

THE HIGH COURT

FAMILY LAW

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

[2025] IEHC 96

RECORD NO. 2024 48 CAF

BETWEEN/

J

APPLICANT/APELLANT

-V-

H

RESPONDENT

JUDGMENT of Mr. Justice Jordan delivered on the 17th. day of February 2025.

1. This is an appeal from a decision of the Circuit Court which was given on 12 July 2024.
2. The appeal concerns the refusal of the Circuit Court to grant judgment in default of appearance in circumstances where the Court was dissatisfied with service.
3. The parties met in 2017 and were married in 2019.
4. There is one child of the marriage who was born in 2021.
5. The applicant is an Irish citizen and currently resides in the family home in Dublin.
6. The respondent is a Chinese citizen and is currently resident in China with the child. The respondent came to Ireland in 2017. The respondent left the jurisdiction with the child in October 2022. The respondent informed the applicant by text that she was leaving for China.
7. The applicant is employed in Dublin.

8. The respondent worked with a Tech Company when she resided in Ireland.
9. In his affidavit dated 12 July 2023, the appellant contends that the respondent refused to provide him with her address in China, although she has provided an IBAN to allow him make payments towards the child's expenses.
10. The parties have regular contact by 'WeChat', a Chinese version of 'Whatsapp'. The respondent uses this forum to send photographs and videos of the child to the applicant.
11. The applicant argues that Ireland is the most appropriate jurisdiction for separation proceedings.
12. The applicant/appellant filed an ex parte docket grounded on an affidavit on 12 July 2023 seeking an order granting leave to issue and serve intended judicial separation proceedings outside of the jurisdiction on the respondent in China by 'WeChat', an order granting leave to serve any further documents relating to the intended proceedings on the respondent in China by 'WeChat', and an order providing for substituted service of the within proceedings on the respondent in China by 'WeChat'.
13. On 26 July 2023 the County Registrar ordered that the intended applicant be at liberty to issue and serve the Civil Bill and subsequent documents on the intended respondent who is not a citizen of Ireland and resides outside of the jurisdiction by sending a copy of the Civil Bill and subsequent documents, along with the order, by 'WeChat'. The County Registrar gave the respondent 42 days to enter an appearance to the Civil Bill from the date of posting, and a further 35 days for delivery of a defence.
14. The Family Law Civil Bill was filed on 23 August 2023.
15. The applicant swore an affidavit of service and filed same on 08 November 2023. In it the applicant outlined that he served the order of the County Registrar of the 26 July 2023, the Family Law Civil Bill, the Statutory Declaration, the affidavit of means and the affidavit of welfare on the respondent on 06 September 2023 through 'WeChat'.

16. The booklet of interparty correspondence provided to the Court by the applicant's solicitors contains a screenshot of the 'WeChat' message sent by the applicant to the respondent, which includes a list of the documents as well as a message reading "*if you intend to enter an appearance you should do so within 10 days to the Circuit Court Office in Dublin*". [The 10 days is an error but the order was also served]. Exhibited also is a second screenshot which shows each of the five documents attached as PDF files.

17. The applicant filed a Motion for judgment in default of appearance on 14 February 2024. In his grounding affidavit he avers that the respondent continued to correspond with him through the same 'WeChat' account and had acknowledged receipt of the documents.

18. In the affidavit the applicant avers that on 09 November 2023 he served a letter prepared by his solicitors on the respondent affording her a period of 21 days to file and serve an entry of appearance. He served this through his 'WeChat' account. Further, on 12 December 2023 the respondent served another letter on the respondent affording her a period of 14 days to file and serve an entry of appearance. Both letters were served to the respondent's 'WeChat' account. Both letters are exhibited. At the date of swearing of the applicant's affidavit, 09 February 2024, the respondent had not entered an appearance.

19. On 21 February 2024, the County Registrar ordered that the applicant be at liberty to serve the Family Law Civil Bill, Notice of Motion and subsequent documents on the respondent by sending copies of the documents to her email address. The County Registrar also ordered that the service of the 6th of September 2023 be deemed good and sufficient service. The respondent was given a further 35 days to file and deliver her appearance, defence, counterclaim and relevant affidavits.

