THE HIGH COURT

[2023] IEHC 765
[2021 No. 86 M]

IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989,

IN THE MATTER OF THE FAMILY LAW ACT 1995, AS AMENDED

BETWEEN

D

APPLICANT

– AND –

D

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 12th January 2023.

I. Background

1. Ms D went to [Country A][1] to study, met her husband (a national of [Country A]) at college and later married him. They then set up a business in [Country A]. That business has proved to be a great success. There are a number of children from their marriage, all still dependents.

[1] To aid in maintaining the anonymity of the parties the square bracketed terms are defined in Appendix 1.

Though the corporate structure of [Company A] – the company (registered in [Country A]) through which the family business is operated – might suggest otherwise, ([Company A] is owned by Mr D and a sibling and they are also both directors), it was clear from the evidence that the *business* (not [Company A]) was in reality a husband and wife venture operated jointly by both parties.

2. I was struck by Ms D's oral evidence (Mr D elected not to give oral evidence) as to just how hard she and Mr D had to work to make their business a success. Ms D's expertise was initially needed to perform the basic services provided by [Company A]. She then progressed to managing and organising the operational side of the business, including staff management, case management, and policy creation and implementation. She also seems to have collated and processed the information needed by tender writers when [Company A] was tendering for business. She was also responsible for rotas and staffing. And she gave evidence of her initial financial contribution at the start-up stage of the business (as well, I note, as her contribution to the former family home in [Country A]). It was not quite so clear to me what Mr D did. He seems to have assisted with the administrative/managerial side of things and as a director he obviously had responsibility for the company accounts and corporate governance.

II. Possible Problems and False Evidence

3. Regrettably, trouble may lie ahead for Mr D as regards his actions as a director of [Company A]. It is clear from the evidence that he has been using [Company A]'s monies as something of a privy purse, latterly spending large untaxed amounts of the company's funds on what might euphemistically be described as 'personal entertainment'. Mr D accepts that this expenditure occurred and has suggested that it has ceased (though, as will be clear from the next paragraph below, it has not). This usage by Mr D of [Company A]'s monies has not been accounted for properly in [Company A]'s account-books. Consequently, the annual accounts filed with [Country A]'s equivalent of the Companies Registration Office do not correctly represent [Company A]'s financial position. Mr D says that he intends now to approach the authorities in [Country A] and tell them the truth of what he has done. I do not know if he will or not. What I do know is that he has been saying this since at least August 2021 and has done nothing about it. If the authorities of [Country A] are ever approached or otherwise become interested in the affairs of [Company A], Ms D may well have reason to be thankful in the years ahead that she was never a director of [Company A].

4. Although Mr D maintained in his questioning of Mr Harding (a forensic accountant called by Ms D) that he had ceased to use [Company A]'s proceeds as he had previously done, Mr Harding was able to show that in a roughly 4-month period across April to August 2022 Mr D's 'personal entertainment' expenditure (using primarily or exclusively untaxed company monies) has continued unabated. Thus, Mr. Harding gave evidence that the average amount of what he called "*anomalous expenditure*" (revenue authorities and lawyers might use alternative terminology) was close on €16k per month (yielding an annualised figure of about €190k). I note too (with regret) that the irregular accounting in [Company A] only came to light due to queries raised by Mr Harding and the details of same were never volunteered by Mr D. I must also regretfully observe that it is clear from the evidence before me that Mr D's affidavits of means of 15th November 2021 and 15th November 2022 contain falsehoods (especially as regards Schedule 2 Income and Schedule 4 Expenditure). It is very hard, as a court, to achieve an optimally fair outcome between parties when one of the parties presents evidence that is patently wrong.

5. In passing, though the issue was discussed when the financial evidence was given in this case, I do not see that I need to get into how [Company A]'s affairs (or indeed Mr D's personal tax situation) might be regularised with the authorities of [Country A]. They should of course be regularised and, for the avoidance of doubt, I disapprove of the fact that (i) taxes owed in [Country A] have not duly been paid in [Country A] to this time, (ii) Mr D has used company funds as he has, potentially to the detriment of the creditors of [Company A] and of course with an impact on the accounted-for profits of [Company A], and (iii) Mr D has allowed incorrect accounts to be filed with [Company A]'s equivalent of the Companies Registration Office.

III. Background (continued)

6. A couple of years before the Covid-19 pandemic, the couple decided that they would like to live in Ireland. Ms D found that Mr D was away a lot (for reasons then unclear but at which one can now perhaps guess, given the manner in which company monies have latterly been spent by Mr D). Because of Mr D's absences, Ms D wanted to be back in Ireland where she could have family help with the children. I must admit that it was not clear to me how exactly the parties thought the family business could be run from Ireland had they both settled down here but that is a matter for them. Ms D has clearly done work online and Mr D has been over

and back to Country A but it must be challenging to run a business in that country largely from here. Ms D, in any event, came here with the children, moving to rented accommodation in a country town and then to other rented accommodation closer to her natural family. Throughout this time, Ms D continued to operate the business remotely/online. Mr D remained in [Country A] and also helped with the business. In addition, he came to Ireland from time to time to see the children. The couple even had plans to build a family home on lands they had bought in a country area. But in or about November 2020 there appears to have been a precipitous decline in the couple's relationship, from which it has never recovered, leading ultimately to Ms D bringing these proceedings. The family house, I should add, was never built, though the lands on which it was to stand have been bought; I return to the property details later below.

IV. Ms D's Ill-Health and HR Experience

7. I come now to the ill-health that Ms D has suffered in recent years. She has been very unwell and had to have a number of operations of a type which are very challenging for a woman. I was sad to hear on the first day she gave evidence that her latest medical diagnosis/prognosis may not be good and I am sorry for her that she has suffered as she has. Mr D behaved awfully throughout the period that his wife was at her most sick, reeling from operations that are not just physically hard for a woman to bear but which I suspect also bring particular psychological challenges. In his oral evidence, Professor Sheehan – the psychologist who acted in these proceedings – described Mr D's behaviour towards Ms D throughout this period as "*appalling*".

8. What Mr D did was this. He began asking his wife to document her illnesses to their joint business so as to accord with [Company A]'s HR policy. Ms D rightly did not do so: [Company A] may have belonged to Mr D but the business it operated was a joint enterprise and Mr D was still married to Ms D. So the notion that Ms D would formally document her illness to *her* business and *her* husband was, with all respect, silly. Aggrieved by Ms D's alleged breach of HR policy Mr D then engaged a notably 'tough-nosed' HR company which bombarded Ms D with messages, sometimes on a daily basis. These messages, *e.g.*, demanded that she document her illness, asked her to engage in a disciplinary process, and even re-assessed her pay for the job she did and (*quelle surprise*) arrived at the conclusion that she was overpaid. Ms D quickly and rightly declined to engage in this farce.

