

Neutral Citation No: [2019] NIFam 14

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: McB11044

Delivered: 23/10/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION
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BETWEEN:

MADONNA MARIE QUINN

Petitioner/Respondent;

-and-

ANTHONY JOHN QUINN

Respondent/Appellant.

—————
McBRIDE J

Introduction

Application

[1] This is an ancillary relief appeal by Mr Anthony Quinn (“the husband”) against the order of Master Sweeney dated 5 April 2016 (“the Order”) whereby she ordered that:-

- (a) The husband transfer the former matrimonial home situate and known as 12 Maloon Heights, Cookstown to the wife.
- (b) The husband transfer the property situate and known as 58 Prout Grove, Dollis Hill, London to the wife.
- (c) The jointly held property situate and known as 7B Springvale, Moneymore be sold and after discharge of mortgage and costs of the sale the wife to retain any balance. In the event that the proceeds of sale were insufficient to discharge the mortgage and costs of sale the wife was to discharge any outstanding liability using the proceeds of

the parties' joint bank accounts and the wife was to retain any balance from the joint accounts.

- (d) The wife was to receive the entire proceeds of the two Friends Life policies.
- (e) The husband and wife were to otherwise each retain all assets including pensions held by them in their own names.
- (f) The Mareva injunction was to be varied to facilitate the implementation of the terms of the order.
- (g) The husband was to pay one third of the wife's costs of the application.

[2] Prior to the hearing on 5 April 2016 Master Sweeney held a number of direction hearings. The husband failed to appear at the first directions hearing and in breach of court orders dated 16 June 2015 and 16 September 2015 failed to file an affidavit of means. The husband breached a further court order requiring him to attend court for examination as to his means and assets and in breach of a court order dated 3 November 2015 the husband failed to file a statement of core issues and failed to attend the hearing on 5 April 2016.

[3] Master Sweeney made the Order in the husband's absence and in the absence of any affidavit, discovery or core issues being filed by the husband. The Order records that the court was satisfied the husband was aware of the hearing and had failed to attend.

Notice of Appeal

[4] The husband filed a notice of appeal on 3 May 2016. In this he stated that he was on holidays at the date of the hearing on 5 April 2016 and had instructed solicitors to attend court on his behalf and that they had failed to do so.

Case Management of Appeal

[5] During case management of this appeal the court remitted the appeal to Master Bell for a financial dispute resolution. The husband indicated that he did not wish to avail of this and the matter was referred back to the Family Judge for hearing.

[6] Prior to the hearing of this appeal both the husband and the wife issued a number of discovery applications and the court made a number of discovery orders. Each party alleges that the other has failed to provide discovery in accordance with the various court orders. Having reviewed the voluminous documentation in this case I am satisfied, that whilst it is arguable the orders for discovery have not been

perfectly complied with, the court has a reasonably complete picture of the income and assets of each of the parties. In the event that it is later established one party has failed to disclose an asset of material value, an application can be made to vary or set aside the Order of this court.

Representation

[7] Originally the husband and wife had the benefit of legal representation. When the appeal was ultimately listed for hearing each party had dispensed with their respective legal representatives and both appeared as litigants in person. The husband had the benefit of a McKenzie Friend, Mr Junk, who had been granted a right of audience by O'Hara J. During evidence the husband informed the court that he had made an interim payment of £10,000 to Mr Junk in respect of fees for his services as a McKenzie Friend.

History of proceedings

[8] The parties were divorced on 7 October 2014 on the grounds of the husband's unreasonable behaviour.

[9] The wife issued ancillary relief proceedings on 21 January 2015.

[10] The wife obtained a Mareva injunction on 2 February 2012 which was subsequently varied on 27 April 2012 when the court permitted the husband to withdraw approximately £10,000 from his Credit Union account which he used in part to pay his solicitor's fees. In April 2018 the court granted a further variation of the Mareva injunction to permit the Barclays Wealth Fund, which matured in the sum of £67,000 approximately, to be paid out equally to the husband and wife.

