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**THE HIGH COURT**

**FAMILY LAW**

**[2023] IEHC 570**

**RECORD NO. 2023/1CAF and 2023/16CAF**

**BETWEEN:**

**O.**

**APPLICANT/RESPONDENT**

**-AND-**

**D.**

**RESPONDENT/APPELLANT**

**JUDGMENT of Mr. Justice Jordan delivered on the 2<sup>nd</sup>. day of October 2023**

1. This is an appeal by Mr. D. against various orders made by the Circuit Court to enforce and implement an ancillary order made previously as proper provision when granting a decree of divorce on 30 July 2020. The ancillary order in question was that the family home be sold and that the proceeds be distributed equally between the parties. For clarity the Court will refer to Mr. D. and Mrs. O. in parts of this judgment. The orders being appealed are as follows; -

(a) Orders 1, 3 and 4 made on 8 April 2022 –

(1) The Court orders that the properties comprised in folio B be sold.

(3) The Court directs Mr. D. to vacate folio B by 1 June 2022.

(4) The Court declares that the garage is included in folio A.

(b) Orders 1 and 2 made on 21 December 2022 –

(1) Mr. D. to vacate both properties by midnight on 22 December 2022.

(2) Mr. D. must keep a 2km distance from the properties.

(c) Orders 3, 4, 5 and 6 made on 11 January 2023 –

(3) The Court confirms that folios A and B be sold forthwith.

(4) The Court directs that Mr. D. is not to attend within 2km of the lands in question.

(5) The Court directs that the electricity and water supplies be transferred into the sole name of Mrs. O.

(6) The Court directs that the mobile home is to be moved by 25 January 2023.

**2.** The appeal follows on from protracted litigation in the Circuit Court involving a significant number of Court applications which were before the Circuit Court by reason of the failure of Mr. D. to comply with Circuit Court orders.

**3.** The original divorce proceedings were commenced by a Family Law Civil Bill dated 8 May 2018. Mr. D. did not deliver a defence to the Civil Bill and he has never sworn an affidavit of means or an affidavit of welfare in the proceedings.

**4.** The divorce proceedings came on for hearing before the Circuit Court on 30 July 2020. The Court granted a decree of divorce and made a number of ancillary orders. Of relevance to this appeal are the following ancillary orders; -

(a) An order for the sale of the home with a stay for nine months to enable Mr. D. to buy out the equity of Mrs. O. in the family home, failing this, the property shall be sold and the proceeds split 50/50 between the parties. Mr. D. is to procure the wife's release from existing mortgage.

(b) Mr. D. is to pay a lumpsum of €25,000 in past and future maintenance.

(c) Adjourned to Easter 2021 for mention.

(d) The judgment mortgage on the family home is in Mr. D's name solely; this payment would be discharged from his share of the sale of the family home.

5. Thus, the Circuit Court ordered a sale of the family home and it made a lumpsum payment order in favour of Mrs. O. The adjournment to Easter of 2021 for mention was presumably to monitor and to ensure compliance with the orders made.

6. The following is an extract from Mr. D's legal submissions, para. 2;

“The family home property that was specified in the Court's ancillary Order for proper provision is contained within a specific Folio of the Land Registry. Adjacent to it is a slightly larger site contained within a separate Folio of the Land Registry, (hereafter ‘the second property’), which is separately owned by Mr. D. After the divorce and ancillary Orders in 2020, Mr. D engaged an engineer, whose report identified numerous serious issues affecting the family home property in terms of good and marketable title. The oil burner supplying heat to the family home is located in a large garage that straddles the two Folios as mapped; water supply to the family home runs from a well on the second property; electricity in the family home is connected to a supply source on the second property; the septic tank on the family home property is without percolation pipes in contravention of planning law; planning permission had not been obtained for an attic conversion to the family home; and boundaries needed to be updated to reflect revisions to the maps and boundaries. In his correspondence to the Court appointed solicitor who had sole carriage of sale the Court-appointed auctioneer accepted the issues identified by the engineer to be serious issues affecting the ability to show good and marketable title; indeed, in that correspondence the Court appointed auctioneer stated “This makes my job impossible and if our services are required in the future we want all these issues resolved before we will take on this listing”.”

