

# **THE HIGH COURT**

**IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT, 1996**

**AND THE FAMILY LAW ACT, 1995**

**[2024] IEHC 117**

**[2023 No. 41 CAF]**

**BETWEEN:**

**O.**

**APPLICANT/RESPONDENT**

**AND**

**G.**

**RESPONDENT/APPELLANT**

**JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 27<sup>th</sup> day February, 2024.**

## **INTRODUCTION**

1. This is the judgment of the court in a limited appeal from the Circuit Family Court in Dublin. In the underlying proceedings, Ms O. was the applicant and her then husband Mr G. was the respondent. The parties have been living apart since 2017. As explained in this judgment, Mr G. has restricted his appeal from the decision of the Circuit Family Court to issues relating to maintenance payments and access to his children.

2. The proceedings were commenced by way of a Family Law Civil Bill dated 14 January 2019. In the proceedings, Ms O. sought a series of orders pursuant to the Family Law (Divorce) Act, 1996.

3. After an extensive exchange of affidavits and supervised case progression in the Circuit Court, the matter came on for hearing in the Circuit Family Court in Dublin on 7 July 2023. At that hearing, both parties were represented, and, having heard the matter until late in the evening, the learned Circuit Court judge made a series of findings and ancillary orders that addressed the questions of how proper provision could be made for the spouses and their three dependent children. I will address the ancillary orders later in this judgment. The Circuit Family Court was satisfied that it could make findings in relation to the marriage, which are not challenged on appeal, to the effect that at the date of the institution of the proceedings the spouses had lived separate and apart from each other for at least two years during the previous three years; there was no reasonable prospect of reconciliation between the spouses; and such provision as the court considered proper having regard to the circumstances which existed for the spouses and the dependent children of the marriage. The court in its exercise of the jurisdiction conferred on it by Article 41.3.2 of the Constitution granted a decree of divorce in respect of the marriage contracted between the parties on [redacted] 2006 at [redacted], County Meath. I am satisfied, independently of the findings made by the Circuit Family Court, that those findings and orders are fully warranted, and for the avoidance of doubt I propose to affirm those orders.

#### **PROCEDURAL ISSUES IN THIS APPEAL**

4. By a notice of appeal dated 11 July 2023, Mr G. appealed to this court in respect of the child maintenance and access parts of the Circuit Court judgment. At that point, Mr G. had discharged his lawyers and was acting in person. The Notice of Appeal, accordingly, was not

set out in a very clear way. It recorded that he could not afford to pay €800 per month and two payments of €300 each year in August and December, and that he needed to vary access. Since he filed the Notice of Appeal, Mr G. filed a variety of documents with the court which, while described as either affidavits or notices, comprised of a mixture of legal argument and apparent facts together with some partial vouching documentation said to support the appeal. I should note that Mr G. is a foreign national and English is not his first language. Nevertheless, I was satisfied that having lived and worked professionally in this jurisdiction for over two decades Mr G. was fully able to participate in the proceedings.

5. When the matter first came before the court for hearing, Mr G. made clear that, despite the limited scope of the appeal set out in the Notice of Appeal, he intended to seek a full appeal of all the orders made in the Circuit Family Court. He also stated to the court that there were issues to be addressed in relation to disclosure and indicated that he wished to retain (and to some extent suggested that this had already occurred) the services of a forensic accountant. Counsel on behalf of Ms O. objected to this course of action. In her submission, the matter had been facilitated with an early hearing date based on the limited nature of the appeal set out in the Notice of Appeal.

6. It was clear that the appeal could not be heard in full at that point because neither party was ready to proceed with a full appeal. Ms O. had come to court to address the limited appeal; and Mr G., at that point, was adamant that there should be a full appeal, but he considered that there were additional steps that had to be taken to be ready for a full appeal hearing. The matter was adjourned for a short period to allow Mr G. to decide what course of action he wished to take, and, if necessary, to issue a motion seeking an extension of time to bring a full appeal. In the intervening period Mr G., in fact, issued motion papers seeking to extend the appeal, and they were replied to by Ms O.

7. When the matter came back before this court on 22 November 2023, Mr G. informed the court that, because he wished to bring finality to the case, he was willing to restrict his appeal to the matters set out in his Notice of Appeal. The court is satisfied that Mr G. understood that he was effectively abandoning any prospect of appealing the remainder of the orders granted in the Circuit Family Court, and he was prepared to do so with a view to bringing some degree of finality to the overall proceedings. In tandem with adopting that approach, Mr G. had sent an open offer to Ms O.'s solicitors. I will address the offer later in this judgment.