20. The applicant's solicitor swore an affidavit on 23 April 2024 in which she states that she sent an email to the respondent's email address on 11 March 2024, serving the relevant documents including the County Registrar's order of 21 February 2024, draft entry of

appearance, draft affidavit of means and draft affidavit of welfare. She states that she received a bounce back email on the same day. She goes on to say that the applicant then forwarded her emails to the respondent along with the copy documentation by sending them to her 'WeChat' profile and the respondent acknowledged receipt. The email and 'WeChat' messages are exhibited.

21. The matter first came before the Circuit Court following transfer by the County Registrar on 24 April 2024.

22. The applicant then served the respondent with his affidavit of means by his solicitor emailing the respondent on 11 July 2024 and the applicant also forwarded the emails by 'WeChat' to her on the same day - the latter of which the respondent acknowledged receipt of.

23. On 11 July 2024, the respondent emailed the applicant's solicitor and the Dublin Circuit Family Law Court email address stating that she would not be able to attend at the Circuit Court on 12 July 2024. The email was entitled "Urgent and Important Regarding to the Case/2023". The respondent outlined that it would be challenging for her to attend, "*with such short notice, it is unrealistic to apply [for] a visa and arrange a trip to Dublin in a few days, usually it takes 1-2 months to get the visa and prepare for international travel...besides I have a full-time job and it is hard to apply for a long leave...*". She also stated that she had applied for a divorce in China.

24. The Circuit Court made an order on 12 July 2024 as follows ; -

"Application for Judicial Separation for judgment in default of appearance pursuant to the County Registrar's order dated 26 July 2023 wherein the direction that service be via 'WeChat'. The Court is dissatisfied as service cannot be effected by use of 'WeChat' or email alone and therefore has refused the application as service is not in accordance with Order 11 (rule 5-13)."

25. The applicant filed a notice of appeal on 18 July 2024 along with a further affidavit of service in which he stated that he served a copy of an email from his solicitor to the respondent on 18 July 2024 via 'WeChat', which contained the notice of appeal.

26. Order 11, Rule 11-13 of the Circuit Court Rules reads ; -

"11. Whenever an order for substituted service or for the substitution for service of notice by advertisement is made in accordance with section 7(5)(a) of the Courts Act 1964 or otherwise, a copy of that order shall be served with the Civil Bill, or the terms of that order stated in such notice. Every such order shall state the time within which the defendant may enter an appearance or comply with the requirements of such order.

12. Every application to the Court or the County Registrar for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

13. In any case, the Judge or the County Registrar may declare the service actually effected sufficient."

27. Section 7(5) of the Courts Act 1964 provides as follows;

"(5) (a) Where—

(i) a person upon whom it is proposed to effect service of a document pursuant to subsection (3) of this section is outside the State or his whereabouts are unknown and cannot be ascertained by reasonable inquiries, or

(ii) an envelope containing a copy of a document intended to be served upon a person pursuant to the said subsection (3) is sent to the person by registered post and returned undelivered to the sender,

the Circuit Court or District Court, as may be appropriate, may make such order for substituted service or for the substitution for service of notice by advertisement or otherwise as it may think proper.

(b) The power conferred on the Circuit Court and District Court by this subsection is without prejudice to any other power of those Courts to make orders for substituted service or for the substitution for service of notice by advertisement or otherwise.

(c) In this subsection “substituted service” means service otherwise than by a summons server or pursuant to subsection (3) of this section.”

28. Section 16(3) of the Civil Law (Miscellaneous Provisions) Act 2008 provides ; -

“(3) Subject to subsection (5), the service of a Circuit Court document or a District Court document may be effected by any of the following methods:

(a) the sending of a copy of the document by registered prepaid post in an envelope addressed to the person to be served at his or her last known residence or place of business in the State and the document may be posted by the person on whose behalf it purports to be issued or a person authorised by him in that behalf;

(b) personal service (including such service by a person other than a summons server) upon the person to be served, in such manner as may be prescribed by rules of court, or upon such person on behalf of the person to be served, and in such manner, as may be so prescribed; or

(c) by such other means as may be prescribed by rules of court.