7. It is abundantly clear on the evidence that Mr. D. set his face against compliance with the Court orders and commenced a campaign with the objective of preventing a sale of the family home.

**8.** The order concerning the sale of the family home was not given effect and the lumpsum payment was not paid. The matter came back before the Circuit Court on 30 April 2021 and the Circuit Court judge then made orders appointing a solicitor and an auctioneer to affect the sale of the family home. The Court also made orders requiring the parties to cooperate with the auctioneer in respect of the sale process. The Court adjourned the matter to 17 June 2021.

**9.** The matter was back before the Circuit Court on 17 June 2021. Prior to that date Mr. D. refused to sign the necessary authority to allow the Court appointed solicitor to take up the title documents of the property. He only agreed to sign the necessary documents when the matter was before the Court as is recorded in the order dated 17 June 2021. That order of 17 June 2021 also directed that Mr. D. was not to contact the Court appointed solicitor by phone.

**10.** In his campaign to prevent the Court orders having effect Mr. D. was in a position to leverage the problems identified above. He sought to frustrate the sale by whatever means were available to him. Consequently, Mrs. O. issued a notice of motion dated 8 July 2021 requiring orders to compel Mr. D. to vacate the family home to allow it to be sold. The instances of interference in the sale on the part of Mr. D. are detailed in the affidavit of Ms. C, solicitor, sworn on 6 July 2021. As owner of the adjoining land the husband was well positioned to frustrate any attempt to complete a sale of the family home.

**11.** A flavour of the campaign carried on by Mr. D. is apparent from the following averments in the affidavit of Ms. C. sworn on 6 July 2021; -

“7. I say that Mr. D. telephoned my office on 5 July and advised, in relation to the garage, that if potential purchasers came out to view the property he would be telling them that the garage was not included in the sale as apparently his plan is to take up residence in the garage which, as can be seen from the auctioneer’s report is a premises just adjacent to the family home site and is entirely unsuited as a separate dwelling.

8. In relation to the electricity and the water Mr D. refused to engage in any discussions about how that issue could be resolved and effectively what he is saying is that it will be up to the purchaser to organise their own water and electricity supplies....

10. Mr. D. indicated to me in the course of the conversation that the previous auctioneer who had valued the property for my client in the context of the judicial separation proceedings had overvalued the property and that it was worth much less and he was suggesting that I should engage in discussions with him regarding buying out my client for a much lesser sum. I said we had gone past the valuation stage and there was an auctioneer appointed and an order for sale and we needed to progress that order for sale.

12. Finally as can be seen from the engineer's report there is a further difficulty in relation to the oil tank which is situate in the garage. When I indicated to Mr D. in the course of our telephone conversation on 5 July that the garage would have to be included in the sale in the context of the oil tank being in the garage he further advised that the garage might disappear, which I took to mean that he would knock down the garage rather than have it included in the sale and leave the oil tank exposed to the elements."

**12.** A further flavour of the campaign of Mr. D. is apparent from the following averments in the affidavit of Ms. C. sworn on 28 January 2022; -

"3. Eventually the property went on the market for sale in early 2022. There was a high level of interest in the sale and ultimately the bidding was closed off on 24 January. At that stage there were two people bidding against each other and the final offers were an offer of €298,000 with no chain involved and an offer of €298,500 but with a considerable chain involved. On the advices of my auctioneer my client decided to accept the lower offer. The auctioneer also contacted Mr. D. to get his approval for the offer. However, Mr. D. refused to accept the offer stating that the house is not ready for

sale until the garage is sorted, that there was no rush in selling the house, that the house was only up for sale for four weeks, that all houses in the countryside stay up for sale for five to six months, that the auctioneer had broken Covid-19 rules by having too many people view the house at the same time, and that the parties had not inspected the garage attached to the family home which would have achieved a higher price.

4. I say further that Mr. D. had contacted my office on 20 January 2022 to discuss the matter. In effect Mr. D. was seeking to renegotiate the terms of the Court order so that the garage attached to the family home would be excluded from the sale. I advised Mr. D. that the Court order clearly set out that it was the property comprised in folio A which was for sale per Court order and that the Land Registry map of this property clearly included the garage contained within its boundaries”.

