

THE HIGH COURT

[2024] IEHC 267

[2021 No. 69M]

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM
ACT 1989 AND IN THE MATTER OF THE FAMILY LAW ACT 1995**

BETWEEN

A

APPLICANT

– AND –

B

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 26th January 2024.

SUMMARY

In this judgment, I indicate that I will grant a divorce decree and also make certain related orders.

1. The applicant works in a [REDACTED]. The respondent is a [REDACTED] who operates his [REDACTED] through a company (Company A) and also, with a business partner, operates a [REDACTED] company (Company B). Both parties are in their 30s. They were married to each other in [REDACTED] 2018. The respondent indicated in the witness box that he had concerns about the applicant's faithfulness to him even at/before the date of their marriage. It was clear from his testimony that the respondent regretted having proceeded with his wedding in all the circumstances. His evidence was that the parties have not enjoyed conjugal relations since sometime in 2018 and that there have been and continue to be irreconcilable differences between the parties since October/November 2019.

2. Some effort was made by the applicant in the course of the proceedings to suggest that the marriage had not been as unhappy as the respondent suggested in his testimony. Thus, I was presented with:

- a Valentine's Day card of 2021 in which the respondent professes his love and gratitude towards the applicant. However, this was written at a time when the respondent and potentially the applicant were trying to make the marriage work. Moreover, unlike when one gives evidence in court, one is not under oath when composing the message in a Valentine's Day Card.
- a 'selfie' of the couple during a weekend away together, [REDACTED] in [REDACTED] 2019. Two people posing for a 'selfie' is no evidence as to the nature or strength of the ongoing personal relationship between them. It merely establishes that at some point they stood beside each other and posed for a 'selfie'.

3. I accept the respondent's evidence which might be summarised as having been that the marriage was never a glowing success and quickly came to an effective end.

4. By 2nd July 2021 the within judicial separation proceedings were commenced. At the moment the couple are in the uncomfortable position of residing in the same residence, living parallel and unconnected lives, and really having very little to do with each other. My understanding from the respondent's evidence is that they do not even speak to each other if they meet in the house. There are no children of the marriage.

5. By way of opening, the following key points, it seems to me, can be taken from the evidence that I heard:

- (i) the applicant has always worked outside the family home and appears to have been financially independent.
- (ii) though the applicant sought to suggest that she played a key role in the establishment of Company A and Company B, the evidence does not support this. Both parties, if I might respectfully observe, are admirably entrepreneurial individuals in and of their own right, and Company A and Company B are the natural end-result of a process which saw the respondent eventually lose his job as a result of the financial crash of 2007/2008 and necessarily branch out as a [REDACTED] in his own right. Counsel for the respondent suggested that there are three elements to any business, (a) the purchasing side, (b) the sales side, and (c) the administrative side. I accept that the applicant had nothing to do with (a) or (b) and only the most nominal involvement as regards (c) (possibly typing up and sending off some invoices that the respondent had created, organising the servicing *etc.* [REDACTED] [REDACTED] Company A and Company B most definitely were not joint businesses by any stretch of the imagination.
- (iii) it cannot reasonably be contended that the recent growth in Company A and Company B impacted on the standard of living enjoyed by the couple during the brief currency of their marriage (which, even on the applicant's account, had ended by June 2020; and I believe the respondent's evidence that it had effectively ended before then). Even taking the applicant's date as to when the marriage ended that was before the recent profitability of Company A.
- (iv) the applicant is presently financially independent, with three or four sources of income available to her at this time. She has a job in a [REDACTED] operates her own (small but growing) business on the side ([REDACTED]), and has the rental income

of one property, in the amount of [ITEM 1]¹ available to her, and *possibly* the income of a second property S available to her (though the applicant maintained that this last income goes to her father and I have no way of discerning whether this is true or not).

