondent. Garda C was aware of another couple of incidents in which the appellant was involved but had no direct knowledge of same. He indicated that the appellant has five convictions in total: two for breaches of orders; two public order offences; and one for assault (of the respondent's mother). None of these offences are related to 'ordinary' criminality such as theft; they are all offences that have arisen in the context of a family dispute and family law orders. That is not to say that they are not offences; however, it seems important to the court to present and see them in their proper context and how they came about.

##### *b. The Evidence of Ms L*

13. By order of 7 April 2017, the Circuit Court ordered that Ms L should prepare a report under s.47 of the Family Law Act 1995. Ultimately, two such reports (a main report and a supplementary report) were prepared. Those helpful reports relate to the two siblings who were originally the subject of this application.

14. The older sibling (16 years of age when first interviewed by Ms L) depicted an environment in which Mum had a heavy drinking problem, presenting drunk at home and at work, being very controlling, and hitting the older child often (sometimes in front of the younger sibling).
15. X (who was 10 years of age when first interviewed by Ms L) told a not dissimilar tale: she had viewed Mum being drunk every night, assaulting the respondent's mother, repeatedly hitting the older sibling (X herself appears not to have been hit) and had been the recipient of excessive mobile phone texts following on the familial break-up.
16. In a supplementary report, to which extensive complementary reference was made in her oral testimony at the hearing, Ms L observed, inter alia, as possible:

*"X was more open and less guarded in her presentation. She held her head up, spoke more freely, and smiled more often....X continues to be afraid of her mother. In addition, she is fearful [that] she might come to her school and her home. She remains in a difficult bind with regard to her relationship with her mother. She reports contact from her mother is 'too much'. In addition, she is in a situation where during telephone calls her mother makes inappropriate statements and requests of her, which leave X feeling compromised and confused. X reports [that] she cannot trust her mother and is 'disappointed' [with her]....This is an intolerable and damaging situation for X which has to cease immediately. [Emphasis added]. I note the school are happy with X and she is making progress. X has a firm grasp of the family situation. She formed a free view, appropriate for her age. She is clear [that] she does not wish to see her mother at this time. I note she did not attend Play Therapy as recommended."*

17. In her oral testimony Ms L indicated herself to be "*quite concerned for X*". She did not find anything unusual in the number of days that the children were absent from school in a particular school year. Ms L also indicated that she considers the children currently to be in a stable home environment with their father (who has latterly remarried). In the course of Ms L's final meeting with the appellant in advance of preparing the initial report – a meeting the result of which was likely to impact on the appellant's future level of access to her children and thus one to which considerable importance attached or ought to have been attached – Ms L observes that "*I noted a smell of alcohol*". That the appellant would turn up to such a meeting having taken alcohol seems telling.
18. When it comes to X, the recommendations of Ms L are as follows:

*X to attend play therapy.*

*[The appellant] to seek professional help for her addiction. To also consider residential treatment. [When asked by the court whether she had sought alcohol addiction/dependency treatment the appellant referred, for example, to (it would seem, when one has regard to the chronology of events, ineffective) treatment in 2016, so long pre-dating the September 2018 report in which Ms L indicated that in*

her professional opinion that the appellant at the time when the report was drafted continued to need “*professional help for her addiction....[even] residential treatment*”].

- [The appellant] *to give an undertaking to the Court [that] she will not ring X, and that she will stay away from the family home and the school for the moment.*
- *I recommend that [the appellant] be afforded the opportunity to send cards, short notes and...small gifts at Christmas and birthdays, these should be addressed to [the respondent] and kept in safe keeping until the children wish to receive them.*
- *The appellant can send a general text [to] X once a week so long as X wishes to receive same. The texts are to be general in nature and should not contain any questions, requests or pressure for X. [The respondent] to periodically monitor the texts and no texts are to be sent if [the appellant] is under the influence of alcohol.”*

19. As mentioned, Ms L expressed continuing concern for X in her oral testimony and indicated that she would like to know that the recommendation as to therapy has been taken up. It appears from the evidence of the respondent that it has been taken up and that X is faring well in that therapy.