**13.** Further evidence of the campaign of obstruction and intimidation is contained in an affidavit of Ms. C. sworn on 4 April 2022.

**14.** In affidavit evidence before the Court Mr. D. has averred to suffering from low mood and depression as a result of the stress of being ordered to vacate the family home and he has averred to developing severe pain and discomfort in the area of a previous injury which caused him a great deal of physical and mental trauma also. He has averred to the fact that the low mood and depression has continued as has the severe pain and discomfort in the area of a previous injury. These averments in the affidavit sworn on 22 March 2023 are in the context of an application to the Court to extend time in order to allow the appeals to be heard by this Court. The Court did extend time as sought by Mr. D. It is however important to emphasise that the mental and physical health issues which the husband has averred to are no excuse for his behaviour and are not an excuse for the campaign of obstruction and intimidation which he has waged with the objective of preventing the Court orders being effective.

**15.** The family home and property comprised in folio A is subject to a mortgage in favour of the bank and the ongoing non-payment of the mortgage is creating a real danger of repossession. The adjacent property comprised in folio B is not encumbered.

**16.** By order dated 14 July 2021 Mr. D. was directed by the Circuit Court to vacate the family home within fourteen days and the matter was listed in October 2021.

**17.** The case was back before the Circuit Court on 15 October 2021. On that date the Circuit Court made an order that Mr. D. was not to interfere with the changing of the locks on the property on 18 October 2021. The order stated that, if necessary, the assistance of the gardaí would be sought. The order expressly stated that Mr. D. would be taken into custody if the order was not complied with.

**18.** After the locks were changed on the property on 18 October 2021 the case came back before the Circuit Court on 19 October 2021. The Court was advised that Mr. D. had vacated the property and that the locks had been changed. The Court directed that Mr. D. turn on the water supply and it also directed him to cooperate to restore the electricity to the property. This order was not complied with.

**19.** When Mr. D. refused to agree to the sale of the property for the sum of €298,000 in January of 2022 a notice of motion dated 28 January 2022 issued and it sought an order from the Court approving the sale of the property. This motion came on for hearing on 8 February 2022 and Mr. D. was represented by his solicitor. The Court made an order approving the sale of the family home and an order permitting the County Registrar to sign the necessary sale/transfer documents on behalf of Mr. D. The affidavit of Ms. C, the solicitor, sworn in support of the motion confirmed that the order dated 19 October 2021 requiring Mr. D. to reconnect the water and electricity supplies to the property had not been complied with.

**20.** One might have expected Mr. D. to come to his senses at some stage of his campaign – but he did not. He continued to interfere with the sale of the family home. Mrs. O. had to bring

a further motion before the Court by notice of motion dated 6 April 2022. The motion sought the sale of the land contained in folio B and sought orders requiring Mr. D. to vacate both properties and to refrain from attending at the properties in order to facilitate the sale process.

**21.** Once more the grounding affidavit of Ms. C. set out various instances of interference by Mr. D. as part of his campaign of obstruction and detailed continued breaches of the Circuit Court orders. The affidavit also exhibited email correspondence from the independent Court appointed auctioneer who stated that the Mr. D's behaviour in intimidating potential purchasers of the family home had made it impossible to sell the property in a safe environment. The auctioneer stated that Mr. D's constant trespassing into the property and aggressive behaviour with potential buyers, auctioneer and engineers had resulted in this situation.

**22.** In addition to the email from the auctioneer, Ms C's affidavit also exhibited an email from one of the prospective buyers. The email confirms that the buyer withdrew her offer on the property due to major concerns with the man living next door. The email described intimidating and aggressive behaviour on the part of Mr. D.

**23.** At this stage of the proceedings the Court was certainly all too familiar with the carry-on of Mr. D. and what was, on any view of the behaviour, brazen contempt of the Court orders.

