THE HIGH COURT

[2024] IEHC 132

[2021 No. 86M]

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 (4)

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 2nd February 2024.

SUMMARY

In this judgment I indicate that I will (i) subject to a final opportunity for the parties to request redactions, publish this judgment and certain previous judgments in these proceedings and (ii) make an order under s.40(8) of the Civil Liability and Courts Act 2004.

1. I refer to my previous judgments in this matter. The underlying facts are described therein. This judgment follows on the hearing contemplated in my judgment of 29th December 2023, in particular §§27 and 29 of same. That further hearing took place on 31st January.

2. In my judgment of 29th December, I indicated that I proposed to publish my previous judgments for the reasons stated therein. As stated in my judgment of 29th December (§27(i)) those judgments seem to me to meet the requirements of s.40(3)(b) of the Civil Liability and Courts Act 2004. At the hearing of 31st January, neither counsel sought to contradict this last point. Counsel for Mr D suggested that if Ms D wanted any redactions made to the judgment a motion should have been brought in this regard. However, counsel for Ms D expressly indicated that Ms D does not seek to have any portion of any of my judgments redacted. It was not entirely clear to me if Mr D would himself be seeking redactions in any versions of the judgments to be published. I sense that he will.

3. Counsel for Mr D suggested that I should "*park*" matters generally until after the bankruptcy proceedings have completed in Mr D's home country. That seems to me, with respect, to set at nought the concerns which I raised in my judgment of 29th December, including but not limited to (i) §5 of same, in particular my concern that Mr D, "*may be seeking to use the* in camera *nature of these proceedings to conceal his corporate and revenue wrongdoings in such a manner as to impede the proper and informed course of justice, which is not of course what the* in camera *rule is designed to achieve*", and (ii) §26 of same, in particular my concern that "*Mr D is, to use a colloquialism, playing 'ducks and drakes' as regards the family law system in this country and the insolvency process in his home country*" by keeping from the insolvency authorities in that country the judgments in respect of him in family law proceedings in this country.

4. These concerns, I note, present in a context in which Mr D, (i) an individual who has previously given evidence to this Court that I have found to be (I regret to observe) "*patently false*", (ii) provided me in his application for variation of maintenance last December (which suffered, amongst other matters, from the 13 deficiencies identified in §16 of my judgment of 29th December) financial details which appear to differ from those provided to the insolvency service in his home country in the 10 respects stated at §17 of that judgment.

5. Counsel for Mr D further suggested that the insolvency service in Mr D's country has evinced no interest in the family law proceedings in this country. However, that is hardly surprising when, as counsel for Ms D succinctly put matters at the hearing of 31st January, that insolvency service is proceeding "*blindfolded*" as to what has happened in the family law proceedings in this country. Moreover, all this is rather beside the point. As I observed at §11 in my judgment of 29th December:

> "*Obviously, it is for Mr D's home country to police corporate and tax wrongdoings done within its frontiers. Likewise, subject to any applicable legal constraints and obligations, it is a matter for Company A and Mr D's brother as to what they respectively decide to do. Where I can and do take legitimate concern is with the notion that the in camera nature of Irish proceedings before me would operate in such a manner as to impede the proper and informed course of justice anywhere...*".

6. The point, in other words, is not what the insolvency service in another jurisdiction will make of the judgments. Rather it is that the judgments should be available and thereafter the insolvency service can make as much or as little as it likes of the judgments that have issued in these proceedings. My concern is to ensure that the *in camera* nature of Irish family proceedings does not operate in such a manner as to impede the proper and informed course of justice anywhere (not least when it has been drawn to my attention that a foreign insolvency service runs a risk of making an uniformed decision, potentially to the lasting detriment of Ms D and the children, because it is proceeding, and it is currently proceeding, to borrow again from counsel for Ms D, "*blindfolded*" as to what has happened and been decided in these proceedings.

7. Counsel for Ms D also invited me of my own motion to allow disclosure of the judgments to the trustee in bankruptcy, to the courts or court services in Mr D's home country and to the Workplace Relations Commission (to which Ms D has made complaint following on her dismissal from employment in the circumstances that I have described in my previous judgments). Counsel for Ms D extended this invitation by reference to s.40(8) of the Civil Liability and Courts Act 2004 and the common law (both as described in *JD v. SD* [2014] 3 IR 483, a judgment from which I do not in any respect demur).

8. Counsel's just-mentioned invitation arises in circumstances that seem to me to sit comfortably within the ambit of s.40(8) of the Act of 2004. That provision provides as follows:

> "*A court hearing proceedings under a relevant enactment shall, on its own motion or on the application of one of the parties to the proceedings, have discretion to order disclosure of documents, information or evidence connected with or arising in the course of the proceedings to third parties if such disclosure is required to protect the legitimate interests of a party or other person affected by the proceedings.*"

9. Counsel for Mr D queried whose legitimate interests would be preserved by any disclosure in this case. However, as counsel for Ms D observed, it is clearly in the interests of (i) the children that maintenance should be paid by their father (and it is clearly in their interests that their medical and dental care should be met by Mr D in the manner previously ordered by me and never yet done by Mr D), and (ii) Ms D (a woman afflicted in the past with serious ill-health – I am not aware if her condition continues – and now so impoverished by all that has happened that she has had to move herself and her children in with relatives) to have funds enough to afford a place of her own.