20. Arising from the delay occasioned by the closure of the courts as a result of the Coronavirus pandemic, there was quite a gap between when Ms L met with X and produced her supplementary report and when the matter thereafter came on before the High Court. In the event, no objection was taken in this regard and Ms L’s concerns/recommendations seemed thoroughly borne out by the other evidence before the court. Nonetheless, even if only as a counsel of prudence, lawyers in applications such as the within may wish to consider whether, in the unusual circumstances presenting as a result of Coronavirus-related delays in hearings, it would be more appropriate and useful that the oral evidence of an expert witness such as Ms L should be able to refer to a relatively recent meeting with an affected child, even if no further written report has been prepared. The foregoing is by way of *obiter* observation only, solicitors and counsel are perfectly capable of deciding whether such a further meeting would be appropriate and useful, and the court is not stating that such a further meeting would invariably and in all circumstances be necessary.

c. *The Evidence of the Respondent*

21. The respondent in his oral testimony indicated, *inter alia*, that:

- the older sibling has performed well in the 2020 Leaving Certificate and will be doing a third level qualification in the social sciences;
- X had started back to school on the day of the hearing and was doing well at her therapy (though as seems almost *de rigueur* for youngsters in need of mental health treatment in Ireland, though none the less disappointing for that (and the court

makes no criticism of the relevant service-provider which is doubtless doing the best it can), there was a “*huge waiting list*” before X could avail of that treatment);

- “*The two children have been through an awful lot. It’s not a game of throwing stones here. It’s about – and it always was – the safety of the two kids. There’s nothing made up*” [The court accepts this evidence as true and notes that the paramount consideration in this judgment are the best interests of the sole remaining minor child, *i.e.* X];
  - during their marriage, the appellant was regularly drunk at home and at work, to the point, for example, of once inadvertently serving a customer at her place of work with a bottle of alcohol in lieu of a bottle of water, and being taken from her place of work on a couple of occasions by emergency services;
  - he has indicated to the maternal grandmother that she can visit the children at his house; however, she indicated that “*they know where I live*” and matters have been left at that;
  - on one occasion, the appellant crashed the car into a wall while driving with the younger sibling; the respondent claimed that the appellant was drunk at the time; the appellant indicated at the hearing that she had in fact been driving under the influence of a powerful anti-depressant (though, with every respect, it is not clear to the court why acting under the influence of a lawfully prescribed drug would be a better explanation for the crash than acting under the influence of lawfully purchased alcohol; one should not, with respect, be driving while under the influence of either);
  - on another occasion, following the issuance of the barring order the appellant “*turned up to the [family] house, entered into the house on her own...hit [the respondent]...in the side of the head...tried to put [X]...into the car....[while] drunk and...assaulted [the respondent’s] mother. My mother didn’t take the case to the court. The guards did.*” [The court notes that this version of events was disputed by the appellant; however, it seems telling as to where the truth lies that she was successfully prosecuted for an assault on the respondent’s mother following the events of the day in question].
  - he is seeking that the order appealed against by the appellant be affirmed “*for the safety of the two kids*”.
22. The respondent seemed to the court to be a straight-talking man who was truthful in his evidence.
23. In passing, the court was struck at this point of the proceedings how much less than optimal it is for a party to represent herself in proceedings such as the within. The cross-examination pitted a divorced couple against each other. The court was apprehensive even before cross-examination began that, in all the circumstances presenting, matters

might descend into acrimonious exchanges and at points it did, though throughout the respondent conducted himself with notable forbearance. While the appellant was perfectly entitled to ask the questions she did and make the submissions that she did, the court is unconvinced that having one party to a dissolved marriage engage in cross-examination of the other party to that dissolved union represents a particularly effective exercise in the garnering of useful evidence.