**24.** Having heard the application, and having heard from Mr. D, the Circuit Court made a number of orders which now form part of the orders under appeal. The Circuit Court made an order that the land being the property contained in folio B be sold with the distribution of the sale proceeds of the land to be determined following a further hearing. The Court also directed Mr. D to vacate the land by 1 June 2022 and made an order prohibiting him from threatening, interfering with or intimidating the Court appointed auctioneer or any potential purchasers or their agents. In addition, the Court made an order confirming that the garage attached to the family home was contained in folio A.



**25.** Mrs. O. submits that the Circuit Court judge held on the affidavit evidence that on the balance of probabilities the loss of the three sales was caused by the actions of Mr. D. She also submits that the Court accepted the submission on her behalf that while Mr. D. continued to live next door to the family home property, the sale would not progress. Mrs. O. submits that the Court also noted that the matter had been going on for a long time and that she had been out of the family home for several years without any assistance from Mr. D.

**26.** While there is no written judgment from the Circuit Court judge – nor would one be expected in the circumstances - this Court is satisfied that; -

- (a) The loss of the three sales was caused by Mr. D's campaign;
- (b) A sale would not progress while Mr. D. continued/continues to live next door;
- (c) Enforcement of the Court orders has grown extremely protracted by reason of the behaviour of Mr. D. and in circumstances where Mrs. O. has been left without the benefit of and provision reflected in the Circuit Court order made more than three years ago. This is wholly unacceptable. The Circuit Court was perfectly entitled to do what was necessary and permissible to enforce its own orders.

**27.** It was submitted on behalf of Mrs. O. that the Circuit Court judge held that under s.19 of the Family Law Divorce Act of 1996, where there was a lumpsum order in place, the Court was entitled to make an order for the sale of the property. It was submitted that the Court indicated that Mr. D. may be entitled to a greater portion of the proceeds of sale and adjourned the question of the distribution of the proceeds until the sale was concluded.

**28.** The Court order made on 8 April 2022 does indeed adjourn the distribution of the proceeds of sale of folio B with liberty to apply. In the absence of a written judgment from the Circuit Court this Court is unaware of the discussion which did take place in relation to the judge's jurisdiction under s.19 of the Family Law Divorce Act 1996 – or otherwise. However,

this Court is in a position to decide itself whether or not the Circuit Court judge did have jurisdiction to make the orders challenged.

**29.** Despite the making of the order of 8 April 2022 Mr. D. failed to vacate the property contained in folio B to allow the land be sold in line with the earlier Circuit Court orders. As a result, there was a further motion brought dated 13 December 2022 in which Mrs. O. sought attachment and committal of Mr. D. by reason of his failure to comply with the earlier orders.

**30.** The motion dated 13 December 2022 came on for hearing before the Circuit Court on 21 December 2022 and Mr. D. was represented by counsel at the hearing. Having heard the application, the Court made orders again requiring Mr. D. to vacate both the family home property and the land. In addition, the Court directed that Mr. D. keep 2 KM distance from both properties.

**31.** Detailed and helpful written submissions have been submitted by both sides – the appellant’s are dated 3 August 2023 and the respondent’s are dated 28 August 2023.

**32.** Part of the appellant’s submissions (from para. 19 on) deal with the “merits” of the appeal. In this regard, this Court finds that the appeals are devoid of merit by reason of the campaign of obstruction and intimidation carried on by the appellant – and by reason of his clear contempt of the Circuit Court orders. The appellant has behaved as a person who believes that he is untouchable, unstoppable and immune - notwithstanding flagrant breaches of Circuit Court orders made in proceedings in which he was named as the respondent. Assuming for the moment that the Court did have jurisdiction to make the orders challenged it has to be said that the orders were a considered and calibrated response to the ongoing campaign of obstruction and intimidation and contempt of Court on the part of the appellant. In many respects it is difficult to understand how he managed to avoid incarceration having regard to the campaign which he conducted. Having said that, these were family law proceedings and incarceration

was/is necessarily a last resort – and an option which the Circuit Court judge has no doubt wished to avoid.