[11] On 10 July 2012 the wife obtained an Occupation Order against the husband. Although the husband has recently alleged harassment against him by his wife, he has not sought any protective orders from the court. The wife denies harassing the husband.

Grounds of Appeal

[12] The husband did not set out specific grounds of appeal but in his submissions he made a number of complaints about the conduct of the proceedings before the Master and submitted that the Master erred in law and in the exercise of her discretion because:

- The court failed to take into account the wife's failure to disclose a number of assets including her pension
- The court placed an excessive valuation upon the husband's assets
- The court wrongly took into account assets which were inherited and other assets which were non-matrimonial property

- The court failed to have proper regard to the wife's misconduct in dissipating assets since the date of separation
- The court made an award to the wife which was excessive
- The court failed to have regard to litigation misconduct by the wife including her breach of discovery orders and failure to provide full disclosure of her assets
- The court wrongly made a costs order against the husband on the grounds that he was guilty of litigation misconduct.

Evidence

[13] The evidence before the court consisted of:-

- (a) Affidavits sworn by the wife dated 21 January 2015 and 4 January 2018.
- (b) Affidavits sworn by the husband on 22 January 2018 and 18 October 2018.
- (c) The affidavit evidence filed in the Mareva injunction application which consisted of an affidavit sworn by the wife on 22 October 2011, a replying affidavit sworn by the husband on 5 April 2012 and supplemental (undated) affidavit by the husband and an affidavit by the husband's brother, Kevin Quinn sworn on 24 May 2012.

[14] The parties also filed a number of core issues, position papers, responses to core issues and closing submissions.

[15] In addition, the court heard oral evidence from the husband and the wife. The court did not hear any evidence from valuers. Despite the court's request the valuers should be called, the parties refused to do so. As a result the court has had to make a determination in respect of valuations without the assistance of expert evidence.

Nature of Appeal hearing

[16] Appeals from the Master are generally dealt with by way of a rehearing. As noted by Girvan J in *National & Provincial Building Society v Williamson & Another* [1995] NI 366 at 372 however:-

"The judge 'will of course, give the weight it deserves to the previous decision of the master, but he is in no way bound by it' (see *Evans v Bartlam* [1937] AC 473 at 478 per Lord Atkins). The judge is not fettered by the previous exercise by the master of his discretion."

[17] In the present appeal the court permitted new evidence to be admitted which consisted of additional affidavits, details of additional assets and updated valuation

evidence. In light of the admission of this new evidence and in light of the general rule that this appeal is a 'de novo' hearing I consider that it is unnecessary for this court to make any determination regarding the complaints made by the husband in respect of the hearing which took place before Master Sweeney.

Relevant Statutory Framework

[18] Articles 25 and 26 of the Matrimonial Causes (Northern Ireland) Order 1978 set out the Court's powers to make various orders including orders for periodical payments, lump sum orders, property adjustment orders and pension sharing orders.

[19] In deciding whether and if so how to exercise these powers Article 27 provides as follows;-

27.—(1) It shall be the duty of the court in deciding whether to exercise its powers under Article 25, or 26 or 26A and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(2) As regards the exercise of the powers of the court under Article 25(1)(a), (b) or (c), 26 or 26A in relation to a party to the marriage, 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 parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 in relation to a child of the family, the court shall in particular have regard to the following matters –

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

(e) the considerations mentioned in relation to the parties to the marriage in sub-paragraphs (a), (b), (c) and (e) of paragraph (2).

(4) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 against a party to a marriage in favour of a child of the family who is not the child of that party, the court shall also have regard –

(a) to whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.”

FINDINGS OF FACT

A. General Findings

[20] In making my findings of fact I have had regard to the affidavit evidence filed by the parties both in respect of the ancillary relief application, this appeal and the injunction application.

[21] I have also had the benefit of hearing the oral evidence of the husband and the wife. I intend to deal with their respective evidence about a number of matters in detail later, but at this stage I set out my overall impression of their respective evidence.