### **THE EFFECT OF THE LIMITED NATURE OF THE APPEAL**

8. This appeal is concerned solely with maintenance and access issues. In order to frame those matters, it is appropriate to identify the general financial status of the parties as they stood when the matter was dealt with in the Circuit Family Court in July 2023 and how that will be affected by the orders made in the Circuit Family Court.

9. There are three dependent children: an older child who was born in 2008, and twins who were born in 2013. Each of the spouses is employed in relatively well-paying professional jobs. Ms O. works in the banking sector, and Mr G. is employed in the public sector as an engineer. At the time that the matter came before the Circuit Family Court, the family real estate assets comprised three properties:

- a. The first was the family home, which is now occupied by Ms O. and the three children. That house was in the joint names of the parties. It was purchased in 2007 and is the subject of a tracker mortgage – which has resulted in an increase in mortgage interest costs in recent years. In July 2023 the family home had an estimated value of €580,000 according to Ms O. and €650,000 according to Mr G. The mortgage loan outstanding was approximately €423,000.

- b. Ms O. also held a property in her sole name that had an estimated value of €290,000 according to Ms O., and which Mr G. valued at €350,000. There was an outstanding loan amount of just under €160,000.
- c. Mr G. held an apartment in his sole name in which he has resided since the parties separated. The property had an estimated value of €325,000 according to Ms O., while Mr G. contended that its value was €241,385.60. Mr G. averred that the outstanding mortgage loan was €247,165.

**10.** The parties also had various bank accounts that held modest sums. Mr G. asserted that his liabilities included a variety of additional loan obligations to banks and to friends and family members. Similarly, Ms O. averred that she also had debt obligations in relation to personal loans, childminding arrears, and in respect of certain building works on her family home.

**11.** The Circuit Family Court made the following ancillary orders:

- (i) An order pursuant to s. 18(10) of the Family Law (Divorce) Act, 1996 that neither party shall on the death of the other party be entitled to apply for an order under this section for provision out of the other party's estate.
- (ii) An order pursuant to s. 14(1)(a) of the Family Law (Divorce) Act, 1996 directing Mr G. to transfer to Ms O., his entire legal and beneficial interest in the [*family home*] for her sole use and benefit, together with the contents thereof.
- (iii) An order pursuant to s. 15(1)(a)(i) of the Family Law (Divorce) Act, 1996 directing that Ms O. will have exclusive right of residence to the family home to the exclusion of Mr G. for life.
- (iv) An order pursuant to s. 19 of the Family Law (Divorce) Act, 1996 directing the sale of [*the house held in the sole name of Ms O.*] with the sale to take place within twelve months of 7 July 2023 or such further time as may be agreed by the parties (to allow tenants to vacate the said property). The mortgage, costs of

sale and [*a joint bank loan of approximately €9,000*] are to be deducted from the gross sale. From the net proceeds of the sale, Mr G. was to receive the sum of €45,000, and the balance of the net proceeds to go to Ms O.

- (v) An order pursuant to s. 14(15) of the Family Law (Divorce) Act, 1996 if either is in default directing that the County Registrar or any nominated official to sign all documents or execute any transfer to implement any order within seven days of being requested to do so.
- (vi) An order pursuant to s. 15(1)(b) of the Family Law (Divorce) Act, 1996 and s. 36 of the Family Law Act, 1995 declaring that Mr G. is entitled to the sole legal and beneficial interest in the property [*held in his sole name*].
- (vii) An order pursuant to s. 17(26) of the Family Law (Divorce) Act 1996 granting Ms O. full entitlement to the children's allowance payment.

**12.** In addition, the Circuit Family Court made orders pursuant to s.17(2) of the Family Law (Divorce) Act, 1996 for the equalisation of the parties' pensions together with an order pursuant to s. 17(3) providing for the payment on the death of the member's spouse to the other spouse of 100% of the contingent benefit that is payable up to the making of the order. The making of the final pension adjustment orders was adjourned.

**13.** Hence, as a result of the limited nature of the appeal pursued by Mr G. the above orders are not challenged, and, for the avoidance of doubt, I propose to affirm those orders. The effect of the above is that before considering the question of maintenance and access each party will retain a residence and will only have mortgage obligations in relation to their respective retained properties. In addition, upon the sale of the remaining property neither party will have mortgage obligations in that regard, their joint loan will be discharged, and Mr G. will have a payment of €45,000, and the balance will be for the benefit of Ms O. Consequently, the

financial position of the parties as they stood at the hearing of the appeal was appreciably clarified, and likely to be improved following the sale of the remaining property.