**33.** The question does arise as to whether or not the Circuit Court judge did have jurisdiction to make the orders sought. If the Circuit Court did not have jurisdiction then the appeals against the orders challenged should be set aside. In the written submissions the appellant submits; -

“

7. It is respectfully submitted that the Circuit Court erred by Ordering the sale of the second property despite not having previously made any Order adjusting the parties’ respective property rights (s.14) or varying proper provision (s.22). The Circuit Court’s powers to make Orders ancillary or subsequent to the grant of a divorce decree are strictly circumscribed by statute. The Circuit Court has, it is submitted, no free-standing power to Order the sale of property that was not the family home (in the terms of s.15) and that was owned by one spouse but not the other. Section 19(1) provides:

“Where the court makes a secured periodical payments Order, a lump sum Order or a property adjustment Order, thereupon, or at any time thereafter, it may make an Order directing the sale of such property as may be specified in the Order, being property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion.”

8. Whilst the provision could be clearer in its language, we submit that the phrase “such property as may be specified in the Order” refers to property “specified” in an antecedent Order whose enforcement or implementation is sought. We respectfully submit that the court’s power of sale under s.19 is thus confined to the sale of property that was specified in a preceding Order as *security* for a prior periodical payments Order

or lump sum Order, or that was subject to a property adjustment Order. In this case, the second property was not specified in any of the ancillary Orders made as “proper provision” on the 30<sup>th</sup> of July 2020, and nor was the second property subject to any property adjustment Order under s.14.

9. Further or in the alternative, and irrespective of the aforesaid interpretation of s.19, in the Appellant’s case, the Circuit Court did not make the Order for the sale of the second property as a means of *enforcing* “a secured periodical payments Order, a lump sum Order or a property adjustment Order”. It had made no prior periodical payments Order or property adjustment Order in this case. Whilst a lump sum of €25,000.00 was awarded for arrears of child maintenance in July 2020, when the Circuit Court subsequently made an Order for the sale of the second property on the 8<sup>th</sup> of April 2022 and the 11<sup>th</sup> of January 2023, it did not do so in an attempt to enforce that lump sum Order, it did so to enforce or implement the sale of the family home property. We say therefore that the Circuit Court did not make the aforesaid Orders for the second property pursuant to s.19, and, further, that s.19 did not give the Court the jurisdiction to make the within appealed Orders in the presenting circumstances.
10. Without prejudice to the foregoing, the Circuit Court further erred by Ordering the sale of the family home property and the second property without having given the mortgage creditor an opportunity to make representations. Section 19(5) provides:

“Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an Order under this Section or Section 14 or 15 (1) (a) in relation to that property or those proceeds, the Court shall give to that person an opportunity to make representations with respect to the making of the Order and

the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the Court is required to have regard under Section 20 in any relevant proceedings under a provision referred to in that section after the making of those representations.”

11. It is submitted that the Circuit Court’s jurisdictional power to Order the sale of the second property was dependent on the Court first deciding to make either a property adjustment Order or an Order for variation of the ancillary Order (for proper provision) after application to it under either s.14 or s.22, in which event the Court was obliged to determine the applications by reference to the criteria expressly set out in s.20. None of these preconditional events occurred. Instead, the sale of the second property was Ordered summarily and not by reference to any of the aforesaid provisions of the 1996 Act.
12. With respect to property that is not the family home and that is wholly owned by one spouse but not the other, the Court had a separate power under s.14 to make a property adjustment Order at the time of the divorce or subsequently. If asked to make such an Order, a court is obliged to determine the application by reference to the criteria set out in s.20(2) and by reference to s.20(5) (“the interests of justice”). Section 20(1) expressly provides that Section 20 applies to any Order made under s.14.
13. With respect to the ancillary Order for the sale of the family home and equal distribution of the proceeds made to achieve ‘proper provision’, the Court had a power potentially to vary that Order under s.22(1)(f) if and when presented with “fresh evidence” or a “change in the circumstances”. But, where asked to make such a variation, the Court again was statutorily obliged by s.20(1) to determine such an application by reference to the criteria set out in s.20(2) and by reference to s.20(5) (“the interests of justice”). Section 20(1) expressly provides that Section 20 applies to any Order made under s.22.