[22] I found the husband to be dishonest, shifty, evasive, rude, obstructive, unhelpful and disrespectful to the court. He stated that he had "memory loss" associated with his medication which meant he was unable to answer a number of questions posed by his wife. The husband however failed to produce any medical evidence to support his memory loss. I found that when he gave his evidence his memory loss was very selective. When asked challenging questions he said that he had no memory. In contrast he appeared to have an excellent and detailed memory stretching back many years in respect of matters which were supportive of the case he was making. I found his evidence in respect of a number of specific matters to be totally unreliable. For example, in 2011 he said that he was unaware that he held a 20% interest in 8 & 10 Chapelside London. HMRC records produced by him relating to this period however show that he had declared on his tax returns that he had received rental income from these properties. I further found his evidence that he had no idea whether the properties at Chapelside were the subject of redevelopment to be totally incredulous given that he collected the rent for these premises; regularly attended at the premises and regularly spoke to his brothers who are property developers. I further disbelieved his evidence that he resided at 58 Prout Grove, London. When his wife put to him that she had on a number of occasions seen a man living at the premises and whom neighbours had advised her was a tenant of the premises, the husband contended that this man was a friend called "Kevin, (whose surname he did not know) and that Kevin stayed at the premises to "look after them" only when the husband was absent from them. I further do not accept the husband's evidence that he has not worked since 2012. The evidence shows that he did not claim benefits until 2017. When challenged about how he could afford to live without income between 2012 and 2017 he stated his brothers gave him income. He accepted under cross examination however that during this time he went on more than one holiday per year, owned a 5 series BMW and owned a work's transit van. He denied using the van for work saying he had signed a SORN declaration. No such document was provided to the court. I found all of this evidence to be totally unconvincing and it is my view that he was working throughout this period. When asked about his ability to file tax returns he stated he was unable to do so as his wife held all the documentation. It transpired in evidence however, that he had had his mail redirected many years earlier and the tax returns which he had failed to return covered the period when his mail was redirected. I am therefore satisfied that the husband in all these matters was less than forthright with the court. As a consequence the court gives little weight to his evidence generally.

[23] In contrast I found that the wife did her best to answer the questions posed by her husband's representative and the court openly and honestly. I found her to be a straightforward witness who exercised considerable restraint given the husband's frequent unsolicited and provocative comments made during her evidence.

[24] Whilst my view of the parties' evidence is relevant in respect of a number of matters in this appeal, upon which I will elaborate later, the evidence in relation to a number of other relevant matters consisted of documentary evidence, which was mostly uncontentious.

B. Background Fact Findings

[25] As appears from both the written and oral evidence the following background facts are not in dispute:-

- (a) The parties were married on 10 August 1996 and separated in early 2012.
- (b) The parties cohabited from in and around 1989/1990 in London. They then returned to live in Northern Ireland in September 2004. The wife obtained employment in Northern Ireland and the husband continued to work in London as a self-employed electrician/builder/subcontractor and travelled back regularly to Northern Ireland.
- (c) There are two children of the family namely a girl who was born in 2001 and is now aged 17 years and a boy born in 2005 who is now aged 14 years.
- (d) The children reside with the wife. She has been their primary carer since the date of separation. The husband has regular contact with the children.
- (e) The husband has not paid any spousal or child maintenance since the date of separation. There is now a nil CSA assessment.

C. Finding of Facts regarding Income and capital assets of both parties

i. The income/earning capacity of the husband

[26] The husband is presently unemployed and in receipt of State benefits. He gave evidence that he had been in employment until late 2011 working as a self-employed electrician/builder/subcontractor in London, working for his brothers, who are successful property developers. He stated that he had to cease employment in late 2011 due to mental health problems namely anxiety and depression. He then attempted to return to work on January 2014 and again between October 2014 and January 2015 but was unable to continue in work due to his mental health problems.