9. Much of the correspondence sent by the HR company indicates that it was acting at the behest of [Company A]'s board of directors. But [Company A]'s board comprises Mr D and a sibling, and as that sibling never appears to have taken an active role in [Company A]'s affairs, the board is essentially Mr D. So all of this harassment was being visited directly by Mr D on his wife, the co-founder/co-operator of [Company A]'s business, at a time when she was very sick (and the latest medical advice, most regretfully, indicates that she may continue to be sick).

10. At the hearing of this matter, Mr D spent about a day cross-examining his wife. I must admit that I was uneasy throughout this process as such cross-examination offers a spouse a chance to antagonise and intimidate. I am grateful to Mr D that he sought to conduct himself politely towards his wife throughout the cross-examination process. In the end I thought we got through matters about as well as we could. Mr D threatened to leave the court at one time when he thought that he was being shouted at by counsel when the latter rose to make a point. For my part, I did not see anything to have happened that merited Mr D threatening to leave. Plus counsel, if I recall correctly, indicated that he did not believe himself to be at fault but apologised in any event just in case. Once a person says 'sorry' that to me is the end of matters. Mr D maintains that he is now a bit afraid of counsel; however, there is no rule that our opponents in litigation should be at ease in our presence, still less that they must like us.

11. A substantial amount of Mr D's cross-examination concerned Ms D's alleged breaches of [Company A]'s HR policy with Ms D making the perfectly reasonable point that although she was a staff member, as a co-founder and co-operator of the business and as Mr D's wife she was and is in a rather different category to other employees. She is right in this, though one would hope that any employee who is seriously sick in *any* company would be treated with more sympathy than was ever shown to Ms D. I rather wondered to myself as I listened to Mr D's litany of questions about Ms D's alleged non-compliance with [Company A]'s HR policy why Mr D thought this was a good line of questioning when it actually showed him in a bad light: arranging for his wife to be harassed (for harassed she was) by the external HR company at a time when she was seriously ill. And of course the 'elephant in the courtroom' was that at the same time that he perceived his wife to be in transgression of [Company A]'s HR policy – hardly the worst of wrongs even if it in fact presented – Mr D was delving into the company funds for extravagant 'personal entertainment' expenditure and allowing inaccurate accounts to be filed with [Country A]'s equivalent of the Companies Registration Office.

12. In the end, having threatened to cease all payments from [Company A] to Ms D, Mr D appears to have retreated from this position and [Company A] continues to pay Ms D her salary. This is touted in Mr D's submissions as a virtue on the part of [Company A]. Given all the circumstances presenting I am not sure that much cause for praise presents, not least as at this time it is pursuant to interim court orders that the salary (and [Stated Amount 1] by way of monthly maintenance for the children) is paid. I note in passing that there was also an order, not yet complied with, that Mr D arrange that [Country A]'s equivalent of the NCT be done on a car that the couple own and the vehicle tax paid on same and the car given to Ms A).

V. Untested Propositions

13. I should note in passing that none of the propositions put by Mr D to any of the witnesses and most particularly, to Ms D, can be relied upon by me in circumstances where Mr D chose not to support any of those propositions by giving evidence and being cross-examined on same. In contrast, the entire of the evidence of Ms D, which was tested in cross-examination, can be relied upon by me. It follows that attempts by Mr D in his submissions to rely on propositions that should have been given in evidence by him cannot be relied upon by me.

VI. Custody

14. [Text redacted]

15. [Text redacted]

16. [Text redacted]

17. [Text redacted]

18. [Text redacted]

19. [Text redacted]

20. [Text redacted]

21. [Text redacted]

22. [Text redacted]

23. [Text redacted]

VII. Sports Events and [Text redacted]

24. [Text redacted]

25. [Text redacted]

26. [Text redacted]

VIII. Open Offers

27. Open offers were made in court when these proceedings were called on. Ms D sought the following: (i) the transfer of the residential and development sites at [Stated Place A] into her sole name; (ii) a lump sum in the amount of [Stated Amount 2] to build a family home and in return she would release her beneficial interest in [Company A]'s business and [Related Venture 1] upon full payment;[2] (iii) maintenance of [Text redacted] per month for the children and [Text redacted] for Ms D; (iv) an order continuing joint custody with primary care and control to her with access as directed by the court; (v) transfer of the car (having had [Country A]'s equivalent of the NCT done on it and vehicle tax paid and finalised) and the transfer of a family camper van; (vi) Mr D to pay the educational and dental expenses of the children; (vii) access to storage facilities in [Country A] in respect of the family items therein; and access to the family photos on iCloud.

[2] In relation to [Related Venture 1], as was indicated by Ms D in her evidence, Mr D persuaded her not to take her 50% shareholding in [Company A] on the basis that he would get half a sibling's share in [Related Venture 1] which would amount to 25% and the sibling in question would hold 50% in [[Company A]] and when his parents retired the two siblings would hold the shares in both companies 50/50. I am not sure why everything was so convoluted. The suspicion arises that it was all part of a bid by Mr D to keep an exclusive hand on profits and money. However, as I mention elsewhere in the main text above, given the financial irregularities perpetrated by Mr D, as director, on [Company A], I suspect that Ms D will be glad in the years to come that she has never been a director of [Company A].

28. Mr D agreed to items (i), (iv) and (it seemed) (vi) and (vii), as mentioned in the previous paragraph. Mr D also indicated that (a) he had no money for a lump sum or to contribute to Ms D's legal costs. His position regarding maintenance for the children was unclear as he stated that his expenses had gone up with the [Text redacted], he needed to buy a house for €250,000 for himself and he was considering the place in [Stated Place B], he wanted 50% access (though Professor Sheehan has cautioned against focusing on percentages in this regard), and he was open to a discussion on educational and dental costs contingent on what happened as regards maintenance.

IX. Financial Matters

i. Land.

29. The parties own what they have described as residential land and development land here in Ireland. Ms D put forward a professional valuer's valuation of 14th November 2022 of [Stated Amount 3] in respect of [Stated Acreage 1] of residential land and contemplating the erection of a dwelling-house thereon. (The valuer noted the purchase price in 2019 was [Stated Amount 4] and planning permission was granted in [Stated Date 1]. The same valuer valued the development land ([Stated Acreage 2] acres with planning permission for several houses) at [Stated Amount 5]. She noted that the purchase price in 2019 was [Stated Amount 6], with planning permission granted in June 2021.