14. We cannot know whether the Circuit Court considered s.14 or s.22 when making any of the within Orders, given the summary nature of the process that predated the Orders in this case, and given the absence of a reasoned decision. The ancillary (proper provision) Order made in July 2020 was for the sale of the family home property with a 50-50 distribution of the proceeds, pursuant to which the court had jurisdiction under s.15(1)(a)(ii). The Order it made subsequently on the 8<sup>th</sup> of April 2022 (Order No.4) deemed the family home property to include all of the garage after fresh evidence had revealed the garage to straddle both properties as mapped in the Land Registry. Moreover, on the 8<sup>th</sup> of April 2022, the Circuit Court deferred to another day the question of distribution of the proceeds of the sale of both properties. This, it is submitted, suggests that the Circuit Court had in substance decided to vary the ancillary Order made to achieve ‘proper provision’ in July 2020 (but without formal recourse to s.20 and s.22). The Orders for the sale of both the family home property and the second property were self-evidently made otherwise than by recourse s.14 (permitting the court to make property adjustment Orders for property owned by either spouse) or s.22 (permitting the court to vary a previous Order made as proper provision). Whether or not s.14 or s.22 was the appropriate basis, the net effect was to bypass the requirement in s.20 to consider the application by reference to express statutory criteria. ”

**34.** In replying in this submission in relation to jurisdiction the respondent says that the appellant was served with the motion papers in respect of the application made on 8 April 2022 and was fully aware that what was sought was an order for sale of the land comprised in folio B. The respondent submits that the appellant did not seek to file a replying affidavit setting out the basis on which he maintained that the land should not be sold nor did he file an affidavit to dispute the evidence offered to the Court which the respondent submits clearly showed that the

sale of the family home was being frustrated by the deliberate actions of the appellant and in particular his use of the land as a means to frustrate the sale and intimidate potential purchasers.

**35.** In relation to s.19(1) of the Act the respondent submits;

“23. The power of the Court to direct the sale of property in divorce proceedings is set out in section 19(1) of the Family Law (Divorce) Act 1996 (“the 1996 Act”). This provides:

“(1) Where the court makes a secured periodical payments order, a lump sum order or a property adjustment order, thereupon, or at any time thereafter, it may make an order directing the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion”.

24. A number of criteria can be seen to arise from the clear wording of section 19(1) of the 1996 Act. The first is that in order for the power to direct the sale of property to arise it is necessary that the Court have already made, a secured periodical payment order, a lump sum order or a property adjustment order. An order under section 19(1) can only be made following the making of one of those three mentioned orders.

25. Secondly, the section states that the property which is to be sold must be specified in the order of the Court. This is clear from the phrase “[the Court] may make an order directing the sale of such property as may be specified in the order”. The Appellant submits that the “order” referred to in the preceding sentence is the original secured periodical payment order, lump sum order or property adjustment order. However, such an interpretation would lead to an absurdity where an order for sale under s.19 of the 1996 Act would direct the sale of “a lump sum” payment. It is clear that a Court cannot direct the sale of an amount of money.

26. The Appellant maintains that the property referred to in respect of a lump sum order

is the property provided as security for the lump sum order. However, the Appellant has failed to acknowledge the distinction between a secured periodical payment order and a lump sum order. A secured periodical payment order is made under s.13(1)(b) of the 1996 Act which provides as follows:

“(b) a secured periodical payments order, that is to say—

(i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts, during such period and at such times as may be so specified, or

(ii) an order that either of the spouses shall secure, to the satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified”

27. Section 13(1)(c) provides for the making of a lump sum order and states:

“(c)(i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified, or

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified”.

28. As can be clearly seen from the above extracts, a lump sum order is not a secured order in the same manner as a secured periodical payments order and accordingly there can be no property specified in the order making the lump sum order. A lump sum order merely requires one spouse to make a lump sum payment of an amount or amounts of money to the other spouse. Where such an order is made, the jurisdiction



of the Court under s.19(1) of the 1996 Act is engaged such that after the making of lump sum payment order, a Court is entitled to make a subsequent order directing the sale of property. Clearly, the property to be sold cannot be the lump sum payment itself.