[27] The husband did not provide any updated medical evidence to the court to support his medical condition and/or his inability to work. Rather he relied upon the fact he was in receipt of State benefits as proof of his inability to work. The most recent medical evidence before the court was a report by Dr Parker which reported that in October 2016 the husband, who had been a patient of Dr Parker since September 2014, had attended with low mood and anxiety causing sleep disturbance and inability to concentrate. At that time he was taking Citalopram - 20 mg daily.

[28] I do not accept the husband's evidence that he has not worked since 2011. The bank statements from his Santander account indicate that he has been in receipt of large amounts of cash and cheque payments since 2011. Some of these payments were made by a company owned by his brother Kevin. I consider that these payments relate to work done by him. In addition to the monies lodged in the Santander account I consider that he has received other cash payments in respect of work done by him. These cash payments may have either been paid into another bank account or retained by him as cash.

[29] I further consider that the husband is presently able to work and is able to earn wages. As appears from the report by Dr McKeever dated 14 May 2012 the husband suffered from anxiety as a result of court proceedings. I am therefore satisfied that the husband will, if he is not presently working, be able to return to work in the very near future as these proceedings have now concluded. I am also satisfied that he has a ready source of work as both his brothers are very successful property developers who have previously employed him.

[30] When the parties were married the husband worked in London and earned a substantial income. In 2012/2013 he earned approximately £40,000 and I consider that in the future he is likely to be able to continue to earn this level of income.

[31] In addition to his earnings from self-employment the husband receives rental income from a number of properties. The husband's evidence was that he received approximately £1700 per month rental for the property at 60 Prout Grove, London. The original mortgage payment was £1100 which left the husband with a net payment of £600 per month. The husband gave evidence that mortgage arrears had accrued which resulted in a larger mortgage payment now being due and therefore he received only a very minimal net rental payment. I find however that the mortgage arrears arose because the husband failed to pay the mortgage despite being in receipt of rental payments. The wife averred that she had seen a rental agreement whereby the rental income for 60 Prout Grove, London was £3000 per month. There was no evidence to corroborate this statement. I am therefore satisfied that the net rental income that should be attributed to him is £600 per month. I am further satisfied that the rental income from this property may increase in the future.

[32] The husband gave evidence that he was not in receipt of rent from 58 Prout Grove London as he now resided at this address. He stated that it had previously been rented but the tenant was evicted in 2015 and since that date he had resided at

these premises. I do not accept the husband's evidence in this regard. I believe that the property at 58 Prout Grove is currently being rented and the husband is in receipt of the rental income. I make this finding for a number of reasons. The husband produced a medical report to the court. It stated the husband had a Cambridge address and that he had been a patient of the practice in Cambridge since 2014. I consider that this is evidence that the husband resides in Cambridge. Secondly, the wife gave evidence that when she visited 58 Prout Grove she saw third parties entering and leaving in a manner which indicated they were tenants of the property. Her suspicion that tenants lived there was supported by neighbours. When the husband was cross-examined about whether any tenants lived in the property he stated that a male friend stayed at the property when he was absent from it. Although the husband denied this person was a tenant I found his evidence in this regard to be totally unbelievable for reasons set out earlier. I therefore prefer the evidence of the wife that the property was rented out. I therefore find that the husband is in receipt of rent for 58 Prout Grove. The previous monthly rental income was £1550 per month and I consider that he receives at least this amount of rental income each month and has done so for a number of years.

[33] In addition the husband is entitled to 20% of the rental income from 8 and 10 Chapelside, London. A schedule of rental payments provided by the husband shows that the rental income for these premises is approximately £28,000 per year. The husband is entitled to a 20% share which is £5,600 per annum.

[34] I therefore find that the husband has a total income or earning capacity of £71,400 per annum.

ii. The income/earning capacity of the wife

[35] When she lived in London the wife was employed as a bank manager with Barclays Bank. She earned approximately £40,000 per annum. I accept her evidence that the parties agreed to return to Northern Ireland as this was a better place to raise children. It was also agreed that the wife would give up full time employment to enable her to be the children's primary carer and so that the husband could continue in his employment in London. As a result of her role as child carer I find that the wife was economically disadvantaged in the labour market. She could only work part time, earned less wages and lost career progression opportunities which would have been open to her if she had remained living and working in London. This economic disadvantage in the labour market continues.