24. In addition to the above-mentioned evidence, the court has had regard to the entirety of the pleadings.

**5. Some Law and Some Related Considerations**

25. Section 3 of the Guardianship of Infants Act 1964, as amended, provides, *inter alia*, that

*"(1) Where, in any proceedings before any court, the – (a)...access to, a child...is in question, the court, in deciding that question, shall regard the best interests of the child as the paramount consideration [not necessarily the sole consideration, but "the paramount consideration"]"*

*(2) In proceedings to which subsection (1) applies, the court shall determine the best interests of the child concerned in accordance with Part V."*

26. Sitting in Part V of the Act of 1964 is s.31, which provides as follows (per the italicised text):

*"31.(1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.*

*(2) The factors and circumstances referred to in subsection (1) include:*

*(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;*

27. Court Note: The court notes (i) Ms L's professional opinion that even limited access between the appellant and X has led to a situation that is actively detrimental to the younger sibling, (ii) Ms L's effort in her recommendations to balance X's interest in having a meaningful relationship with each of X's parents by proposing a very limited form of access between the appellant and X; (iii) that Ms L's recommendations come in a context where, *inter alia*, Ms L expects that the appellant will seek addiction treatment, even residential treatment.

*(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);*



28. Court Note: The court notes, *inter alia*, Ms L's observation of X that "She [X] is clear [that] she does not wish to see her mother at this time."

(c) *the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;*

29. Court Note: The court notes (i) Ms L's professional opinion that even limited access between the appellant and the younger sibling has led to a situation that is positively detrimental to X, and (ii) that she considers the present home environment to be a stable home environment (an assessment that would seem to be borne out, *inter alia*, by the older sibling's recent good performance in her Leaving Certificate examinations).

(d) *the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;*

30. Court Note: The appellant struck the court as a basically good person who is destroying her life with drinking, but who wants to be a part of her children's lives. (Ms L refers to the appellant in the first of her reports as having "a serious difficulty with alcohol dependence"). What seemed, with respect, to be lacking on the part of the appellant was a real understanding as to how poorly she has at times behaved after taking drink. She repeatedly indicated that she was being punished for one mistake (presumably the night Garda C was called to the family home). Unfortunately, that is just not so. Through her excessive drinking, the appellant has, regrettably, made her children's young lives very difficult – and one is only a child once. The court was particularly struck by the observation by the elder of the two siblings, as relayed by Ms L that "I don't think I have ever met my real Mam, only the drunken one". That is a very sad observation for any child to make, and one that is even a little chilling to type. The upbringing of the children, so far as their mother has been concerned, has been wanting; the upbringing received at the hands of their father has, if the court might respectfully observe, been commendable. Relations between the children and the mother have been cool; with the father they have been warm. It is unfortunate that the appellant's mother appears not to wish to visit her grandchildren at their present home, but the respondent has told the appellant's mother that she is free to do so, and he seemed willing, historically, to try and make any such visit work; his paramount interest seems at all times genuinely to have been the welfare and happiness of his children. As to relations with cousins on the mother's side, there is no evidence before the court of any personal relationship presenting in this regard – and casting an unfortunate shadow over all of the court's considerations in this regard is the appellant's history of drinking and her behaviour after drinking. All that said, the court does not wish to be unduly discouraging to the appellant: as mentioned, she appeared to the court to be a basically good woman who is destroying her life with drink and who greatly misses her children. As Ms L recommends, the appellant needs to enter some form of (further) treatment for her drinking. The appellant owes that to herself; indeed,

the court suspects that the first step to greater happiness within herself and in her relations with her children (to the extent that relations with her children are salvageable following her past misbehaviour) lies in her getting her drinking under control through completion of a reputable, perhaps residential, treatment programme.

(e) *the child's religious, spiritual, cultural and linguistic upbringing and needs;*

31. Court Note: No particular religious, spiritual, cultural or linguistic upbringing/needs have been argued to present. (A question perhaps arises, though it does not present in these proceedings, as to whether a perceived religious need falls ever to be viewed as rationally founded).

(f) *the child's social, intellectual and educational upbringing and needs;*

32. Court Note: For the reasons identified under the other headings above, it seems to the court that the social, intellectual and educational upbringing and needs of X lie in the court making an order along the lines recommended by Ms L.