[Some complaint was made by counsel for the respondent that the applicant had not been forthcoming in her affidavit of means as to the business that she operates. There was, if I might respectfully observe, a touch in this of the respondent seeing the mote in the applicant's eye and not the mote in his own. Both parties were guilty of oversights in their affidavits of means. However, I consider that through the oral evidence (and the cross-examination by the parties' respective counsel) that we got to the truth of matters in the end.]

- (v) the applicant offered some – I regrettably observe, not very credible – evidence about an outstanding loan to her mother of which her mother has never sought repayment and which I suspect was in truth a gift, or will become one.

- (vi) apart from the family home (of which more anon), the respondent's shareholdings in Company A and Company B are his sole assets of note. In this regard, I was provided with two competing valuations of those shareholdings, one by C (for the respondent) and one by M (for the applicant). The valuation provided by C was, if I might respectfully observe, the more comprehensive and the more credible. (M by contrast brought a desktop valuation to bear). Unlike C, M had no relevant experience in terms of the buying and selling of companies and seemed unable to support her opinion in any way. M's proposition as to the general allowance to be made for goodwill seemed to me, with every respect, to be unduly generous in respect of what are in effect one or two-man SMEs which merely clothe the respondent and also (in the case of Company B)

¹ The various [ITEMS] mentioned in the main text above are set out in the Appendix hereto, the details of which will remain private to the parties.

a business partner with corporate identity but are essentially businesses that are personal to the respondent and also (in the case of Company B) that other individual as private actors. I accept the valuation of the respondent's shareholdings to be [ITEM 2]. Obviously (and as M herself accepted) any income that might now be drawn down from Company A or Company B as part of the making of proper provision, would be subject to income tax, PRSI, and USC, which of course would inflate the cost of making financial provision.²

- (vii) the respondent enjoys a net weekly income of [ITEM 3] (wages) + [ITEM 4] (rental income). He also draws a subsistence, e.g., as to his daily food.

6. During his cross-examination of the respondent, counsel for the applicant (perfectly legitimately) embarked on a line of questioning that sought to attack the credibility of the respondent. I consider that questioning hereafter. In approaching this evidence, I found the following statement of the applicable laws of evidence volunteered by counsel for the respondent, in their written submissions, to be (if I might respectfully observe) correct and notable:

“The well-known rule of evidence is that where a witness is cross-examined on a collateral issue, the party carrying out the cross-examination is bound by the answers given....Whilst there may be some room for debate in certain circumstances as to what is a collateral issue, the one area where there is no room for any dispute is the issue of credibility. Thus, where the questions go to credit, the questioner is bound by the answers. This rule is explained in...the following extract from the judgment of Hardiman J. in Nevin v. DPP [2011] 1 ILTM 479, 499 [[2010] IECCA 106, p 40-41]...:

[It] turns on the practical need to limit the length of litigation and the issues, remote from the issues in question at a trial, which may be gone into. If a witness is contradicting a party as to something sufficiently

² At the hearing, the respondent argued for a time that the correct date for the valuation of the companies was the purported date of the marriage breakdown. However, I do not understand it now to be contested that the correct date for the valuation is other than the date of the trial, as indicated in *DT v. CT* [2002] 3 IR 334. In passing, I note that I had asked that any (if any) recent management accounts be made available to me at the final hearing of this matter. I was advised by counsel for the respondent on that date that there are no such management accounts.

relevant that that party could call evidence on it himself then it is deemed to be of direct relevance and a witness's answers can be contradicted. But if a party seeks to contradict a witness on a matter itself irrelevant to the trial except insofar as [it] reflects on the witness's credibility, he is bound by the answer of the witness and can take the issue no further."

7. This point of law is of limited import in these proceedings as the applicant did not give any evidence on the issues raised by counsel at this point in his cross-examination of the respondent, so the applicant is fixed with the evidence of the respondent in this regard.