[36] When she returned to live in Northern Ireland she was only able to work part time due to her child caring responsibilities. Initially she worked for a construction company and from 2009 was employed on a part time basis with Woman's Aid.

[37] The wife's total income, consisting of wages from Women's Aid, tax credits and child benefits is £1,945.91 per month which equates to £23,340 per annum.

[38] The husband submitted that the wife received rental income from 58 Prout Grove, 60 Prout Grove and 8 & 10 Chapelside until 2014. A perusal of the bank statements shows that the rental income from these properties was paid into the parties' joint account and used to pay joint household bills. I therefore do not accept the husband's evidence that until 2014 the wife had sole use of the rental income from these properties.

[39] The only other source of income available to the wife is rental income from 7B Springvale. I am satisfied that this is required, almost in its entirety, to discharge the mortgage.

[40] The wife has cancer and is presently undergoing chemotherapy. Her prognosis is uncertain. She is presently returning to work on a phased return. She did not wish to provide the court with any medical evidence and it is therefore unclear what her earning capacity in the future will be.

[41] I consider it unlikely that she will ever return to full-time employment in light of her illness, her treatment programme and her inability to now carry out a number of activities. In the unlikely event that she does return to work in a full time capacity I find that it is unlikely that she will earn wages at the level she previously earned. This is because she is economically disadvantaged due to her role as the primary child-carer which resulted in her leaving full time employment and losing opportunities for career progression in banking.

iii. The property and other financial resources that each party has or is likely to have in the foreseeable future

Joint Assets

A. 58 Prout Grove, London

[42] This property was purchased in October 1997 from the husband's mother for the sum of £85,000. The husband submits that his mother sold the property to him and the wife for less than its true value because it constituted part of his 'inheritance'. The wife denied that the property was purchased for less than its true value. She submitted that it was purchased at full consideration and used as the matrimonial home and after the parties vacated this property in 1998 the rental income received from it was used to discharge joint household expenses until 2014.

[43] The husband provided the court with comparators to show that the purchase price paid for this property in 1997 was less than the "going rate". The comparators provided however were of no assistance to the court in making such a determination as the properties were not described and therefore the court was unable to know whether the comparators were similar properties to 58 Prout Grove. In addition the

comparators related to properties sold at different dates to the date of purchase of 58 Prout Grove. Consequently there is no independent evidence before this court that the property was purchase at a reduced consideration.

[44] Having listened to the parties and in light of my findings about their evidence set out above I prefer the evidence of the wife and find that the property was not purchased at a reduced consideration.

[45] I further accept the undisputed evidence of the wife that the property was used as the matrimonial home from 1998 until 2009 and that thereafter the rental income from the property was used to pay joint household bills as appears from the bank statements.

[46] The court did not have the benefit of hearing expert valuation evidence in respect of the value of the property. The only information available to the court at the date of hearing was a single page document provided by Warwick, estate agents. It is essentially a letter of engagement which sets out its terms of engagement in the event a person placed the premises with the agents for sale. It is not a valuation. It stated that they would expect to receive offers of £650,000 and advised marketing the property for sale at £685,000. The wife obtained a similar document from Foxtons dated 6 February 2018. It stated that they recommended placing the property on the market for sale at £700,000. None of these documents is a valuation. They are however the only documents available to the court setting out any figures in respect of the value of the property and therefore the only documents available to assist the court in determining the valuation of the property. Having regard to all the available material I consider that a fair valuation is £692,500. After the hearing concluded the husband provided a further letter from Warwick, Estate Agents dated 23 July 2019 which stated that they would be likely to receive offers in the region of £625,000 plus for this property and would advise placing it on the market for £650,000. This letter, which is not a valuation, sets out no reasons why the agents have changed their earlier expressed views. I consider that this document was obtained by the husband after the hearing in a bid to reduce the valuation of the matrimonial assets. I therefore do not intend to rely on this letter. In the absence of oral evidence and any other reason being given to the court to undermine or challenge one or other of the earlier letters I consider that it is appropriate to value the property at the mid-point value of £692,500. The mortgage redemption of January 2019 was £55,571. I therefore find that there is an equity of £636,829 in this property.