**14.** This leads to the central issues in the appeal. In relation to maintenance, the Circuit Family Court made an order pursuant to s. 13(1)(a)(2) of the 1996 Act directing Mr G. to pay Ms O. maintenance in respect of the dependent children in the overall amount of €800 per month. This translates to a weekly payment of approximately €66 per child. The Court also directed that Mr G. twice a year pay the sum of €300, on or before 15 August and on or before 15 December. While not stated as such in the order, the parties understood that these additional payments were in respect of Christmas and back to school expenses.

**15.** The Court made an order pursuant to s. 15(1)(f) of the 1996 Act granting the parties joint custody of the dependent children with the primary care and control being with Ms O. That aspect of the order is not appealed, and I propose to affirm that order.

**16.** Access was regulated as follows:

- (a) Overnight access with Mr G. was to take place every Wednesday commencing from 12 July 2023 at 6.30pm.
- (b) Overnight access with Mr G. was to take place one Saturday per month starting from 1pm on Saturday until 1pm on Sunday, to commence on the next Saturday access date.
- (c) The access arrangements were to continue with any further access arrangements as agreed by the parties with all times to be strictly adhered to.
- (d) Mr G. was not to co-sleep with any of the children while in his care.
- (e) Mr G. was entitled to take the children on two weeks' holidays to [*his country of origin*] every year. Mr G. was to provide full details to Ms O. of the travel arrangements and accommodation four weeks in advance.

- (f) Ms O. was entitled to take the children on two weeks' holidays every year. Ms O. was to provide Mr G. with full details of the travel arrangements and accommodation four weeks in advance.
- (g) Christmas access with Mr G. was regulated as follows:
  - (1) Christmas Eve from 12pm until 4pm.
  - (2) Christmas Day from 2pm until 5pm.
  - (3) St. Stephen's Day from 1pm overnight until 1pm the next day.
  - (4) New Year's Eve from 1pm overnight until 1pm the next day, subject to if Mr G. was not in [*his country of origin*]. Mr G. was to notify Ms O. two weeks in advance if he was going to be in [*his country of origin*] or not over the Christmas period in order for access to take place.
  - (5) Easter Sunday from 1pm until 1pm on the next day with two weeks' notice if Mr G. was unavailable.

17. The court directed that neither party was to denigrate or badmouth the other party or discuss finances with the children. Neither party was to discuss the outcome of the matter with the children unless in very general terms. The court directed that the parties are to sign up to and use for all communications the "*My Family Wizard*" app within two weeks from the date of the judgment, with payment of that to be borne equally by the parties. With regard to the older child, the court directed that both parties were to cooperate fully in respect of the provision of any therapy or advice from appropriate professionals. Liberty to apply was granted and no order for costs was made.

## **THE EVIDENCE**



**18.** The court was provided with booklets of papers and the parties gave oral evidence. Unfortunately, the court found that the materials provided by Mr G. – particularly for the period after the Circuit Family Court hearing when he represented himself – were very unsatisfactory. The court has endeavoured to work through those materials in an attempt to understand Mr G.’s evidence. However, the materials were presented in a piecemeal way and there was very little distinction made between materials with authentic evidential value on the one hand and bare assertions and arguments on the other hand. In many instances the documentation was incomplete or constituted selective extracts overlaid with handwritten notes. Overall, the court was left with the strong impression that Mr G. tended to exaggerate the extent of his difficulties, was unwilling to provide a cogent explanation for his financial situation, and that his primary focus was on shifting financial responsibility for his children to Ms O. His somewhat obdurate focus on his own difficulties contrasted with a seeming inability to appreciate the extent to which Ms O. had her own difficulties to deal with.

### ***Ms O.’s evidence***

**19.** Ms O. gave evidence in relation to her care for the children. As noted above, the parties are the parents of three children, the eldest of whom was born in 2008 and the twins were born in 2013. The older child has experienced some serious stress related mental health problems in recent years, which his mother believes were precipitated or contributed to by his father engaging him in discussions around the family law proceedings. As a result of therapeutic services accessed by his mother for that child, he appears to be doing reasonably well at this point.

**20.** In addition, with regard to dealings concerning the children, Ms O. indicated that, from the time of the separation in 2017, communication between the parents has been extremely difficult. That is one of the reasons why the Circuit Court judge suggested the use of the My

Wizard app to address matters. Use of the app costs €175 per annum. Unfortunately, it is not being utilised by Mr G.