8. The key points raised by counsel for the applicant in this regard were the following:

i. The Motor Events

9. In a bid to show that the respondent has been using Company A and/or Company B as a private purse into which the respondent delves, and from which he maintains an extravagant lifestyle, the respondent was questioned about his participation in an annual charitable motor event. In fact, it turned out that the respondent does this as a way of making contacts and getting new business. So the companies do better (at least that is the aim), some money is generated for charity and, as it happens, the respondent enjoys himself in the process . There is nothing untoward in that.

ii. The Watches

10. In a bid to show that the respondent has been using Company A and/or Company B as a private purse into which the respondent delves, and from which he maintains an extravagant lifestyle, the respondent was questioned about his ownership of three expensive watches. In fact, two of them are owned by the companies and are the fruits of a possibly eclectic but nonetheless rational investment of company monies, such watches (the respondent testified) having always risen in value over time. There is a

third watch that the defendant owns in his own right (a differently branded watch that the respondent testified was bought for €9k and is worth about €3k today). I do not see that the respondent's ownership of an expensive watch is any more notable than the fact that the applicant (like the respondent) owns a very expensive car. In particular, in the context of these proceedings I do not see that a single watch, now worth an estimated €3k, is a significant factor in the grander scheme of the parties' financial affairs.

iii. The Holidays

11. The respondent enjoyed two holidays in 2023 with his present girlfriend. The respondent seemed a little puzzled when he was questioned about these holidays. So was I. His counsel posed the rhetorical question 'So what?' in his closing submissions and, with every respect, I agree. The respondent is entitled to take a holiday or two with his girlfriend if that is what he wants. The total cost for the two of them was about €8k. A total cost of about €4k x 2 for two foreign holidays away for two people is undoubtedly expensive. The respondent's evidence was that the holidays were paid for out of savings.

iv. The Cash

12. As I mentioned above, the applicant and respondent effectively live separate lives in their present residence, to the extent that the respondent locks his bedroom when he is not there. It emerged in the evidence – and the respondent seemed genuinely taken aback by this when it emerged in cross-examination – that the applicant appears to have breached the respondent's privacy by somehow entering into his customarily locked bedroom and taken photographs of some rolls of money that were allegedly held in the respondent's locker drawer. At some previous point in the couple's relationship, the applicant also found cash in the attic of the family home. Notably, the respondent did not deny that he, at some point, kept some cash in the attic, though he contended that the money so retained by him was a much smaller amount than the applicant contended. Faced

with one party who has not hesitated, it seems, to breach the privacy of another, and with a party who does not hesitate to give an honest answer to a slightly embarrassing truth (that he kept money in his attic) I am inclined to accept the evidence of the truth-teller (the respondent) as to the amount of money so retained and indeed more generally as regards facts in dispute.

v. The Recently Purchased Land

13. It was put to the respondent that he recently purchased some land. The respondent seemed genuinely puzzled by this and indicated that it was his father who has recently bought some land, not him.

14. Because the parties are now seeking a divorce decree, I consider various elements of s.20 of the Family Law (Divorce) Act 1996 hereafter. I note, however, that the provisions of s.20 are identical to those that apply under s.16 of the Family Law Act 1995 and hence any distinction that might be contended (though in fact it has not here been contended) to present is one of form and not of substance.

15. Section 20 of the Act of 1996 provides as follows (the text of the Act is in Bold text; I make some related comments in plain text immediately after the various subsections). I would respectfully draw the attention of the parties to the fact that all of the observations made below come subject to the separate comments that I make hereafter concerning the family home:

“(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.

[Court Note: In this judgment I have had regard to all the various circumstances outlined in this judgment.]

(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,

[Court Note: The applicant, as outlined above, has an earning capacity, present income, expanding business, and ██████████, all of which suggest that she has an earning capacity and property interests that are sufficient to meet her needs now and for the foreseeable future. She is financially self-sufficient and appears never to have relied or never significantly to have relied on the respondent for her standard of living. The respondent likewise has sufficient income from Company A and Company B to meet his financial needs into the future, though I cannot but note (and the point was made in the submissions) that the ██████████ sector is notoriously cyclical in nature. Though it would be possible to draw funds from Company A and/or Company B (albeit, the accounting evidence suggests, considerably less than might be expected once tax liabilities are paid, yielding in or about [ITEM 5], there is simply no case for making financial provision of such a nature where the applicant is financially self sufficient and has historically had little (in truth, very close to nothing) to do with the dealings of Companies A and B].