B. 12 Maloon Heights, Cookstown

[47] This is the matrimonial home which was purchased in joint names when the parties returned to live in Northern Ireland. The wife presently resides here with the children. The house is held mortgage free. The husband obtained a valuation by Quinn & Company which valued the matrimonial home at £215,000 as of May 2017. The wife obtained a valuation from Stanley Best, estate agent which valued the

matrimonial home at £200,000 as of 8 January 2019. For the reasons set out above I consider that the property should be valued at the mid- point of £207,500.

C. 7 Springvale, Money more

[48] This property was purchased as an investment property during the boom years. Having listened to the evidence of the wife and the husband and having regard to the documentary evidence I find that the husband and the wife contributed equally to the purchase price. I find that the wife used the proceeds of the sale of her Barclays shares to pay half the deposit and the husband used monies he inherited from his brother to pay the other half of the deposit. This property is now in negative equity. The wife's valuer, Mr Best valued the property at £127,500 as of 8 January 2019. The husband's valuer valued it at £125,000. The mortgage redemption as of 31 March 2019 is £181,000 approximately. There is therefore a negative equity of £54,500, if a mid-valuation is taken.

D. Barclays accounts *898 and ***919**

[49] As of December 2018 account ***898 had a balance of £3,548 and account ***919 had a balance of £361.51.

E. Friends Life Policy

[50] As of 2 November 2015 this policy has a value of £1,714.

F. Contents of the former matrimonial home

[51] There was limited evidence given in respect of the contents of the home save that the husband indicated he wished to have the following items returned to him;- bible, photographs, tools and financial documents.

G. Barclays Wealth Fund

[52] In April 2018 the court varied the Mareva injunction to permit this fund which had matured in the sum of £67,000 to be paid equally to the husband and wife.

Wife's assets

A. Bank accounts

[53] Having considered the oral evidence and the documentary evidence before the court I find that the wife has a number of bank accounts. As of January 2019 the total balance of all her accounts totals £34,337.24. In addition she holds £11,257.58 in an account for the two children of the marriage.

B. Pensions

[54] The wife has a Barclays pension which has a CETV of £340,000 approximately as of 11 January 2018. In addition she has a pension with Women's Aid which has a CETV of £13,000 approximately as at 22 January 2018.

Husband's assets

A. 8 and 10 Chapelside, Bayswater, London

[55] The documentation before the court demonstrates and the husband laterally accepted that he holds a 20% interest in these properties. The remaining interest in the properties is held by his two brothers Kevin Quinn and Leo Quinn. In addition one of his brothers owns No. 9 Chapel side.

[56] The wife gave evidence that these properties are to be re-developed and she produced proof of planning permission for the construction of four townhouses. She also provided a valuation by Templar Construction who valued the premises, when redeveloped, at £3.65M. This valuation however did not set out what the costs of development would be.

[57] The husband denied any knowledge that the properties were to be redeveloped and sought to rely on a valuation of the properties in their present state which valued them at £1.2 M.

[58] I found the husband's evidence that he had no knowledge the properties were to be redeveloped incredible especially in circumstances where there is proof of planning permission; his brothers are property developers; he enjoys a close relationship with his brothers; he collects rent for these properties on behalf of his brothers and meets up with them frequently to pay rent to them; he works for them and is regularly in London at the properties collecting rent. I am therefore satisfied that the properties will be redeveloped. I am also satisfied that this work will be carried out and paid for by his brothers without contribution from the husband and that the husband will continue to receive 20% of the rental income from the redeveloped properties.