30. Mr D initially produced a valuation of 3rd March 2022 that departed quite radically from the figures mentioned in the preceding paragraph. However, immediately before the proceedings, he furnished a different but older valuation that accords with the figures shown above. I am therefore confronted with three valuations, two of which essentially accord with one another and one of which is something of an outlier. I propose to disregard the outlier and proceed by reference to the figures discussed in the previous paragraph (which essentially accord with the figures shown in the preceding paragraph). I note in passing Ms D's evidence at the hearing (which I accept) that the planning permission for the family home was only granted because of the size of the entire site with one entrance so that the site cannot be split.

31. Mr D has submitted valuations of two properties in [Country A] which have not been disputed.

ii. [Company A]'s Business.

32. As to the value to be placed on [Company A]'s business, I have addressed in the opening paragraphs the role played by both parties in that business. Evidence as to the valuations to be placed on [Company A]'s business was provided by Mr Harding (for Ms D) and Ms Kingston (for Mr D). I have previous experience of Ms Kingston giving evidence to the court and she is a very impressive witness and a highly competent professional. However, in these proceedings all her evidence was coloured by the quality and limited nature of Mr D's instructions to her, (and I am conscious in this regard that (i) Mr D has not hesitated to place false statements of means before the court and (ii) his improper use of company monies was discovered by Ms D in these proceedings and not disclosed by Mr D. So he is, I must regrettably note, a man who is clearly prepared to deceive as regards financial matters). It follows that I respectfully do not (I cannot) believe anything that Mr D has to say from a financial perspective and I have no faith that he will have been open and honest with Ms Kingston when, I must regretfully observe, he has not been fully open and honest at all times with the court.

33. Mr. Harding gave evidence as to (i) why the financial statements were not reliable, (ii) why he could not rely on the inaccurate unaudited management accounts to September 2022, (iii) the fact that the previous management accounts were understated by one million when compared to the statutory accounts, (iv) the value of the business, using the average adjusted EBITDA value over a four and also a three year average, arriving at a midpoint valuation of [Stated Amount 7]. I asked Mr Harding in his evidence whether we were not all standing on quicksand in terms of arriving at a proper valuation of [Company A] given all that has happened. Certainly, it seems to me from the evidence that the valuation of the company's business is affected by the understatement of profits (due to Mr D consistently taking an income from the company which is simply not reflected in the company's accounts). And I note that (unsurprisingly perhaps given what has been going on) Mr Harding did not receive a full response to all of the various reasonable requests that he has raised and has never received [Company A]'s nominal ledger, which he was satisfied that he had requested.

34. Mr D maintains that Ms D should receive nothing from [Company A] (or in respect of its business) or [Related Venture 1] despite her having a beneficial interest in both.[3] (In passing, I fully accept Ms D's evidence that she was unaware before these proceedings of Mr D's irregular expenditure and was not involved in the financial management of the company. It is clear from the parties' educational backgrounds that it is Mr D's accounting and financial management skills that he brought to the couple's business doings and Ms D has good cause to feel very let down in this regard.) If I were to accept Mr D's proposition that Ms D should receive nothing – based on [Company A] having no value thanks to Mr D's financial improprieties (and the evidence I note did not suggest that it has no value) – that would in effect be to rid Ms D of her beneficial interest and to reward Mr D by allowing him to continue to engage in the errant financial behaviour that he has hitherto manifested. I do not see how that would be fair or just to Ms D.

35. Mr. Harding gave evidence as to the value of Ms D's shareholding in [Related Venture 1]. This evidence differed from that of Ms. Kingston. The main difference between them was in the description by Ms. Kingston of Mr D as a minority shareholder (resulting in a minority discount being applied to his shareholding). The idea of a minority discount being applied was rejected by Mr. Harding. He stated (and I think he is right in this when one looks at the truth of matters, rather than the strict corporate structure employed) that he would describe [Related Venture 1] as a quasi-partnership in the way that family members have worked in unison in relation to the operation of the business for the mutual benefit of each other. If one accepts that logic (and I do) Mr Harding's evidence was that what presents is not a situation in which it would be appropriate to apply a minority discount.

X. *In Camera* Proceedings

36. Both parties have claimed in their submissions that there have been breaches by the other party of the '*in camera*' rule after these proceedings were heard.[4] I have no doubt that people

[3] There is also a sibling of Mr D, who is a shareholder in [Company A]. However, Mr D accepts this sibling to have been a passive shareholder and not in any way involved in the daily operations of [Company A].

[4] I do not know why we continue to use the Latin words '*in camera*'. Practically nobody now understands Latin and even lawyers tend not to have studied it at school or university. Literally, '*in camera*' means 'in chambers'. However, even this translation makes no sense to most people. What are 'chambers' most people would likely ask? In reality what is meant by the phrase '*in camera* proceedings' is that the proceedings are held privately, without members of the public present and with a requirement that the parties disclose none of the details of the proceedings beyond what is allowed by the court. So, frankly it would be more sensible and comprehensible if they were generally styled as 'Private Proceedings' instead of being called '*In Camera* Proceedings'

leave family and child law proceedings and are asked by, say, a worried parent or partner or sibling what happened and respond by telling them the truth of what occurred. Strictly speaking, that is a breach of the notion inherent in private court proceedings that 'what happens in court stays in court'. However, such limited disclosure is perhaps inevitable (and essentially unpoliceable as the family member will almost certainly state that she was never told anything). But what is not inevitable (and what is thoroughly objectionable) is that children should effectively be brought into the detail of proceedings by being told some version of what has happened and both sides allege that that is what has happened here. I would be grateful if both parties would, from this point on, rigorously observe the private nature of these proceedings. There is good reason why they are conducted in private. It is to their respective benefit that they observe the private nature of the proceedings. More importantly, it is to the benefit of their children (and their ongoing relationships with their children).

XI. Parental Alienation

37. In passing, I note that allegations of parental alienation were made to Professor Sheehan by Mr D against Ms D. However, these appear not to have been accepted by Professor Sheehan who makes no mention of them in his report.

XII. Mr D's Written Submissions

38. I respectfully refer the parties to my observations in Section V above. In this section I address a number of points raised in those submissions that I do not consider have been addressed elsewhere in this judgment:

(1) *Mr D claims to suffer from mental ill-health and to have suffered harassment from Ms D*. There is no evidence before me that Mr D suffers from mental ill-health. In fact Mr D has averred to being in good health but now says that he lied when he said this because he could not at the time bring himself to admit to being in poor health. I am genuinely sorry if he considers himself to suffer from mental ill-health but there was nothing in his demeanour or performance in the court or in his lifestyle more generally to suggest that, to the extent that he suffers from mental ill-health (if he does), it has in any way affected his competencies as an adult. Beyond Mr D's say-so there is nothing before me to suggest that he has ever been

harassed by his wife. There is abundant evidence before me that Mr D repeatedly had his wife harassed by a HR firm at a time when she was very unwell.