(g) *the child's age and any special characteristics;*

33. Court Note: X's age does not seem to the court to present any additional concern, save to note that she is a child entitled to the best childhood possible. She does not appear to present with any "special characteristics".

(h) *any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;*

34. The court notes in this regard (i) Ms L's observation, as quoted at para.13 above, and (ii) the following observations in the initial report:

*"The writer has some concerns for X. She has witnessed [her]...parents' conflict over a number of years. In addition, she has...witnessed the abuse of [the older sibling]...for some time and in recent times the assault of her grandmother. She has been present when her mother has been drunk, the Gardaí called and was a passenger in the car when her mother hit a wall. It appears [that] she is confused about her relationship with her mother, continues to worry about her, and [is] fearful [that] something might happen to her. These are excessive, inappropriate burdens to be placed on a [then] 10 year old child".*

35. Neither, the court notes, are they appropriate burdens to be placed on a now 13-year old child. Childhood is, or ought to be, a time of magic and marvel, not an exercise in endurance and worry, as, regrettably, it has too often been for X.

(i) *where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to*

*the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;*

36. Court Note: No proposals have been made as such; there is an existing court order pertaining, *inter alia*, to access. The appellant seeks a loosening of same. The respondent seeks an affirmation of same. Ms L has formulated the recommendations detailed previously above. The appellant has a history of breaching a court order (the barring order), so the court entertains some uncertainty as to whether she will manage fully to comply with the form of order suggested by Ms L but considers, at the same time, that that form of order represents a professionally informed, balanced suggestion which seeks, *inter alia*, to balance X's interest in having a meaningful relationship with each of her parents by proposing a very limited form of access between the appellant and X. (Again, the court notes that this comes in a context where, *inter alia*, Ms L expects that the appellant will seek (further) addiction treatment, even residential treatment).

(j) *the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;*

37. Court Note: Again, there is an existing court order pertaining, *inter alia*, to access. The appellant seeks a loosening of same. The respondent seeks an affirmation of same, an affirmation he considers necessary (to borrow from his oral testimony) "*for the safety of the two kids*", albeit that only X is the subject of this judgment. Ms L has formulated the recommendation detailed previously above, which recommendation represents a professionally informed, balanced suggestion that seeks, *inter alia*, to balance X's interest in having a meaningful relationship with each of her parents by proposing a very limited form of access between the appellant and X. (Again, the court notes that this comes in a context where, *inter alia*, Ms L expects that the appellant will seek (further) addiction treatment, even residential treatment).

(k) *the capacity of each person in respect of whom an application is made under this Act—*

(i) *to care for and meet the needs of the child,*

(ii) *to communicate and co-operate on issues relating to the child, and*

(iii) *to exercise the relevant powers, responsibilities and entitlements to which the application relates.*

38. Court Note: Given her drinking problem and her past behaviour when under the influence of alcohol, the court must regrettably conclude, on all of the evidence before it, including but not limited to the reports of Ms L, that when under the influence of drink (and she seems, on the evidence before the court, regularly to be heavily so) the appellant often has low, even no general capacity as regards (i), (ii) and (iii).

(3) *For the purposes of subsection (2)(h), the court shall have regard to household violence that has occurred or is likely to occur in the household of the child, or a*

*household in which the child has been or is likely to be present, including the impact or likely impact of such violence on:*

- (a) the safety of the child and other members of the household concerned;*
- (b) the child's personal well-being, including the child's psychological and emotional well-being;*
- (c) the victim of such violence;*
- (d) the capacity of the perpetrator of the violence to properly care for the child and the risk, or likely risk, that the perpetrator poses to the child.*

39. Court Note: The court has done so.

- (4) For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only.*

40. Court Note: The court has proceeded accordingly.

- (5) In any proceedings to which section 3(1)(a) applies, the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interests of the child.*

41. Court Note: This obligation is noted; however, no such delay presents in these proceedings.

- (6) In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—*
  - (a) shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and*
  - (b) may make an order under section 32.*