(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...of the spouse or otherwise),

[Court Note: The couple have no children. I do not see any particular such needs, obligations or responsibilities to present that are not capable of being met by the parties separately and by themselves.]

- (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,**

[Court Note: The period in which the marriage was ‘live’ between the parties (it has long ended) was of a notably short duration and throughout this time each appears to have been in effect financially self-sufficient. Save the provision to be made as regards the family home (considered later below) I do not see that any financial provision falls to be made by reference to this heading.]

- (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,**

[Court Note: The parties are still relatively young. The period in which the marriage was ‘live’ between the parties (it has long ended) was of a notably short duration and throughout this time each appears to have been in effect financially self-sufficient. The parties continue to live in the same property notwithstanding the end of their marriage. However, in no sense can they be said to be ‘living together’ as husband and wife; they have parallel existences and seek to avoid each other. I do not see that any financial provision falls to be made by reference to this heading.]

- (e) any physical or mental disability of either of the spouses,**

[Court Note: Not relevant.]

- (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,**

[Court Note: There is not a lot to be said under this heading, given the notably short duration of the marriage and the financial self-sufficiency of the parties. If anything, the applicant has benefitted the respondent by effectively yielding to the applicant a form of rental business that he had started. Otherwise, I would reiterate the points made under (a) above.]

- (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,**

[Court Note: Though the applicant states in her grounding affidavit that she has foregone her career prospects to support the respondent in his business, she did not maintain this in her oral evidence and I do not see that it is a claim which is otherwise borne out by the evidence. In this regard I would respectfully refer the parties to paras. 5(i)-(iii) above. I do not see that any financial provision falls to be made by reference to this heading.]

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

[Court Note: Not relevant.]

- (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,**

[Court Note: I do not see any conduct on the part of the parties that it would be unjust to disregard.]

- (j) the accommodation needs of either of the spouses,**

[Court Note: I consider the issue of the family home later below.]

- (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,**

[Court Note: I do not see any such issue to present on the evidence before me. I do not see that any financial provision falls to be made by reference to this heading.]

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

[Court Note: There is no such person.]

- (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.**

[Court Note: There is no such separation agreement.]

- (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....**

[Court Note: There is no such dependent person.]

- (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.**

[Court Note: Save as regards the provision that I propose to make as regards the family home, for the various reasons identified in this judgment, including but not limited to the observations made at para.5(i)-(iv) above, I do not consider that it would be in the interests of justice to make any such order.]”

16. I have stated that I propose to make slightly different provision as regards the family home. The applicant maintains that she contributed €104,632.27 to the building of same. However, that does not seem to me to be the complete picture. On the evidence before me, her true contribution, by my reckoning, falls to be calculated as follows:

104,632.27
- [€17,000] ^a
- [€28,000] ^b
<u>59,632.27</u>

a. contribution by respondent to purchase of particular brand of car.

b. ½ x joint business monies (applicant counted the entirety as her contribution).

17. The applicant maintains that the respondent contributed €42,105.00 to the building of the family home. However, that does not seem to me to be the complete picture. On the evidence before me, his true contribution, by my reckoning, falls to be calculated as follows:

42,105.00
+ 45,000 (a+b)
+ 67,000 ^c
+ 14,190.01 ^d
+ 20,000 ^e
<u>+47,500^f</u>
<u>235,795.01</u>

- c. cost of site
- d. planning contributions
- e. credit union loan (as repaid by respondent)
- f. cost of additional outside works done by respondent (as testified to at hearing).