(2) Mr D claims that after he continued with his cross-examination (following on threatening to leave the courtroom at the hearing) he was not mentally in a condition to proceed with the cross-examination. In fact Mr D conducted himself admirably after this episode, there was nothing in his behaviour or performance to suggest the contrary, and if he felt unable to proceed on the day he could simply have told me so. I respectfully see no merit to this submission.

(3) Mr D complains about some material being handed to him during the proceedings. I see nothing untoward in how counsel and the solicitors for Ms D conducted these proceedings.

(4) Mr D complains that [Text redacted] *drove past his house in [Stated Place A], parked and looked at his house, drove towards him and glared at him*. There is nothing unlawful in driving past a house, looking at a house, driving towards somebody without the intention of hitting them, or even glaring at them. If it is the case that someone drove at Mr D with the intention of hitting him, that would be a matter for complaint to the Gardaí and I note that Mr D has in fact made complaint to the Gardaí concerning this episode. There is no suggestion that Ms D participated in, knew of, or instigated this alleged episode, so I see it to have no relevance to these proceedings.

39. As to Mr D's submissions regarding the financial side of matters, I have treated extensively elsewhere in this judgment with how I see the financial side of matters to lie.

XIII. Law and Case-Law

40. Turning to the law:

– I note that, as regards proper provision in judicial separation and divorce cases, the Court of Appeal in *Q.R.* v. *S.T.* [2016] IECA 421 standardised the approach to be brought (see para.51). The Court also considered that a similar approach should be taken to both judicial separation and divorce cases by virtue of the fact that the criteria in both s.16 of the Family Law Act 1995 and s.20 of the Family Law (Divorce) Act 1996 are practically identical.

– drawing on *M* v. *S* [2020] IEHC 562 and *N.O.* v. *P.Q.* [2021] IECA 177 which between them also refer to, *e.g.*, the decisions of the Supreme Court in *D.T.* v. *C.T.* [2002] 3 I.R. 334 and *Y.G.* v. *N.G.* [2011] 3 I.R. 717 and the High Court in *M.K.* v. *J.K.* (No 2) [2003] 1 I.R. 326, it seems to me that the following propositions arise. (References to page numbers are to the page numbers indicated on the Lexis database). The propositions are stated in Bold text; my observations appear in plain text immediately after each block of Bold text. I have proceeded in accordance with all the propositions stated.

CLEAN BREAK?

41. (1) When, following the 15th Amendment, the Oireachtas came to introduce divorce legislation, it was modelled to some extent on modern English divorce law. There is, however, an important difference. English legislation embodies the 'clean break' principle laid down by the House of Lords in *Minton* v. *Minton* [1979] A.C. 593 (*D.T.* v. *C.T.*, Keane C.J., at p. 384).

42. (2) Irish law does not establish a right to a 'clean break'. However, it is a legitimate aspiration (*Y.G.* v. *N.G.*, Denham C.J., at p. 729).

43. (3) The absence of specific statutory machinery for the making of 'clean break' provision should not preclude the court from seeking to do so in appropriate cases. In the case where the amplitude of resources makes it possible, the desire of the parties for financial finality should not be frustrated (*D.T.* v. *C.T.*, Fennelly J., at p. 440; see also *Y.G.* v. *N.G.*, Denham C.J., at p. 729).

44. This is not a 'clean break' case.

CERTAINTY AND FINALITY

45. (4) Keane C.J. did not believe that the Oireachtas, in declining to adopt the 'clean break' approach to the extent favoured in England, intended that the courts should be obliged to abandon any possibility of achieving certainty and finality and of

encouraging the avoidance of further litigation between the parties (*D.T.* v. *C.T.*, Keane C.J., at p. 385).

46. (5) The principles of certainty apply to family law as to other areas of the law. Certainty is important in all litigation. Certainty and consistency are at the core of the legal system. However, the concepts of certainty and consistency are subject to the necessity of fairness. Consequently, each case must be considered on its own facts, in light of the principles set out in the law, so as to achieve a just result. Thus while the underlying constitutional principle is one of making proper provision for the spouses and children, this is to be administered with justice to achieve fairness (*D.T.* v. *C.T.*, Denham J., at p. 403).

47. (6) A court may, in the appropriate circumstances, seek to achieve certainty and finality in the continuing obligations of the divorced spouses to one another. This is not to say that legal finality can be achieved in all cases and any provision made may be subject to review pursuant to s.22 of the Act of 1996, where that provision applies. However, the objective of seeking to achieve certainty and stability in the obligations between the parties is a desirable one where the circumstances of the case permit (*D.T.* v. *C.T.*, Murray J., at p. 432).

48. All noted.

BROAD DISCRETION

49. (7) While s.20(2) of the Act of 1996 lists in detail the factors to which the court is required to have regard in making the various financial orders provided for in Part III of the said Act, it is obvious that the circumstances of individual cases will vary so widely that, ultimately, where the parties are unable to agree, the trial judge must be regarded as having a relatively broad discretion in reaching what she or he considers a just resolution in all the circumstances (*D.T.* v. *C.T.*, Keane C.J., at p. 386; see also Murray J., at p. 422).

50. Noted.

51. (8) Normally, even in cases where the parties might be considered to enjoy a substantial decree of financial comfort, the finite resources of the parties will be an underlying prescriptive factor in the exercise of a discretion as to how those resources can be applied in making proper or fair provision for both spouses (*D.T.* v. *C.T.*, Murray J., at p. 423).

52. Noted.

53. (9) The Oireachtas, in choosing the approach it enshrined in s.20, made a considered decision to confer upon the court a duty of a particularly broad discretionary character. This requires the court to pass judgment on the presence and, where they are present, the weight it attributes to an extremely wide range of specified considerations (*D.T.* v. *C.T.*, Fennelly J., at p. 435).

54. Given the absence of agreement between the parties on a range of points this is a case in which I have had to invoke that relatively broad discretion.

55. (10) The matters listed ins.20(2) of the Act of 1996, are designed to ensure that the court will have regard to all the wide variety of circumstances which should, in the interests of justice, be weighed in the balance when considering what is proper provision. The starting point in that regard must be, on the one hand, to the resources and on the other to the needs, obligations and responsibilities of the parties. There is no stated limitation on the financial resources or on the "*financial needs, obligations and responsibilities...*" to be considered by the court and which may be available for the purpose of making provision. They may extend to resources or to needs, obligations or responsibilities which either spouse "*is likely to have in the future*" (*D.T.* v. *C.T.*, Fennelly J., at p. 437).