29. Section 16(4)(b) provides that ; -

(b) by substituting the following for paragraph (a) of subsection (5) :

“(a) Where—

(i) a person upon whom it is proposed to effect service of a document pursuant to subsection (3)(a) or (b) is outside the State or his or her whereabouts are unknown and cannot be ascertained by reasonable inquiries,

(ii) an envelope containing a copy of a document intended to be served upon a person pursuant to subsection (3)(a) is sent to the person by registered post and returned undelivered to the sender,

(iii) personal service in accordance with subsection (3)(b) cannot be promptly effected, or

(iv) in a case to which subsection (3)(c) is applicable, the circumstances, prescribed by rules of court for the purposes of this subparagraph, occur,

the Circuit Court (and, in the case of proceedings before that Court, the County Registrar for the county in which the proceedings have been instituted) or the District Court, as may be appropriate, may make such order for substituted service or for the substitution for service of notice by advertisement or otherwise as it (or, in the case of the County Registrar, he or she) may think proper.”.

30. In *McGrath v. Godfrey* [2016] IECA 178, the Court of Appeal at para. 31 states : -

“[A]n order for substituted service is only made if the court is satisfied that in effecting service in the manner proposed, the proceedings are likely to reach the defendant or come to his knowledge. The right to order substituted service exists, inter alia, so as to ensure that proposed defendants will not readily be able to evade service of legal documents and thus thwart a plaintiff’s right of access to the courts.”

31. There is clear evidence before this Court that the proceedings did come to the knowledge of the respondent when served on her via ‘WeChat’.

32. Delany and McGrath on Civil Procedure, 5th Ed., (Round Hall Press, 2023) at para. 3-36 notes that the manner in which substituted service is effected naturally varies with the circumstances. The authors give examples of service by:

- Putting the summons through the letterbox at the defendant's residence;
- Pinning it to the door of his residence or business premises;
- Service by advertisement. In *Mahon v Skeehan* (1953) 88 ILTR 36, Davitt P. held that publication of a condensed form of the contents of a summons in the press was sufficient service.

33. There are examples of service being properly effected through electronic means, such as social media. Kirwan on Injunctions Law and Practice, 3rd Ed., (Round Hall, 2020) at para. 5-164 notes that there have been unreported examples of Irish High Court Orders providing for service via the social media platforms 'Twitter' and 'LinkedIn'.

34. An early instance of substituted service via social media appears in the decision of Peart J. in *Daly v. Lynch* (Unreported, High Court, 28 March 2012). In that case, Peart J. allowed service of proceedings through the social media platform Facebook.

35. A more recent example in this jurisdiction is the decision of Barniville J. in *Trafalgar Developments Ltd & Ors. v. Dmitry Mazepin & Ors.* [2022] IEHC 167. At para. 412, the Court noted that McDermott J. had made an Order for substituted service allowing service on certain defendants "*through a combination of post, e-mail, fax and messages to social media accounts*". Barniville J. was satisfied that this Order was complied with (para. 413).

36. In *Kenneth Price v. Douglas* [2023] IEHC 247, Simons J. considered that the fact that the respondent did not appear to have a social media presence supported the application for deeming service on the respondent's solicitor, who was not on record, good.

37. It appears that the Courts of England and Wales are also amenable to granting litigants the opportunity to serve by way of social media. One such example is the decision of *D'Aloia*

v Person Unknown & Others [2022] EWHC 1723 (Ch). In this case, the High Court of England and Wales made an Order providing for substituted service using a Non-Fungible Token ('NFT'), a digital asset, into the digital wallet of a respondent. Although technologically complex, the effect of this Order was to use digital means to effect service. Paras. 38 to 40 are instructive in this regard:

"38. I then move on to the application for service by an alternative method or at an alternative place on the first defendant. The application for service by alternative means on the first defendant is sought, both in relation to service by email, and, also, service by what is called the "non-fungible token", which is a form of airdrop into the tda-finan wallets in respect of which the claimant first made his transfer to those behind the tda-finan website.