42. Court Note: Noted. Noted; no issue presents in this regard.

- (7) In this section 'household violence' includes behaviour by a parent or guardian or a household member causing or attempting to cause physical harm to the child or another child, parent or household member, and includes sexual abuse or causing a child or a parent or other household member to fear for his or her safety or that of another household member."*

43. Court Note: Noted.

**6. Intended Order**

44. As mentioned above, only X remains a minor and, as a consequence, this judgment relates solely to her. So, for the various reasons identified above, the court will (A) affirm

the order of the Circuit Court, points 1-4 and 6-7, restricting it, as is now appropriate, to X only, and (B) make some supplementary provision in its order so as to make sure that the order expressly conforms with the professional recommendations of Ms L. (Those recommendations are listed below, in underlined SMALL CAPS, and what the court proposes is identified thereafter):

X TO ATTEND PLAY THERAPY

45. Court Note: X has attended the therapy to which the respondent referred in his oral testimony. So the court does not propose to order this, unless it would somehow assist in ensuring that that therapy continues to be provided, if and as necessary.

APPELLANT SHOULD SEEK PROFESSIONAL HELP FOR HER ADDICTION AND ALSO CONSIDER RESIDENTIAL TREATMENT

46. Court Note: The appellant should seek further, comprehensive treatment from a reputable service provider, undertaking residential treatment if and as appropriate. However, seeking such treatment is an elective matter for her, not for the court to order. The court would but note that unless and until the appellant gets her drinking under control she will almost certainly find that in any future application which she may make concerning X, her excessive use of alcohol and her past history when she has drink taken will be a significant factor in whatever decision is then made, as it has been here. The appellant should also note that time, unfortunately, is ticking in this regard: X is now a mid-teenager and it will only be a short few years before adulthood arrives.

APPELLANT TO GIVE AN UNDERTAKING THAT (I) SHE WILL NOT RING X,

(II) SHE WILL STAY AWAY FROM THE FAMILY, (III) SHE WILL STAY AWAY FROM X'S SCHOOL

47. Court Note: The court will seek that the appellant give these undertakings.

APPELLANT SHOULD BE GIVEN THE OPPORTUNITY TO SEND CARDS, SHORT NOTES AND SMALL GIFTS TO X AT CHRISTMAS AND BIRTHDAYS, TO BE ADDRESSED TO THE RESPONDENT AND KEPT IN SAFE KEEPING UNTIL X WISHES TO RECEIVE THEM

48. Court Note: The court admits to hesitating over this recommendation. This was because the court was surprised by the appellant's observation at the hearing that in giving presents and maintaining some form of contact with her children she wanted to send a (punitive) message that they had left her, she had not left them ("*I am going to say to my children 'I never forgot about you, but you forgot about me'*"). For the avoidance of doubt, the two children of the appellant are in no way responsible for the appellant's drinking habit, let alone any consequences that have flowed therefrom. Regardless, however, of the appellant's observation, the court is alive to the fact that the above-mentioned recommendation is a recommendation by a competent professional who is clearly seeking in the recommendation to balance X's interest in having a meaningful

relationship with each of her parents through proposing a very limited form of access between the appellant and X. Subject to the above-mentioned undertakings being provided by the appellant, and given that X's interests are paramount, the court will order that the contemplated arrangement be established. The appellant should note that the sending of cards, short notes and small gifts ought rightly to be used by her as a means of celebrating love (and the court does not doubt that at the end of the day the appellant loves her children), not as a means of reminding children of perceived wrongs that do not in fact present. As contemplated by Ms L, any such cards, notes or small gifts are to be sent at Christmastime and at the time of X's birthday only.