56. The parties enjoyed a comfortable standard of living prior to separation. (This despite the fact that Mr D clearly indulged in a secret lavish lifestyle before their separation of which Ms D was unaware). This excessive expenditure has continued post-separation and only come to light during the course of queries raised by Mr Harding.

FINANCIAL NEEDS

57. (11) The standard of living of a dependent spouse should be commensurate with that enjoyed when the marriage ended. The Act of 1996 specifically refers to matters to which the court shall have regard and these include the standard of living enjoyed by the family before the proceedings were instituted or before the spouses commenced to live apart, as the case may be (Y.G. v. N.G., Denham C.J., at p. 731).

58. Please see my responses to Points (1)-(3) and (10).

59. (12) If a party has new needs, for example a debilitating illness, that will be a factor to be considered by a court in all the circumstances of the case (Y.G. v. N.G., Denham C.J., at p. 731).

60. Though Ms D has been grievously unwell I do not see that, at this time, she is suffering from a debilitating illness.

61. (13) "*Assets which are inherited will not be treated as assets obtained by both parties in a marriage. The distinction in the event of separation or divorce will all depend on the circumstances. In one case, where a couple had worked a farm together, which the husband had inherited, the wife on separation sought 50%, however, the order given by a court was 75% to the husband and 25% to the wife. This is a precedent to illustrate an approach, but the circumstances of each case should be considered specifically.*" (*Y.G.* v. *N.G.*, Denham C.J., at p. 732).

62. This is not relevant here.

63. (14) Where one or both parties are in receipt of income, but their joint assets are not of such significant value, the first task of the court will almost certainly be to consider what the financial needs of the spouses and the dependent children are. At one end of the spectrum, there will be cases in which, at best, no more than basic subsistence requirements at the most can be met. At the other, there will be both substantial assets and income available and the court will be concerned with the proper distribution,

in terms of the section, of the available assets so as to ensure that proper provision is made for the spouses and any dependent children (*D.T.* v. *C.T.*, Keane C.J., at p. 386).

64. I have considered the financial position at some detail in the main text above and had due regard to Mr Harding's evidence and report as the more reliable in this case for the reasons stated above. Despite Mr D's transgressions, I consider that there are still sufficient assets available to the parties to enable me to make the financial orders set out in Appendix 2 to this judgment.

65. (15) The Act of 1996 does not require the assets of the spouses to be divided between them and the dependent children in every case. There will be cases in which it would be solely concerned with the appropriate level of the maintenance to be paid by one spouse to the other and as to what is to happen to the family home. But in cases… where there are substantial assets brought into being in circumstances where it would be unjust not to effect some form of division, the court will inevitably find itself having to determine, where the parties are unable to agree, how the assets should be divided and whether that division should take the form of a lump sum order or a property adjustment order (*D.T.* v. *C.T.*, Keane C.J., at pp. 386-87).

66. Please see my response to (14).

NON-DISCRIMINATION

67. (16) The work of a spouse in the home cannot be a basis for discriminating against her by reason only of the fact that the husband was the major earner or the breadwinner during the course of the marriage (*D.T.* v. *C.T.*, Murray J., at p. 427).

68. (17) Lord Nicholls, in *White* v. *White* [2001] 1 A.C. 596, emphasised that the whole tenor of English divorce legislation was the avoidance of a discriminatory approach: the fact that, as often happened, the wife had devoted the greater part of her time to looking after the children and caring for the home generally, was no ground for confining her share of the family assets, in the event of a breakdown of the marriage, to so much of the assets as met her 'reasonable requirements'. That is also the law in Ireland (*D.T.* v. *C.T.*, Keane C.J., at p. 389).

69. All noted. This is not really such a case. Mr D and Ms D worked jointly in their business and appear to have split the homemaking tasks between them. That said I have taken account of the fact that it is likely that Ms D will sacrifice some of her out-of-house earning ability by virtue of her role as primary carer. And I have taken into account that there is no reality in all the circumstances presenting to her continuing to work in [Company A]'s business.

70. (18) In *Cowan* v. *Cowan* [2002] Fam. 97, a so-called 'ample resources' case, Thorpe LJ, at pp. 118-19, summarised his understanding of *White* v. *White* [2001] 1 A.C. 596 as follows, "*Disapproved is any discriminatory appraisal of the traditional role of the woman as homemaker and of the man as breadwinner and arbiter of the destination of family assets amongst the next generation. A calculation of what would be the result of equal division is a necessary cross check against such discrimination....Disapproved is any evaluation of outcome solely or even largely by reference to reasonable requirements*." Provided that it is always borne in mind that in 'ample resources' cases an equal division of the assets is emphatically not mandated by the legislation, Keane C.J. considered that there should be no difficulty in adopting a broadly similar approach in this jurisdiction. (*D.T.* v. *C.T.*, Keane C.J., at pp. 389-90).

71. Please see my response to (17). Despite Mr D's transgressions, this remains *something* of an ample resources case – though not a very ample one.

72. (19) When a court is exercising its discretion in making provision for spouses on an application for divorce, the following should be considered: (i) in making such provision a spouse who has worked principally in the home during the course of the marriage should not be disadvantaged in the making of such provision by reason of that fact; (ii) both spouses are entitled, in principle, to seek that the provision made for them provides them with a measure of independence and security in their lives and there is no reason why, in principle, a non-earning spouse should be confined to periodic payments. The extent to which this can be achieved in practice will depend on the circumstances of the case, the resources available and the exercise of judicial discretion in taking into account all the factors referred to in s.20; (iii) a court has power to direct the payment of lump-sum payments where this is considered an appropriate means of making proper provision for one or other of the spouses; (iv) all the resources, assets and

income of the applicant and the respondent) should be taken into account (*D.T.* v. *C.T.*, Murray J., at pp. 431-32).

73. As to (i), please see my response to (17). As to (ii), I consider that the course of action that I intend to take will provide both spouses with a measure of independence and security in their lives. As to (iii) please see my response to (1)-(3), As to (iv), I have so proceeded.

'BREADWINNERS' VERSUS 'HOMEMAKERS'

74. (20) The role of the dependent homemaker and child carer, usually the wife, is not to be disadvantaged in the distribution of assets by reason of having a non-economic role (*M.K.* v. *J.K. (No 2)*, O'Neill J., at p. 349).