29. The third criterion which must be met when making an order under s.19(1) is that the property to be sold must be property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion. No issue arises in respect of this aspect of s.19(1) where it is not in issue that the Land contained in Folio B is owned by the Appellant and as such is amenable to an order for sale under s.19(1).

30. Therefore, applying the criteria set out in s.19(1) of the 1996 Act, the Court was empowered to make an order for sale in respect of the Land as follows:

- a. The Court had previously made a lump sum order in favour of the Respondent which has not been complied with.
- b. The Property which is to be sold is property in which the Appellant has a beneficial interest, the Appellant is the full owner of the Land.

31. Accordingly, it is clear from the above extracts that the Court does have a power to order the sale of property in this case pursuant to the powers granted to the Court in s.19(1) of the 1996 Act.

32. The Appellant goes on to submit that an order under s.19 is limited to enforcing the original secured periodical payment order, a lump sum order or a property adjustment order. However, no such limitation is contained in the section and the Appellant is in essence asking the Court to read in such a limitation when interpreting the clear wording of the provision.

33. It is well established that as a general rule it is not permissible to read words into an

enactment, fill gaps or ‘to indulge in conjecture as to what the legislature would have done if a particular case had been presented to their notice’. The courts’ role is to give effect to what has been expressed, that which follows by implication, and no more.

34. So long as the criteria set out in s.19(1), as outlined above, are met the Court is entitled to make an order for sale of property under the section. There can be no basis for the Court to apply the type of limitation sought by the Appellant in this case absent a clear intention on the part of the Oireachtas to limit the power contained in section 19(1). Indeed, the Oireachtas did provide for certain limitations on the power to make an order for sale under s.19(1).

35. Section 19(2) of the 1996 Act provides that an order under the section cannot be made to affect the right of a spouse to occupy the Family Home if such a right is enjoyed pursuant to an order made under Part 3 of the 1996 Act:

“The jurisdiction conferred on the court by subsection (1) shall not be so exercised as to affect a right to occupy the family home of the spouse concerned that is enjoyed by virtue of an order under this Part”.

36. In addition, section 19(6) provides that an order under the section cannot be made in respect of a family home in which one of the spouses resides having remarried:

“This section shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse”.

37. A further protection is contained in section 19(5) which is referred to by the Appellant in his submissions. Section 19(5) provides:

“(5) Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has

a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or section 14 or 15 (1) (a) in relation to that property or those proceeds, the court shall give to that person an opportunity to make representations with respect to the making of the order and the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the court is required to have regard under section 20 in any relevant proceedings under a provision referred to in that section after the making of those representations”.

38. The Appellant maintains that the Circuit Court erred in ordering the sale of the Land in this case without affording the mortgage creditor an opportunity to make representations. This is an entirely disingenuous submission in circumstances where it was confirmed to the High Court at the hearing of the appeal that the Land was not subject to the mortgage and was in fact unencumbered. Accordingly, where the Land is unencumbered and no person other than the Appellant holds a beneficial interest in the property, section 19(5) simply does not apply.

39. Finally, and contrary to what is submitted by the Appellant, it is not necessary for the Court to make a property adjustment order prior to making an order for sale under s.19(1) of the 1996 Act. Such a limitation runs contrary to the clear wording of the section which permits the Court to make an order for sale of any property in which the spouse holds a beneficial interest where a secured periodical payment order or a lump sum payment order has been made.

40. The Circuit Court therefore had a power to make an order for sale of the Land, which was property of the Appellant, where a lump sum order had been made in favour of the Respondent. None of the limitations contained in s.19 of the 1996 Act apply in the instant cases such as would prevent the Court from being entitled to make such an

order.”

**36.** The Court accepts the respondent’s submissions in relation to the jurisdiction afforded to the Court under s.19 and is satisfied that the Circuit Court did have the power to make the orders which it made by virtue of the jurisdiction afforded to it by s.19.

**37.** Section 19(1) is clear in its terms and, as the respondent points out, the criteria required to satisfy the clear wording of the provision were met in this case as; -

(a) A lumpsum order had been made and it had not been paid by the appellant as required by the Court order.