18. As can be seen from the above calculation, the respondent actually contributed about 3.95 times more than the applicant towards the building of the family home. That said, I note the following point from the written submissions of counsel for the respondent, much the same point was made by counsel for the respondent in his closing submissions before me, and indeed both submissions are reflective of an (unaccepted) open offer from the respondent to the applicant, the terms of which were identified to me at the outset of the proceedings:

“In the circumstances, the respondent’s financial contribution to the purchase of the site and [REDACTED] is substantially more than triple the applicant’s contribution and indeed if the value of his work is properly accounted, the disparity is all the greater. Nonetheless, although the parties’ married life was very short lived and the applicant’s contribution was significantly less than the respondent’s, he [the respondent] recognises that the house is the family home and in the circumstances has been prepared to offer to share the proceeds of sale equally, should the court determine that the proper position is that the house be divided and sold.”

19. Given that the house is the family home, it seems to me that the appropriate way to proceed is to order that the family home be sold and that the proceeds of sale be divided equally between the parties. That said, I will give the parties until 24th March 2024 to see whether they can arrive at an agreement (and raise the necessary funds) such that in return for a transfer of one half of the estimated sale proceeds (whether from applicant to respondent or vice versa) the transferor of those funds will become the sole owner of the family home. If the parties cannot reach such an agreement by that date (or sooner if each and both of the parties are satisfied for a shorter timeframe to apply), I will order that the house be sold and that the proceeds of sale be divided equally between the parties.

20. Before closing, it seems appropriate that I should touch upon some points made in the closing submissions and which I have not already touched upon above. Thus:

- mention was made of the “*careful hand-written [financial] records*” made by the applicant and which were placed in evidence before me. With respect, however, these were not agreed financial records and were in any event clearly deficient, *e.g.*, they made no mention of the monies expended by the respondent on the acquisition of the site on which the family home now stands, and they do not factor in, *e.g.*, the landscaping done by the respondent at the family home.
- mention was made of “*the fundamental lack of credibility of the respondent*”. With respect, no such fundamental lack of credibility has been established.
- it was suggested that the respondent has downplayed the importance of the applicant in his business dealings and that in this regard his “*motivation is strategic*”. With respect, none of this has been established on the evidence before me. In fact, the applicant singularly failed to establish that she played any significant role in the respondent’s business affairs and dealings.
- there was mention of “*the respondent’s extravagant spending on a luxury lifestyle*”. Again, with respect, this has not been established on the evidence before me. The only notable personal expenditure by the respondent is the two holidays that he took with his present girlfriend. I have already treated with this aspect of matters above.

21. The special summons in this case issued on 2nd July 2021. The applicant avers in her grounding affidavit that “*A normal marital relationship has not existed between us since June 2020.*” At the hearings before me, both the parties requested that I would grant a decree of divorce. However, if the applicant’s evidence was correct as to when the “*normal marital relationship*” ceased to exist, a *possible* problem might present in this regard given that s.5(1) of the Act of 1996 requires that “*at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least two years during the previous three years.*” I say ‘a possible problem’ because (i) there would be nothing to stop the parties from now issuing a divorce summons at this time and for me to adjudicate on same in short order, (ii) I am not entirely clear what the applicant means when she refers to a “*normal marital relationship*” ceasing in June 2020, *i.e.* it may be (even on her version of events) that they were living apart even before then and that she means merely to indicate that every aspect of the marital relationship ceased at that time. However, all this is in any event moot in the present case because (i) counsel for the applicant acknowledged in opening the case before me that the statutory prerequisites for a divorce have been established, and (ii) the

respondent, I note, and I accept his evidence in this regard, expressly avers in his affidavit evidence (in a section dealing with the demise of the marital relationship between the parties) that *“Your deponent will assert that...the parties have lived separate and apart from one another for a period of or periods amounting to two years prior to the institution of the within proceedings.”*

22. The requirements of s.5(1) of the Act of 1996 having been established on the evidence before me, I will grant the divorce decree sought and make the order as to the family home that I have elaborated upon above. I do not consider (for the reasons stated previously above) that any further order requires to be made as regards proper provision for the parties. I will hear the parties as to costs.