75. (21) In Irish society today, it can no longer be assumed that the husband and wife [in mixed-sex marriages] will occupy their traditional roles in which the husband has been the breadwinner and the wife the home builder and carer. The roles may on occasions even be reversed and, in many instances, both husband and wife will be in receipt of income from work. In those cases where one spouse alone is working and, in the result, a significantly greater responsibility for looking after the home has devolved on the other, it is clear that under s.20(2)(f) of the Act of 1996, the court must have regard to that as a relevant factor (*D.T.* v. C.T., Keane C.J., at p. 387).

76. (22) A court is obliged by virtue of s.20(2)(g) to have regard to the financial consequences for either spouse of his or her having relinquished the opportunity of remunerative activity in order to look after the home or care for the family (*D.T.* v. *C.T.*, Keane C.J., at p.387).

77. (23) In assessing the "*proper provision*" under Article 41.3.2°, the court must look at both aspects of a spouse's role in the family, *i.e.* the two sides of the coin. Thus the court must have regard to the role of the spouses in relation to the welfare of the family, to their contribution in looking after the home or caring for the family: s.20(2)(f). On the other side of the coin, the court must have regard to the effect on the earning capacity

of each of the spouses of the marital responsibilities assumed by each, and the degree to which the future earning capacity of a spouse was impaired by reason of the spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family: s.20(2)(g). By this total approach to the family role of a spouse and its effect, formal recognition is given to the role of caring for the family (D.T. v. C.T., Denham J., at p. 402).

78. (24) Article 41.3.2° of the Constitution and the Act of 1996, clearly require that value be placed on the work of a spouse caring for dependents, the family and the home. A long-lasting marriage, especially in the primary childbearing and rearing years of a woman's life, carries significant weight, especially if the wife has been the major home and family carer (*D.T.* v. *C.T.*, Denham J., at pp. 402-03).

79. (25) In ensuring that proper provision is made for the spouses of a marriage before a decree of divorce, the courts should, in principle, attribute the same value to the contribution of a spouse who works primarily in the home as it does to that of a spouse who works primarily outside the home as the principal earner. The value to be attached to their respective contributions in those circumstances is, perhaps, underscored by Article 42.1 of the Constitution which refers, *inter alia*, to the "*duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children*" (*D.T.* v. *C.T.*, Murray J., at p. 428).

80. (26) Where substantial assets and income have accrued to one spouse in the course of the marriage, the court should take them into account in determining the proper provision to be made for the other spouse. They are available in order to make a proper provision for the other spouse. In the case of a wife who has worked primarily in the home, she is just as entitled as her husband to have the 'fruits of the marriage', taken into account by the court in determining what provision should be made for each of them (*D.T.* v. *C.T.*, Murray J., at p. 430).

81. (27) Section 20(2)(f) obliges the court to give due weight and consideration to the respective roles of the breadwinner and the homemaker, *i.e.* such weight as is appropriate in all the circumstances. It does not erect any automatic or mechanical rule of equality. Nor does it institute any notion of family resources or property to be subjected

to division. Several considerations militate against the adoption of such rules of thumb. The children of the marriage have to be considered and their provision by one spouse may mean that property should not be equally divided. One or both of the parties may have entered into new relationships, possibly involving children. The supposed 'breadwinner' or 'homemaker', as the case may be, may not, depending on the circumstances deserve to be placed on an equal footing. It is only with the greatest care, therefore, that one should formulate any general propositions (*D.T.* v. *C.T.*, Fennelly J., at pp. 438-39).

82. (28) In *White* v. *White* [2001] 1 A.C. 596, Lord Nicholls observes, at p. 605, that "*If, in their different spheres, each [spouse]contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer*". Fennelly J. adopted this language to the extent that he argues for equal recognition of the value of the contributions that may have been made during the marriage, in their respective roles, by the money-earning spouse and the home-making spouse (*D.T.* v. *C.T.*, Fennelly J., at p. 439).

83. All noted. Please see my response to (17).

OTHER RELEVANT FACTORS

84. (29) Other factors to which the court is obliged to have regard is the standard of living enjoyed by both parties before the breakdown of the marriage, their respective ages and the duration of the marriage (*D.T.* v. *C.T.*, Keane C.J., at p. 387).

85. As to the standard of living, please see my response to (10). The parties are now in their 40s and the marriage was of relatively long duration, lasting for about 15 years until it essentially ceased in November 2020.

86. (30) A party should not be compensated for their own incompetence or indiscretions to the detriment of the other party (*Y.G.* v. *N.G.*, Denham C.J., at p. 732).

87. Here one has to be careful not to see Mr D rewarded for having depleted the resources of [Company A] as he has.

CONDUCT OF PARTIES

88. (31) The conduct of the parties will be relevant where, in the opinion of the court, it would be unjust to disregard it (*D.T.* v. *C.T.*, Keane C.J., at p. 387).

89. I have considered Mr D's (ab)use of [Company A]'s resources previously above. I have also raised concern about how he has conducted himself when the children are in his custody (removing one from the jurisdiction for a time, leaving them alone, and perhaps being unduly lax). I have also noted the unintended but reprehensible fact that one of the children accessed photographic material of Mr D engaged in consensual sexual encounters. I have said what I have said in this regard with a view to ensuring that there is not a repeat in the future. I do not see that there is more to be said in this regard.

90. (32) Ultimately, when all these factors have been assessed by the trial judge, he or she must be satisfied that any financial orders made constitute proper provision for each of the spouses, and the dependent children, within the meaning of the Constitution and the Act of 1996 (*D.T.* v. *C.T.*, Keane C.J., at p. 387).

91. I am satisfied for the various reasons stated in this judgment that I am making proper provision for all.

92. (33) As to when it would be "*unjust*" within the meaning of s.20(2)(i) to disregard the conduct of each of the spouses, in *Wachtel* v. *Wachtel* [1973] Fam. 72, Denning MR said, at p. 90, that: "*There will no doubt be a residue of cases where the conduct of one of the parties is...'both obvious and gross', so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life ... in the financial*

***adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place.*" Keane C.J., in *D.T.*, agreed with the view expressed by Lord Denning in *Wachtel* that the court should not reduce the financial provision which it would otherwise make to one of the parties save in cases where misconduct has been "obvious and gross". (D.T. v. C.T., Keane C.J., at p. 391; see also Denham J., at pp. 408-09).**

93. Please see my observations at (31).

DATE OF VALUATION OF ASSETS

94. (34) As to the time at which the assets should be valued, the language of s.20(2)(a), and, in particular, the reference to "*property ... which each of the spouses concerned has or is likely to have in the foreseeable future*" is more consistent with an assessment by the court of the value of those assets as of the date of the hearing. Any other construction would seem to give rise to the possibility of injustice to either party. That was also the view taken by the Court of Appeal in *Cowan* v. *Cowan* [2002] Fam. 97, at p. 122 (*D.T.* v. *C.T.*, Keane C.J., at pp. 390-91).