49. The appellant indicated a fear at the hearing that the respondent would never pass on any such cards, notes or small gifts as she might send. Ms L clearly contemplates that they should only ever be passed on should X at some point wish to receive them; however, the respondent should note that any such cards, notes or small gifts as may be sent ought to be kept in safe keeping in the event that X ever does wish to receive them.
- (I) APPELLANT CAN SEND A GENERAL TEXT TO X ONCE A WEEK SO LONG AS X WISHES TO RECEIVE SAME; (II) THE TEXTS ARE TO BE GENERAL IN NATURE AND SHOULD NOT CONTAIN ANY QUESTIONS, REQUESTS OR OTHERWISE PRESSURE X; (III) NO TEXTS ARE TO BE SENT IF THE APPELLANT IS UNDER THE INFLUENCE OF ALCOHOL;
- (IV) RESPONDENT IS PERIODICALLY TO MONITOR THE TEXTS
50. Court Note: Subject to the above undertakings being provided by the appellant, the court will make an order authorising this process. The court notes that this arrangement will supersede point 5 of the Circuit Court order and will make this aspect of its order in place of that point 5. The court emphasises to the appellant that: (i) such texts are only to be sent if and for so long as X wishes to receive them (and if X ever states/texts that she does not wish to receive them, then the appellant must thereafter cease in sending them unless and until X indicates that they might resume); (ii) no texts are to be sent by the appellant when and if she is under the influence of alcohol.
51. The respondent is respectfully reminded that although a limited form of access is contemplated by Ms L and now by the court, it is nonetheless a limited form of access ordered by the court because it is in the paramount interests of X that she have that limited access. It would be wrong of the respondent, and contrary to X's best interests, to do anything to frustrate that limited access.
52. The court will make no order as to costs.

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**TO THE APPELLANT/RESPONDENT:  
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

*Dear Appellant/Respondent*

*I have dealt in the preceding pages of my judgment with the various issues presenting in this appeal. I am conscious that much of what I have written might seem like legal jargon. So, in this section, I identify briefly some key elements of the judgment and what it means for each of you. This summary is not a substitute for what is stated in the preceding pages. It is meant merely to help you understand some key elements of what I have stated above.*

#### **For the Appellant**

*I intend to confirm points 1-4 and 6-7 of the Circuit Court order. My order will relate only to your younger child. Also, I will add a couple of extra elements to the original order so as to give express effect to what the psychotherapist has recommended as being in the best interests of your younger child. So, if you give certain binding undertakings to the High Court (that you will not ring your younger daughter, that you will stay away from the respondent, his wife and the two children, and that you will stay away from your younger daughter's school), I will order that:*

- (1) you be given the opportunity to send cards, short notes and small gifts to your younger child at Christmas and birthdays, to be addressed to your former husband and to be kept in safe keeping by him until your younger child wishes to receive them (if she does ever wish to receive them); and*
- (2) you be allowed to send a general text once a week to your younger child, for so long as she wishes that. Those texts must be general in nature and should not contain any questions, requests or otherwise pressure your younger child. No texts should be sent if you are under the influence of alcohol, and your former husband may periodically cast an eye over whatever texts you do send. If your younger child ever asks that the weekly texts stop, you must stop sending them unless and until your younger child indicates that they might resume.*

*Finally, though I make no order in this regard, I would, most respectfully, suggest that you give the keenest consideration to seeking further treatment, it may be necessary to undertake residential treatment, for your relationship with alcohol.*

#### **For the Respondent**

*Please read the section just above concerning the implications of this judgment for your former wife. Please note that:*

- (1) if any cards, short notes or small gifts are sent by your former wife and addressed to you but intended for your younger child, whether they be sent at Christmastime or to mark your youngest child's birthday, you should keep them in a safe place and give them to your daughter, should she ever ask for them;*
- (2) the appellant is entitled to see medical and school reports pertaining to your younger child and it would be appropriate to send copies of these to the appellant without her having to ask you for them;*

(3) *the limited form of access that I am ordering is being ordered on the strength of what the psychotherapist (an expert professional who has your younger child's mental health at heart) considers to be in that child's best interests. So it is in your youngest child's best interests (now and longer term) that you seek, in good faith, to facilitate the limited form of access between your former wife and your younger child that the psychotherapist has recommended and which I intend to order.*

*Yours sincerely,*

*Max Barrett (Judge)*