**21.** Ms O. works as a senior officer with a bank, where she has attained a high degree of professional success. Unfortunately, in December 2022, she developed serious neck problems which resulted in her requiring emergency spinal surgery involving a discectomy and fusion of her C5 C6 and C6 C7. Consequently, she has been out of work since January 2023. Following the surgery, she was maintained on full pay for six months, and went on to half pay from July 2023 for a further six-month period. During that period, she has been assisted in caring for her children by friends and members of her family.

**22.** The court was furnished with a variety of documents concerning Ms O.'s health situation and is satisfied that the medical reports are fully consistent with her account of her health difficulties and her endeavours to recover.

**23.** Ms O. gave evidence that, prior to her neck surgery, she often worked up to 50 hours a week. Before the Covid pandemic, she worked in the office five days a weeks, and, post-Covid, she worked from home for three days per week and in the office for two days per week. Ms O. emphasised that working from home was still working and that, during those days, she was involved in meetings and presentations as part of her daily tasks. In order to allow that to occur, she has relied significantly on external childminders to assist her in managing both her work obligations and her obligations to the three children, who spend the overwhelming majority of their time in her care.

**24.** Ms O. described how certain childminders who had been hired by her had been the subject of extensive interference and questioning by the appellant after he left the family home in 2017; and that she has found it difficult to retain childminding staff. She is now reliant on her sister-in-law and brother who provide her with extensive assistance. Ms O. described her normal daily schedule as involving working from 9am to 2pm; she then spends the period of

2pm to 4pm addressing school collections and so forth; and then, at 4pm, the childminding team arrive and she can get back to work. That procedure operates with some flexibility, and they are able to make it work because they are all family members. On the days when she is in the office, her sister-in-law collects the boys from school. In addition to normal school obligations, Ms O informed the court that the children are involved in a lot of activities and that that takes up a huge portion of her time. She noted that, under the current access arrangements, her former husband takes the children for approximately eight waking hours per week.

**25.** Ms O. paid €1,300 per month for childminding when she was on full pay. As she has been on half-pay since July, she has not paid her sister-in-law. This was not a service provided as a favour, and her sister-in-law expected to be paid. There was, as of the date of the hearing of the appeal, approximately €8,700 outstanding since July 2023.

**26.** As set out in her various affidavits and in her oral evidence, Ms O. raised issues about the extent to which Mr G. was willing to take responsibility for activities involving the children. This, in many respects, was relevant to the manner in which Mr G. has addressed these issues, and, as will be set out later, his suggestion that there is no need for childminding and all of this should be dealt with by Ms O. Ms O. gave evidence that, for the duration of their marriage, Mr G. did not spend time with the children and, effectively, was only willing to engage in activities that he enjoyed.

**27.** While Mr G. sought to have the appeal dealt with on an urgent basis because of what he described as his difficult financial circumstances and his stated inability to comply with the maintenance orders made by the Circuit Family Court, Ms O. noted, fairly, that she was in a worse position than she had been at the time of the Circuit Family Court hearings in July 2023, as she had moved to half pay. Ms O. disputed Mr G.'s contention that he was effectively insolvent. She noted that Mr G. was employed at a gross nominal salary of €82,000 per year

and that, while she was the higher earner, when the two salaries were compared net of tax, there was a difference of less than €1,000 per month between the parties in terms of take-home pay. In essence, Ms O. adopted the position that that Mr G. was a person who seemed unable to manage his own finances.

**28.** Ms O. noted that since Mr G. moved out of the family home in February 2017, he had only paid €500 maintenance per month in respect of his three children and that he seemed satisfied to place the entire burden of maintaining the family on her. Despite the orders made in the Circuit Family Court, Mr G. continued to only pay €500 per month and also had failed to pay the €300 directed to be paid in August as a contribution towards back-to-school expenses. She asserted that Mr G. does not prioritise the children's needs above his own needs when it came to finances. By way of illustration, Ms O. pointed out that Mr G. had recently bought a 2023 registration car, while she has remained driving a 2019 registration car. She asserted that Mr G. had a history of trying to avoid his debts and financial obligations. In that regard, she noted that, in 2004, the apartment in which Mr G. now resides had a mortgage of €240,000. The apartment was rented to tenants between 2008 and February 2017. Yet, despite that, nineteen years later, there is now €247,000 outstanding on the mortgage. She also noted that Mr G. had defaulted on three personal loans, one of which had led to a judgment against him.