10. I entertain little doubt, not least from the tenor of the application of last December, that if Mr D is fully and finally adjudicated bankrupt in his home country he will make a future application to this Court for a permanent reduction in maintenance, coupled perhaps with an application that he should not be liable for medical and dental expenses (which he has never in any event paid as part of his selective compliance with the order that I made following on my original judgment in these proceedings).

11. Given (i) the potential for injustice to be done to Ms D and the children in the event that Mr D is fully and finally adjudicated bankrupt when (ii) the insolvency service is proceeding, to borrow again from counsel for Ms D, "*blindfolded*" as to various of the findings made in these proceedings, I am satisfied that the form of disclosure sought by counsel for Ms D pursuant to statute and common law, is required to protect the legitimate interests of a party (Ms D) or other person affected (the children) by the proceedings. So I will, of my own motion, following on the invitation of counsel for Ms D and acting pursuant to s.40(8) of the Act of 2004, allow disclosure of any and all of my judgments in these proceedings (including but not

limited to the present judgment) to the trustee in bankruptcy and to the WRC. I understand that no application has yet been made by Ms D to the courts of Mr D's home country. In the event that any such application is made, I am likewise satisfied, of my own motion, following on the invitation of counsel for Ms D and acting pursuant to s.40(8) of the Act of 2004, to allow disclosure of any and all of my judgments in these proceedings to the courts or court services in Mr D's home country upon and from the moment any such proceedings are commenced, *i.e.* separate future application in this regard will be necessary.

12. In passing, I note that counsel for Mr D contended that *JD v. SD* was concerned with facts very different to the present case. It was, but what of it? Section 40(8) does not indicate itself to be constrained in its application to facts such as those which presented in *JD v. SD*. Nor does the judgment in *JD v. SD* suggest that s.40(8) is confined in its application to facts akin to those presenting in *JD v. SD*. All s.40(8) requires is that I be satisfied that the disclosure to be ordered "*is required to protect the legitimate interests of a party or other person affected by the proceedings*." On the basis and for the reasons described above, I am satisfied of this.

13. As I am content to make an order under s.40(8), I do not see that it is necessary for me to consider the common law aspect of matters.

14. The suggestion of counsel for Mr D that I should "*park*" matters generally until after the bankruptcy proceedings have completed in Mr D's home country also applied in respect of s.40(8). I respectfully reject this suggestion for the reasons stated in §§3-6 above.

15. Counsel for Mr D also contended that Ms D's applications should have been brought by way of motion and on notice. However: (i) I do not see that (a) there could be any doubt following my judgment of the 29th that some such application would be brought on the date for the further hearing of matters, or (b) that counsel for Mr D was in any way impeded from making the fullest arguments as to the applications that were made by counsel for Ms D (in fact this reserved judgment was necessitated by the fact that both counsel made such thorough arguments that I considered I could not in justice deal with matters in an *ex tempore* manner); (ii) to require in the circumstances now presenting that those applications now be brought by way of motion at some future point would seem to me to place a premium on form over justice and require Ms D to incur additional costs which her counsel indicated in his submissions that she is not really able to afford, and (iii) as judges of the superior courts have repeatedly observed

over the years, the rules of court are the servants of Justice, not her master, and I am in no doubt as to how justice is best served as regards the issues now before me; it is best served by my proceeding as I have indicated I will proceed.

16. In an abundance of prudence – principally because I am not certain from the submissions made on 31st January whether Mr D is seeking any redactions to the versions of the judgments that I publish (there will be no redactions in respect of the judgments to be disclosed under s.40(8)) – I will give the parties until 14th February to advise me, by way of written submissions if there any redactions to the judgments that they would like to see made before they are published. If it is necessary I will also hear the parties briefly in this regard, also during the month of February. In the meantime my order under s.40(8) can and will issue.

17. There is one caveat to what I have stated in the preceding paragraph. Counsel for Ms D also requested that I make a declaration that Ms D has a beneficial interest in certain property. That is a matter which counsel for Mr D expressly indicated that he was not able to deal with on 31st January, so I will respectfully direct that any such application be brought by way of motion at the hearing-date that was agreed on 31st January.

18. It may be necessary to sit in February (pursuant to §16 or indeed for any other good reason). I am, as I indicated in my judgment of 29th December satisfied to sit any day from 09:00-11:00 or 16:00-18:00 in order to expedite matters. The parties might advise the registrar if a hearing is required pursuant to §16. (And they may wish to consider if any application of the type indicated in §17 might also usefully be brought on such date).