39. Ms Muldoon says that this is a novel form of service, and has explained to me that its advantage is that, in serving by Non-Fungible Token (NFT) the claimant will, what she described as "embrace the Blockchain technology", because the effect of the service by NFT will be that the drop of the documents by this means into the system, will embed the service in the blockchain. I may not have expressed that very happily but that is the essence of what Ms Muldoon said. There can be no objection to it; rather it is likely to lead to a greater prospect of those who are behind the tda-finan website being put on notice of the making of this order, and the commencement of these proceedings.

40. I am satisfied that, in this particular case, it is appropriate for service to be effected by NFT in addition to service by email. I think that the difficulties that would otherwise arise and the complexities in relation to service on the first defendant mean that good reason has been shown. I do not think it is appropriate, nor, indeed did Ms Muldoon ask me, to make an order for service by alternative means in circumstances in which it would be sufficient, without serving by email as well. However, I am content to make

an order for service by alternative means by those two additional routes. I am also satisfied that there is good reason for service on the exchange defendants to be by the alternative means on the face of the order.”

38. In *CMOC Sales & Marketing Limited v Person Unknown and 30 others* [2018] EWHC 2230 (Comm), service was effected by “*Facebook Messenger, email and courier modes of service*” (para. 20). The Court was accordingly satisfied that the respondents were aware of the proceedings.

39. In terms of service by “WeChat”, reference is made to an Order for service by WeChat in *AW v. AH* [2022] EWFC 195 at para. 17. Deputy District Judge Michael Horton QC commented on a previous order made by the District Court where personal service was ordered, but also service by “WeChat” was permitted.

“The order further recited that AH had put the former matrimonial home on the market for sale without informing the applicant, and indeed the property had been sold subject to contract. The court had AW’s Form E but nothing from AH. Her order required AW’s solicitors to serve notice of the application on all three mortgagees of properties listed in the Form E, and to arrange for personal service of the order, but also gave permission to the applicant to effect service by email and by WeChat.”

Referring to a previous decision in the same matter made by Deputy District Judge Michael Horton QC, the Court stated that;

“I directed that all further orders, applications and documents in the proceedings should be served on the respondent by email to his hotmail.com email address and also directed that the applicant should message the respondent via WeChat to inform him that documents had been sent by email by way of service.”

40. This matter came before this Court on 10 December 2024. Counsel for the applicant was present but the respondent was not. The Court directed that the respondent be re-sent the Pexip link and listed the matter again for 18 December 2024.

41. The respondent appeared remotely before the Court on 18 December 2024 and counsel for the applicant attended in person.

Decision

42. The Court is satisfied that service was effected by the applicant in accordance with the Circuit Court Rules.

43. The Court is satisfied that substituted service via 'WeChat' was properly effected.

44. From the email of the respondent dated 11 July 2024, and various affidavits of the applicant and his solicitor, it is clear that the respondent was aware of these proceedings and of the hearing date fixed. Ultimately, she has appeared remotely before this court for the hearing of this appeal following like mode of service concerning the appeal.

45. Under Section 16(3) of the Civil Law (Miscellaneous Provisions) Act 2008 and under Section 7(5) of the Courts Act 1964, the Court is given relatively broad discretion in relation to substituted service - once the Court is satisfied that the proposed service is likely to be effective.

46. On 18 December 2024, this Court did allow the appeal against the order of the Circuit Court of 12 July 2024 and did order:-

"1. That all documents served on the respondent to date in respect of the within proceedings be deemed good and sufficient service.

2. That all subsequent documents be served on the respondent by same 'WeChat' profile as heretofore being and in addition by email atcom as nominated by the respondent.

3. That the time limited by the Rules of the Circuit Court for the filing and the delivery of an Appearance, Defence, and Counterclaim, Affidavit of Means and Affidavit of Welfare is hereby extended until Friday 24th day of January 2025 these documents to be filed by the Respondent in person by email with the Circuit Family Court Office at dublincircuitfamilylaw@courts.ie and a copy served on the applicant's solicitors by email at the same time".

47. The Court also listed the matter for mention on 05 February 2025 to ascertain the position. Counsel for the applicant appeared in person and the respondent appeared remotely. It was confirmed that the respondent had served and filed the requisite paperwork and the Court returned the case to the Circuit Court for further prosecution of the applicant's claim. The Court made no order in respect of costs.