**29.** In response to allegations that had been made by Mr G., Ms O. asserted that her expenditure was limited and that expenditure on her children was her priority. There had been an allegation that she had spent money on a holiday, but she asserted that that had been paid for by her brothers. She rejected the allegation that she held cryptocurrencies and noted that, in fact, her position in the bank prevented her from holding certain forms of shares without the permission of the bank.

**30.** With regard to access, the applicant gave evidence that Mr G. was inconsistent in his approach to access, and this caused upset and disruption to her children. She noted that Mr G., despite the existence of a structured access programme, wished to avail of a less restrictive form of access, which she considered to be both unfair on the children and designed to suit Mr G.'s schedule and needs.

**31.** Mr G. then cross-examined Ms O. In the first instance, Mr G. brought Ms O. through a variety of matters in her bank statements and credit card statements with a view, primarily, to establish that she was engaging in extravagant spending on what he described as luxury items.

**32.** It is not necessary to go through each of these items in turn, which are documented in the vouching materials. I am fully satisfied, on the basis of the evidence and the responses from Ms O. that the expenditure amounted to no more than normal day-to-day expenditure, and contained nothing that struck the court as in any way extravagant. It was very clear to the court that Ms O. works very hard at a job that is well-paid, but demanding and difficult. She has achieved and maintained her position despite the pressures of these family law proceedings, caring for her children, and a serious and debilitating medical condition. Many of the matters complained of did not relate to her expenditure on herself but, rather, to payments for clothing for the children and educational matters such as grinds and summer camps for her children.

**33.** It was put to Ms O. that she was renting a room in her house, which she denied. There was no evidence to support that contention. She described the house as a three-bedroom house which accommodated her and three children, and that she used one of the rooms as a home office for working from home. Ms O. denied that she was renting a room, although she held out the prospect that it may be necessary to rent a room at some point if her return to work is not achieved. She also noted that Mr G. seems to question the children at length and inappropriately about comings and goings at the house and seems to take an excessive interest

in these matters. I accept that this is so, particularly having regard to the nature and extent of the matters that Mr G. sought to put to Ms O. in the course of his cross examination.

**34.** Mr G. questioned Ms O. in relation to the child-minding situation. This was a curious part of Mr G.'s case. He appeared to suggest that having a childminder was something of a lifestyle choice for Ms O., and he complained that the childminding either was unnecessary or was not provided in exchange for payments. I am again fully satisfied that employing the services of a childminder, whether that be an external childminder or a member of the family who is paid for that service, is essential if Ms O. is to combine both her work and home life. It seemed very unfortunate throughout the course of the hearing that Mr G. did not seem to appreciate that his former wife had, and is entitled to have, a career to pursue. Moreover, if Ms O. did not pursue her career, it is almost impossible to understand how the financial stability of the family could be maintained, and the additional obligations on Mr G. would be far more extensive.

**35.** Mr G. put his situation to Ms O. and he asserted that he was suffering from a variety of medical conditions and struggling because of increased mortgage costs and other increased costs, such as the cost of health insurance. As a result, he claimed that he was in deficit every month.

**36.** Ms O. pointed out that the costs had gone up for everyone and that she was dealing with the costs of dealing with three growing boys, and her main priority was the children. Ms O. pointed out that a €500 contribution to children amounts to approximately 10% of Mr G.'s take-home pay.

**37.** I was satisfied that Ms O. was an honest and reliable witness. Her evidence was given in a straightforward and clear manner notwithstanding the clear stress of having to be cross examined by her former husband. Ms O. provided comprehensive vouching documentation that corroborated her oral and affidavit evidence. There were clear and uncontested medical

reports that established the very difficult nature of her medical condition and the urgent surgery that it necessitated. Likewise, there was a recent medical report from her GP certifying that, as of the date of the hearing of the appeal, she remained medically unfit for work.

**38.** Ms O.'s vouching documentation supported her contention that her expenditure was reasonable and that she discharged the overwhelming amount of costs associated with bringing up her children. That expenditure was reasonable and vouched.

**39.** I am satisfied on the evidence that Ms O. has a base line gross salary of €98,270 per annum, added to which she receives a gross annual car allowance of €7000. This, were it not for her current medical condition, would allow a net monthly income of €5290. She is in receipt of €560 per month in children's allowance, and currently receives €500 per month by way of maintenance from Mr G. Her rental property produces a net rental income of €725 per month, but the existing orders of the Circuit Family Court require the sale of that property in the next year.