(35) The assessment of assets must be as of the date of trial or appeal. This is consistent with the wording of the statute which refers to "*circumstances exist*", "*the income...which each of the spouses concerned has or is likely to have*", "*the financial needs which each of the spouses has or is likely to have*". However, while the assessment of assets is at the date of the trial or the appeal, there may be important factors relevant to that sum to be taken into consideration in determining the proper provision for the spouses. *E.g.*, the fact that a considerable sum of money was acquired by a spouse after their separation, the basis for such a new acquired sum, or the existence of a deed of separation, may be very relevant (*D.T.* v. *C.T.*, Denham J., at p. 404).

95. (36) Assets should be assessed as at the date of trial. However, there may well be circumstances as to their relevance as an asset base in providing proper provision. Thus, if the parties had no joint enterprise (such as a farm or business or professional practice) and one party after separation commenced and achieved success in a wholly

new area, that may be a circumstance applicable to the determination of the asset base relevant to proper provision. While the factors set out in s.20(2)(a)-(1) must be applied, it may affect the benchmarking of fairness (*D.T.* v. *C.T.*, Denham J., at p. 405).

96. All noted.

***AD SERIATIM* CONSIDERATION**

97. (37) In determining proper provision, it is mandatory for the court to have regard, in particular, to the factors set out in s.20(2) of the Act of 1996. The relevance and weight of each factor will depend on the circumstances of each case. Best practice is to consider all the circumstances and each particular factor ad seriatim and give reasons for their relative weight in the case (*D.T.* v. *C.T.*, Denham J., at p. 402).

98. (38) What the court of first instance must do is go through the various factors set out in s.20(2) seriatim and deal with the circumstances of the case in the light of these factors insofar as they are relevant to the circumstances of the case, assessing in the light of the evidence, the weight to be attached to each factor. Having completed that exercise, the court must then, in the light of s.20(5) of the Act of 1996, consider in a residual way and on the basis that the court's discretion is not confined solely to the factors set out in s.20(2) but must have regard to whether or not an order which the court might be disposed to make, having weighed up the various factors in s.20(2), should not be made unless it would be in the interests of justice to do so (*M.K.* v. *J.K. (No 2)*, O'Neill J., at p. 350).

99. All noted. I have so proceeded.

LUMP SUM

100. (39) There is nothing in the Constitution or legislation which prohibits a lump sum as part of a financial ancillary order. In considering whether such an order is applicable, the provisions of the Act of 1996 must be applied (*D.T.* v. *C.T.*, Denham J., at p. 403).

101. (40) The Constitution would require that the making of lump sum payments be ordered if, in the particular circumstances of the case, the court considered in its discretion that that was the appropriate manner by which proper provision should be made for the spouse in question (*D.T.* v. *C.T.*, Murray J., at pp. 429-30).

102. All noted.

PROPER PROVISION (NOT DIVISION)

103. (41) Under s.20(1) of the Act of 1996, "*the court shall ensure that such provision as the court considers proper having regard to the circumstances exists*" will be made for the spouses and any dependent children. Thus this duty requires the court to make proper provision, having regard to all the circumstances (Y.G. v. N.G., Denham C.J., at p. 730).

104. (42) The Act of 1996 enables the court to make a variety of financial and property orders; the purpose of the making of these orders upon the granting of a divorce decree is to ensure that proper provision is being made for a dependent spouse and children (*M.K.* v. *J.K.* (No 2), O'Neill J., at p. 332).

105. (43) In English matrimonial law, the court in divorce proceedings is primarily concerned with dividing assets as fairly as possible between the parties rather than making proper provision for the spouses and their dependent children. Such an approach could not be adopted in this jurisdiction, where the appropriate criterion is the making of proper provision for the parties concerned (*M.K.* v. *J.K. (No 2)*, O'Neill J., at p. 348).

106. (44) The scheme established under the Act of 1996 is not a division of property. The scheme provides for proper provision. It is not a question of dividing the assets at the trial on a percentage or equal basis. All the circumstances of the family, including

the particular factors referred to in s.20(2) are relevant in assessing the matter of provision from the assets (*D.T.* v. *C.T.*, Denham J., at p. 404).

107. (45) It is not the case that in making financial provision for spouses their assets should be divided between them. Neither the Constitution nor the Act of 1996 requires that, expressly or implicitly. It is rather that a spouse should not be disadvantaged by reason of the fact that all, or nearly all, of the assets and income in the marriage are those of the other spouse. It also means that in cases where there are very substantial assets belonging to one spouse which greatly exceed any conceivable day-to-day needs of either spouse, whatever their standard of living, those assets should not as a matter of course remain with the spouse who owns them, with the other spouse being confined to depending on periodic payments (*D.T.* v. *C.T.*, Murray J., at p. 428).

108. All noted. In this case it seems to me that Ms D ought not to be discriminated against by virtue of the fact that her co-founding and joint operation of the day-to-day business of [Company A] is not accurately reflected in the ownership of Company. It is also necessary to reflect the ownership arrangements as regards [Related Venture 1].

109. (46) Proper provision should seek to reflect the equal partnership of the spouses. Proper provision for a spouse who falls into the category of a financially dependent spouse should seek, so far as the circumstances of the case permit, to ensure that the spouse is not only in a position to meet his/her financial liabilities and obligations, continue with a standard of living commensurate with his/her standard of living during marriage but to enjoy what may reasonably be regarded as the fruits of the marriage so that he/she can live an independent life and have security in the control of his/her own affairs, with a personal dignity that such autonomy confers, without necessarily being dependant on receiving periodic payments for the rest of her life from his/her former wife/husband. 'In principle' because in many cases the resources or circumstances of the parties will dictate that the only means of making future provision for the spouse in question will be by periodic payments from the other spouse (*D.T.* v. *C.T.*, Murray J., at p. 429).

110. I have nothing further to add in this regard that has not previously been stated above.

111. (47) The court must do what is "*proper*" in the sense of 'appropriate'. This is synonymous with what is "fair" or "just". In the moral sense, this is a clearly stated objective. In practice, it requires the court to weigh in the balance the infinite variety and complexity of the elements of human affairs and relationships and to arrive at a just result (*D.T.* v. *C.T.*, Fennelly J., at p. 434).