[59] The husband submitted that the lands were of no value because he held a minority interest in the lands; he did not hold a legal title to the lands; his share was illiquid and it was family owned property. I do not accept that the value of his share in land is akin to a minority shareholder in a company because he can apply to court for sale of the property. I therefore do not propose to reduce the value of the husband's interest on this basis. I reject the other arguments that the land has no value especially as Leo Quinn, the husband's brother recently contacted the wife and offered to pay her money so that she would release the charge she has registered against the premises.

[60] I consider that the husband's 20% capital share in the premises is worth £530,000. This is based on a valuation of £2.65M less £1M being a generous estimate for the costs of development.

B. 60 Prout Grove

[61] The husband and his other siblings each acquired a share in this property under his mother's Will. The husband "bought out" his siblings' interests in the property with the assistance of a mortgage. According to the husband the market value of the property was £385,000. His inheritance was £102,000 and therefore 26% of the property was acquired by way of inheritance. The parties agreed that this property was rented throughout the marriage. Originally the rental income was paid into a joint account and used to cover joint family expenses until the parties separated in 2012. Thereafter the husband received the rental income.

[62] The property was "valued" at £700,000 to £725,000 by Warwick Estate Agents engaged by the husband on 19 January 2018. The husband produced a further letter from Warwick after the conclusion of the hearing, which stated that this property would be expected to receive offers in the region of £640,000. This letter does not set out any reasons why the likely offers would be less than the figures set out by this estate agent in January 2018. I consider that it was obtained by the husband to reduce the valuation. I therefore propose to rely on the earlier letter provided by Warwick as it is more likely to be accurate. The wife provided no valuation of this property. The mortgage redemption is approximately £300,000. Taking a mid-value of £712,500 means there is an equity of £412,500.

C. Pension

[63] The husband has a number of policies with Reassure with a total CETV as of 3 January 2019 of £87,000 approximately. These pensions were taken out from in or around 1991 and therefore were all taken out during the period of the marriage or cohabitation of the parties.

D. Various bank accounts

[64] The husband holds approximately £31,000 in bank accounts. The wife alleged that her husband also held a number of undeclared bank accounts, premium bonds and BT shares. She alleged that in total he held £16,000 undeclared monies.

[65] Having regard to all the evidence before the court I do not consider that the husband holds £16,000 undeclared monies. In particular there is no corroborating evidence of undeclared bank accounts and no evidence of existing Premium Bonds and BT shares. The documentation in respect of premium bonds and BT shares is

old. The updated evidence appeared to indicate that these assets are no longer held by the husband.

[66] The husband holds an account ***7748 called the Chapelside account into which the rental payments for these premises in paid. As of 30 November 2017 this had a balance of over £16,000.

[67] The husband submitted that all of these monies belonged to his brothers. The wife accepted that the husband's brothers were entitled to part of these monies. Given that this account is for the rental income from Chapelside I consider that 20% of these monies are owned by the husband. This equates to £3,200.

D. Findings of Fact regarding monies allegedly dissipated by each party since the date of separation

[68] The wife alleged that the husband had removed between £20,000 and £40,000 cash from the house after the separation. In addition she alleged that he removed £100,000 from Barclays accounts ***897 and ***882 and encashed a Legal and General Policy for £3,500 since the date of separation.

[69] The wife alleged that the husband removed approximately £40,000 from the matrimonial home in March 2012. She stated that this money had been kept in a safe in the home and was part of the husband's earnings. She gave evidence that when he worked in London he came home to Northern Ireland with large amounts of cash which were then kept in the safety deposit box. She stated that approximately £20,000 to £40,000 was regularly kept in the safety deposit box. When the husband was cross-examined about this he did not deny that cash amounts of between £20,000 and £40,000 were kept in the safety deposit box. When it was put to him that he had removed the contents of the safe he simply said "prove it" and pointed out inconsistencies in the date when the wife alleged the money had been removed. I am satisfied on the evidence that the husband did remove the entire contents of the safety deposit box. I am satisfied that he therefore received something in the order of £20,000 to £40,000.