#### ***Mr G.'s evidence***

**40.** In describing his financial circumstances, Mr G. asserted that, in addition to the legal costs he had incurred in the family law proceedings, he had borrowed money from his mother and father and had obtained loans from friends. He described that he had certain health problems including irritable bowel syndrome, ADHD, depression, and that recently he had spent six weeks out of work with broken ribs because of a fall. He expressed considerable distress about his financial circumstances and stated that he was finding it hard to survive.

**41.** He noted that some of the medications he required were not covered by the Drug Payment Scheme, and, in particular, he stated that his ADHD medications were expensive.

**42.** Mr G. endeavoured to explain that he bought a new car in April 2023 for just under €30,000. This was bought with the assistance of a car loan which results in a required €400 per

month repayment bill. I found it very difficult to follow and understand Mr G.'s description of the circumstances leading to him purchasing a new car. He suggested that this had been arranged through MABS who dealt directly with a bank in respect of the loan. However, there was no documentation to corroborate this account, and his account lacked credibility. I do not understand how a debt and budgeting service would advise that a client obtain a bank loan to purchase a new car and advise that a loan could not be obtained for a second hand car. Mr G. stated that his private healthcare insurance was €132 per month, which also seemed very high.

**43.** In terms of his accommodation, Mr G. explained that, in 2004, he purchased an apartment in his sole name for just under €267,000. Currently, he is in arrears, and he stated that, during the recession, he restructured the loan. However, it should be noted that he remained employed during the recession, and, again, it was not at all clear why there was a need to restructure the loan, incur further debt or, indeed, fall into arrears when the property was rented for a significant period of time prior to him re-entering the apartment after he left the family home in 2017.

**44.** By reference to the most recent affidavit of means in the Circuit Court, Mr G. was earning approximately nett €4,000 per month from his employment. The documentation from his employer confirmed that his current gross salary is €82,549. Over the course of the proceedings, Mr G. asserted that he was only incurring reasonable living expenses and he, in effect, was just paying for petrol, car expenses, groceries, utilities and so forth. Essentially, according to Mr G.'s evidence, his predicament is a result of his extensive loans and the necessity to make repayments on those loans. Mr G.'s approach was very well illustrated by his assertion to the court that Ms O. has a life of luxury and that he cannot live and cannot afford to pay even €500 maintenance per month. Mr G. asserted that he had incurred loans through friends and family of €65,000. These loans were not documented or corroborated in any credible or satisfactory way.



**45.** Mr G. was cross-examined by counsel for Ms O. Mr G. was questioned closely on his contention that he had been advised to get a new car by MABS. He asserted that that was the case, but did not produce any documents supporting that contention. Similarly, Mr G., under cross-examination, made clear that he was unable to produce any proper documentation corroborating the existence of the various loans that he claimed to have incurred.

**46.** It was put to Mr G. that he had been paying the same maintenance for a large number of years without any increase and that he had never topped it up himself. This was despite the fact that, as he agreed, costs were increasing and the cost of living was increasing. Mr G. effectively said that he did not choose what to pay but he simply could not afford to pay more. It was put to him that, in effect, he was paying €38.50 per child per week while he was earning €82,000 per year.

**47.** In terms of his recent injury, Mr G. indicated that, while playing football, he had fallen over an object and fractured his ribs. This occurred in August 2023, and he was, according to his doctor's reports, unfit to work for a period. Mr G. noted a report from his GP on 7 November 2023 indicating, at that point, that he was likely to be out of work for a further six weeks and then require six weeks' part-time work, building up to full time employment.

**48.** Mr G. indicated that things might be better if he was able to work from home but that that was not permitted by his employers, and he was only allowed to work from home one day per week. He indicated that he was in a new relationship with a person who lived in a different county and would travel back and forth to that person.

**49.** Insofar as Mr G. was asserting that, in fact, he was able only to work from home, this is not supported by the medical evidence. No satisfactory evidence was adduced from Mr G.'s employer about his current working arrangements. Mr G. seemed to accept that none of his evidence concerning matters of ill health or any medical evidence was brought up in the Circuit Court proceedings – when he was represented by solicitors and counsel - and further accepted

that the only certification from a doctor that was available in evidence related to his rib injuries in August 2023.