(b) The property which is to be sold must be specified in the order of the Court. The appellant is wrong in submitting that the order referred to here is the original secured periodical payment order, lumpsum order or property adjustment order. That is a misconstruction of the section. The respondent is correct in this regard.

(c) There is no argument in relation to the fact that the appellant has a beneficial interest in the property directed to be sold – the property comprised in folio B. This property is owned by the appellant.

**38.** In circumstances where the appellant had not paid the lumpsum and did own the land comprised in folio B the Circuit Court judge was perfectly entitled to make an order for sale in respect of the land comprised in folio B.

**39.** The respondent is correct in submitting that the limitations contended for by the appellant are not contained in s.19 and cannot be read into the section by the Court. The limitations provided for in the section in relation to the exercise of the power under s.19(1) do not apply in this case.

**40.** The land comprised in folio B is unencumbered and the submission made in relation to s.19(5) on behalf of the appellant is not correct. Nor is it correct to suggest that the Court must

make a property adjustment order prior to making the order for sale under s.19(1) of the 1996 Act – in respect of the land affected. Such a limitation is not contained in s.19(1).

**41.** It is the position that the appellant is the author of the misfortune which he complains of. Furthermore, his recent offers to move to resolve the difficulties to allow the sale proceed are too little too late – and cannot be relied upon given his past behaviour.

**42.** The appellant contends that the order for sale is a disproportionate interference with his constitutionally protected property rights. In response the respondent points out that the Circuit Court has not made a determination in relation to the distribution of the proceeds of the sale of the land in Folio B and says that the Circuit Court expressly acknowledged that the appellant may well be entitled to the majority of the sale proceeds of the land. Of course, this remains to be seen – and in particular by reason of the cost generated by these appeals.

**43.** Having regard to the decision of the High Court in *LB v Ireland, Attorney General and PB* [2008] 1 I.R. 134 and the decision of the Supreme Court in *TF v Ireland* [1995] 1 I.R. 321 the appellant's submission that the order for sale is a disproportionate interference with his constitutionally protected property rights is incorrect. The making of an ancillary order under the 1996 Act, including an order for sale under s.19, is not an unjust attack or a disproportionate interference with the property rights of the appellant. The making of the Court orders for sale challenged by the appellant were necessary in order to give effect to the orders made by the Circuit Court as ancillary orders when granting the decree of divorce - which ancillary orders were made in the context of making "proper provision" as required by the legislation and by the Constitution. The appellant submits that the making of the order for sale by the Circuit Court on 8 April 2022 was made in breach of his rights to fair procedures and he asserts that the Court failed to hear sworn evidence from him. The application was made in the appropriate way by a motion grounded on affidavit which was served on the appellant. It was open to him to serve a replying affidavit but no such affidavit was sworn.

**44.** The fact of the matter is that the appellant adopted a strategy of stonewalling in relation to the proceedings and engaged in a campaign of obstruction, intimidation, and contempt of Court. In terms of fairness the bottom line is that it is the appellant who has behaved unfairly. He has behaved unfairly to the respondent by refusing to comply with the Court orders made and by unnecessarily protracting the litigation.

**45.** The behaviour of the appellant, whether described as litigation misconduct/contempt of Court or in some other way, would not in the view of the Court justify allowing the orders to stand if the Circuit Court did not have jurisdiction to make the orders.

**46.** However, for the reasons given the Court is satisfied that the Circuit Court did have jurisdiction to make the orders sought.

**47.** It is indeed unfortunate that the Circuit Court arrived at the point where it was necessary to direct a sale of the land comprised in folio B. Having said that, a Court is obliged to give effect to Court orders made as failure to do so would undermine the system of justice and erode all confidence in it. In this case the appellant threw down the gauntlet and challenged the authority and power of the Court. He has only himself to blame for the predicament he has created for himself by reason of the Court exercising its power and authority.

**48.** There is no good reason why the Court should allow the appeals. The Court will dismiss the appeals and will affirm the Circuit Court orders. The Court will hear the parties in relation to any matters arising – including costs.

**49.** After hearing submissions from both sides the Court made no order as to costs in relation to the motion to extend time. It made an order for costs of the appeal in favour of the respondent, Mrs. O, to be adjudicated in default of agreement.