112. Noted.

113. (48) Any property, whenever acquired, of either spouse and whenever and no matter how acquired, is, in principle, available for the purposes of the provision. Thus, property acquired by inheritance, by chance, or the exclusive labours of one spouse does not necessarily escape the net. On the other hand, not all such property is automatically available either (*D.T.* v. *C.T.*, Fennelly J., at p. 437).

114. Noted.

CONTINUING OBLIGATION

115. (49) Each spouse has a continuing obligation to make proper provision for the other and the resources which are available to each of them may be taken into account, so far as is necessary, to achieve that objective. Each case will necessarily depend on its own particular circumstances (D.T. v. C.T., Murray J., at p. 430).

116. Noted.

AGREEMENT BETWEEN SPOUSES

117. (50) It is evident that parties may well be able to compose their material and financial differences by agreement. Agreement is, in its nature, to be encouraged, a matter which is recognised in the legislation, in particular, by requiring the court to have regard to the terms of any existing separation agreement (*D.T.* v. *C.T.*, Fennelly J., at pp. 433-34).

118. There is no agreement here.

SECTION 20

119. Section 20 of the Act of 1996 provides as set out in the Bold text that follows; my comments appear in plain text.

120. 20.— (1) In deciding whether to make an order under section 12, 13, 14, 15 (1) (a), 16, 17, 18 or 22 and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

121. I have treated with this aspect of matters above.

122. (2) Without prejudice to the generality of subsection (1), in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters: (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,

123. I have treated with this aspect of matters above.

124. (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage or registration in a civil partnership of the spouse or otherwise),

125. I have treated with this aspect of matters above.

126. (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,

127. I have treated with this aspect of matters above.

128. (d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,

129. I have treated with this aspect of matters above. The parties appear to have lived together throughout their marriage.

130. (e) any physical or mental disability of either of the spouses,

131. Neither spouse suffers from any such disability.

132. (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,

133. I have treated with this aspect of matters above.

134. (g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,

135. I have treated with this aspect of matters above.

136. (h) any income or benefits to which either of the spouses is entitled by or under statute,

137. Each of the parties will at some point come into receipt of the old age pension. However, given the scale of the private assets available in this case, I do not see that this is an especially relevant factor. (It is of course *a* factor but not an especially significant one in all the circumstances presenting).

138. (i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,

139. I have treated with this aspect of matters above.

140. (j) the accommodation needs of either of the spouses,

141. I have treated with this aspect of matters above. It does not seem that there is any risk of either party not being able to finance accommodation into the future following on the orders that I will make.

142. (k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,

143. There are minor pensions enjoyed by each party and it seems to me that the fairest way to proceed is to leave each spouse with his/her respective pension rights.

144. (l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.

145. I have obviously had regard to the interests and rights of the children. No other third party rights have been raised as an issue, though I have also had regard to the position of Mr D's brother as shareholder insofar as that is known to me.

146. (3) In deciding whether to make an order under a provision referred to in subsection (1) and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.

147. There is no such agreement.

148. (4) Without prejudice to the generality of subsection (1), in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family

concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters: (a) the financial needs of the member, (b) the income, earning capacity (if any), property and other financial resources of the member, (c) any physical or mental disability of the member, (d) any income or benefits to which the member is entitled by or under statute, (e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained, (f) the matters specified in paragraphs (a), (b) and (c) of subsection (2) and in subsection (3), (g) the accommodation needs of the member.

149. Noted. Apart from the custody/access orders I am not making any order in respect of a dependent family member.

150. (5) The court shall not make an order under a provision referred to in subsection (1) unless it would be in the interests of justice to do so.

151. Noted. I am satisfied that it is in the interests of justice to make the orders I intend to make.

XIV. Conclusion

152. There are a few minor outstanding points which have been touched upon in the submissions and which I cannot believe will be the subject of much controversy. Thus, Ms D has sought access to (i) storage facilities in [Country A] in respect of certain family items therein, and (ii) certain family photos on iCloud. Although I will make both orders, it may be that my order as regards point (i) has little if any consequence if it comes to enforcing same in [Country A]. I would respectfully ask that Mr D act sensibly and allow Ms D the access and retrieval that she has sought at (i) and which (for what it is worth) I will order.

153. I will make the decree sought and the orders indicated above for the reasons stated above, subject to the caveat as to further interaction with Professor Sheehan concerning the proposed access arrangements. Given that Mr D is unrepresented legally, I would ask that counsel for Ms D prepare a draft order that accurately reflects this judgment which I will then consider. I will hear the parties as to costs. There is no reason why Professor Sheehan cannot immediately be approached. I will also make such other ancillary orders as may be necessary including but

not limited to (a) that the Principal Registrar would sign and/or execute the transfer of sites in default; (b) a declaration that the habitual residence of the children is in the Republic of Ireland.

154. Finally, although this was not touched upon at the proceedings, it seems to me that there is a real prospect that Mr D's actions vis-à-vis [Company A] may yet be the subject of criminal investigation in [Country A] should he approach the authorities or should his actions otherwise be discovered. That being so, I propose not to make any element of this judgment public at this time in case to do so would somehow prejudice Mr D's rights, including his presumption as to innocence, under [Country A]'s criminal law. If elements of the judgment will require to be disclosed in order that the proposed orders be effected, it would help if these could be referenced in the proposed draft order, rather than having the parties engage in the time and expense of reverting to me again.

TO MR D/MS D:

WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Ms D, Mr D

I have just written a detailed judgment about the application brought by Ms D. The judgment contains a lot of legal language which can be hard (even boring) to read. In a bid to make my judgments easier to understand by those who receive them I often now attach a note in 'plain English' briefly summarising what I have decided. I thought it might assist for me to add such a note in this case.

In a bid to ensure that people do not know who you are, I refer to you in my judgment and in this note as Mr D and Ms D. This may seem a bit artificial. However, I think it is for the best.

This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is written to help you understand what I have decided. Any lawyers that you have engaged or may engage will explain the rest of my judgment in more detail.

*I am granting the decree sought. As regards the financial and custody arrangements that should apply, I propose to make the orders indicated in Appendix 2 to my judgment. (You will find Appendix 2 a few pages after this page. It starts on the page headed '***Appendix 2***'.) It is not clear to me that Professor Sheehan, when preparing his report, was familiar with all the evidence that I heard at the hearings. So before I finalise the proposed access orders I will be giving Professor Sheehan a copy of my judgment to see if there is anything further that he wishes to state regarding access.*

I wish you both the very best.

Yours sincerely

Max Barrett (Judge)

Date: 12th January, 2023.