**50.** In terms of his overall medical situation, Mr G. submitted a short report from a consultant psychiatrist dated 19 July 2023 which confirmed that he suffered from anxiety related to irritable bowel syndrome. That report made no reference to a diagnosis of ADHD. A medical report prepared for his employers in October 2023 recommended that he be accommodated with working from home for a four month period, if feasible. The report notes that investigations in June 2023 into his condition – which was not described – were inconclusive. The report does not set out any diagnostic information or prognosis. There was also a report from his GP dated 7 November 2023. That report stated that Mr G. sustained fractured ribs and a neck sprain in August 2023. The report recommended that Mr G. would be able to return to work in six weeks' time, suggesting that his injuries would be resolved by late December 2023. The report also noted that Mr G. suffered from an ulcer and has irritable bowel syndrome which is causing anxiety. The report does note that Mr G. is on medication for ADHD, and that some of his medications are not covered by the Drug Payment Scheme.

**51.** Mr G. had provided some receipts for medical appointments and some pharmacy receipts, but it was not made clear by Mr G. whether any of those expenses were covered by his health insurance policy for which he pays approximately €1,400 per annum.

**52.** Overall, I was satisfied that Mr G. had a number of medical difficulties, and that for a period from August 2023 to December 2023 he was unable to attend work due to his rib injuries. While the evidence was not clear in relation to the financial impact of those injuries, I am satisfied that for an approximate 4-month period in late 2023 Mr G. was on reduced pay, which in common with Ms O. has had a financial impact. However, I was not satisfied that the evidence established that his overall difficulties were likely to have a substantial non-temporary impact on his ability to work.

**53.** With regard to his apartment, Mr G. confirmed that he had owned the apartment for eighteen to nineteen years. Essentially, it was put to M. G. that, even if the apartment had been purchased for €267,000, it was hard to credit that there was still an outstanding mortgage balance of €247,000 after eighteen or nineteen years. Mr G. attributed this to the restructuring of his mortgage and obtaining a top-up payment at some point (which appears to have been €20,000).

**54.** Nevertheless, given that, at all material times, Mr G. has been earning a good salary and the property was rented for substantial periods of time during the nineteen years, it is extraordinary that Mr G. did not manage to reduce his liability and appears to have incurred further liabilities in terms of loans. Whether, as asserted by Ms O., Mr G. chose to run up significant debts, or, alternatively, simply has proved almost incapable of managing his own finances, it is hard to see this as a reason for Mr G. to seek to further reduce his obligation to contribute to his family. It was noted that, as a result of the orders made in the Circuit Court which are not the subject of this appeal, some elements of Mr G.'s indebtedness will be discharged, and his financial situation will improve.

#### **CONCLUSIONS ON MAINTENANCE**

**55.** Prior to the hearing of this appeal, Mr G. had made an open offer to the effect that his maintenance payment be altered to €550 per month. He would not pay the two €300 additional payments, and he sought to have that new order backdated to the date of the orders made in the Circuit Family Court. That offer was rejected by Ms O.

**56.** The court is satisfied that it is fair and equitable to require Mr G. to pay €800 per month to Ms O. in respect of maintenance for the children. I consider that this is a payment that can be made by Mr G. if he maintains a better grasp on his personal finances and prioritises contributing to the care of his children over other expenses. Ms O. earns more than Mr G. and

is far more capable of managing her finances. However, the difference in earnings must be considered in the light of the fact that Ms O. bears a higher burden financially and personally in caring for the children. I can see no basis for reducing the payments to Ms O. because she is better at managing her finances. I note that Mr G. will receive a substantial payment of €45,000 in the relatively close future.

**57.** In addressing the question of maintenance, and as explained above, I was not satisfied that Mr G. provided a clear explanation for the extent of his claimed liabilities, which in turn were said to explain why, despite his salary, he was unable to pay maintenance. I am not at all satisfied that Mr G. has explained why it was necessary to purchase a new car and take on additional financial obligations amounting to €400 per month in 2023 when he already was in difficult financial circumstances. I am not satisfied that Mr G. has established that he has obligations to repay loans to friends and family in the amount of €500 per month. Mr G.'s oral evidence in that regard was very unclear and evasive, and the documentary materials he submitted did not establish the loans or his repayment obligations. Finally, I am concerned that a certain amount claimed by Mr G. as liabilities in his affidavits of means are not properly vouched and appear excessive. As noted above, Mr G. was very unclear in reconciling his entitlements under his health insurance with his claimed expenses on medical and pharmacy costs.

**58.** I have considered the fact that Mr G. was unable to work for a period and was on reduced pay for a period. Therefore, I will adjust the Circuit Family Court order to provide that Mr G. does not immediately have to pay Ms O. the difference between what was ordered by the Circuit Family Court in July 2023 and what was paid by Mr G. (which amounts to €300 per month) or the €300 that was to have been paid in August 2023. I will direct that any deficit must be paid from the €45,000 payment that he will receive from the property sale. The payments of €800 per month and the additional payments should commence as and from the

date when the orders herein are perfected. For the avoidance of doubt, Mr G. is required to pay the December 2023 payment of €300, and if it has not been paid it will have to be paid by the 1 April 2024.

## **ACCESS ISSUES**

**59.** Mr G. sought to have an alternative access scheme endorsed by the court. This was framed as increasing the level of access, but, in fact, this was not the case. The following was proposed:

- a. Overnight access with Mr G. was to change from weekly overnight access on Wednesdays to monthly weekend access from 6.30 pm on Friday to 6 pm on Sunday.
- b. If Mr G. gives one week's notice, he can have access on one additional Saturday per month.
- c. All communication is to be by email and the parties should use a shared google calendar to schedule holidays and children's activities.
- d. Ms O. is not to co-sleep with any of the children.
- e. There should be "flexible quality time" with the children, so that the children can spend time with Mr G. if they bump into each other. In that scenario, Mr G. is to notify Ms O. by email.
- f. Mr G. wants to be able to attend the children's activities outside of access hours.

**60.** In terms of holidays the following was proposed:

- a. The parties will rotate summer holidays with the children, with Mr G. taking a holiday with the children in July 2024.
- b. When Ms O. is travelling with the children, she is to provide flight details and accommodation details to Mr G.

- c. When the children are travelling with Mr G., Ms O. is to provide the children's passports one week before the date of travel.
- d. Mr G. will have access on Christmas day from 1 pm to 4 pm.
- e. Mr G. will have access on St. Stephen's Day from 4pm until 1 pm the next day.
- f. Mr G. will have overnight access from 2 pm on New Year's Eve until 6pm on New Year's Day, every second year.
- g. No Easter access was sought.

**61.** All of the above was to be subject to Mr G. being entitled to notify Ms O. by email if he was not available or not able to take part in access.

**62.** The primary consideration for the court is the welfare of the children. The welfare of the children demands in this case that access is consistent and regular. As is apparent, the access arrangement proposed by Mr G. will reduce the amount of time that he spends with his children, and result in a situation in which Ms O. will have less time to spend on her personal life. The proposals made by Mr G. seem designed to afford him more flexibility, will reduce access from weekly to monthly, and will reduce the overall level of contact with his children. Moreover, the proposal seems to contemplate that Mr G. will be able to arrange access or disengage from access when it suits him. Mr G has not satisfied me that the proposal is in the welfare interests of his children.

**63.** A secondary, although important, reason for not acceding to this proposal is that it will have an adverse impact on Ms O., who is entitled to expect to be able to lead at least some form of personal life of her own.

**64.** I am not satisfied that the use of the "My Family Wizard" app is unfair for Mr G. or too costly. The use of emails as suggested by Mr G. leads to the risk that communications will become more fraught than should be the case and carry the further risk that communications may be missed or misunderstood. Likewise, I consider that the proposal that Mr G. should be

able to have informal access with his children is problematic. There is a real benefit in the children and the parties having a clear understanding of when access will take place and being able to arrange their lives in the light of that understanding. Introducing the uncertainty proposed by Mr G. appears at this point to risk further destabilising relationships that already are difficult.

**65.** In all the circumstances and having considered the matter closely, I am satisfied that the carefully calibrated orders made by the Circuit Family Court regarding access are far better suited to achieving the best welfare interests of the children insofar as access with their father is concerned.

## **CONCLUSION**

**66.** In the premises I propose to make orders affirming the orders made in the Circuit Family Court regarding access. Hence, the overall outcome is that the orders made by the Circuit Family Court will be affirmed by this court. I will make a further direction that any further applications in this case other than those relating to the costs and final orders in this appeal should be made to the Circuit Family Court.

**67.** My provisional view is that there should be no order made as to costs in connection with this appeal.

**68.** This judgment is being delivered electronically and with a view to avoiding further costs being incurred unnecessarily I am proposing that the parties seek to reach an agreement on the form of the final orders to be made in light of the decisions made in this judgment. I will ask that the first draft is prepared by the legal representatives of Ms O. and sent to Mr G. for his approval. If the parties are in a position to agree on final orders, a proposed draft can be sent to the court through the registrar for final approval. If there is any dispute on the form of the orders or if the parties wish to make submissions in relation to costs this should be notified

to the court through the registrar on or before the 15 March 2024, and a hearing will be scheduled. To avoid any doubt, any further hearing before this court is to address final orders and costs only.