[70] The wife further alleged as appears from her affidavit evidence in relation to the Mareva injunction that the husband removed £85,000 from Barclays account ***897 in June 2011 and removed £20,000 from account ***882 in June 2011. The husband admitted that he removed the monies from these accounts but stated that these were monies that he owed to his brothers in respect of rental payments he had and he did so to pay his brothers their share of the rent he collected for Chapelside. He averred that the rental payments were not paid into the Chapelside account. Rather his brothers allowed the rental income to be paid into the Barclays accounts so the husband could use it to set off his borrowing thereby keeping the interest rate low. As the balance built up the husband said he then paid over the accumulated balances to his brothers. The husband produced a document which set out the payments he had made to his brothers from these accounts. The document showed

various payments including a payment of £85,000 and a payment of £13,000. The husband's brother Kevin swore an affidavit stating that the husband collected the rent for Chapelside and he and his brother permitted the husband to lodge into his own accounts with Barclays. He averred that he believed the husband's marriage was in difficulties in or around 2011. As a result he asked the husband to remove the money from these accounts and give it to him. Kevin then placed the monies in a separate account in his own name which still exists intact. Kevin further stated his view was that the husband's interest in these properties did not form part of the matrimonial assets.

[71] I do not accept the husband's evidence that the monies in the Barclays accounts consisted of rental income for the Chapelside properties. Rather I am satisfied that the rental income for Chapelside was paid into the Chapelside account and the monies in these accounts formed part of the husband's earnings and/or rental income from other properties. I therefore find these monies were part of the matrimonial assets.

[72] The husband could have produced documentary evidence to prove that the monies in these accounts were rental payments for Chapelside. No such documentary evidence was ever produced. The only document produced was an unauthenticated sheet stating various payments were made to his brothers. This was not proof of payment and in any event I find it significant that the monies were withdrawn at the time of the marriage breakup and that Kevin considered it appropriate to keep the monies in a separate account. I am satisfied that Kevin's evidence illustrates that he knew that he had no entitlement to these monies otherwise it is difficult to understand why he felt he needed to keep the monies in a separate account which have remained untouched.

[73] On the basis of all the evidence I am satisfied that the monies for rent in respect of Chapelside were paid into the Chapelside account and not into the Barclays accounts. I therefore find the husband withdrew £100,000 from the Barclays accounts after the parties separated in an attempt to dissipate matrimonial assets.

[74] I further find that the husband encashed approximately £3,500 from a Legal and General account. This was accepted by the husband.

[75] The husband also spent £10,000 out of the Credit Union account with the sanction of the court.

[76] In total I therefore find that the husband has dissipated assets totalling £153,500 from the date of separation.

[77] The husband alleged that the wife had also dissipated assets worth approximately £71,000 since the date of separation. The wife accepted that she has spent approximately £63,000 and in addition she spent approximately £10,000 on a car.

[78] The wife also encashed the Friends Life policy valued at £33,000. She was awarded this policy on foot of Master Sweeney's Order. The wife however encashed this policy when this appeal was pending.

[79] I therefore find that the wife has dissipated £104,000 in total since the date of separation.

E. Findings of Fact regarding misconduct

[80] The husband submitted that there was conduct on the part of the wife which it would be inequitable for the court to disregard. In particular he submitted that she failed to make disclosure and that she had divested assets.

[81] In relation to a failure to disclose he relies on the fact that the pension was not disclosed to the lower court. I note that this was not referred to in the core issues filed on behalf of the wife provided to Master Sweeney. This is a legal document which was prepared by her legal advisers and signed by them. The husband did accept that the wife had disclosed details of her pension in correspondence with his former solicitors, prior to the date of the hearing before Master Sweeney. I therefore make no adverse finding against the wife in this regard. The husband further alleges that she failed to provide discovery in relation to a number of bank accounts. I am satisfied however that all of her bank accounts have now been provided to the court.

[82] In addition the husband further averred that the wife had dissipated assets totaling £71,000. I accept that the wife did encash the Friends life policy at a time when she knew an appeal had been lodged. In addition I accept that she withdrew money from Chelsea Building Society account but I accept that this was used to buy a car which she needed for her and the children's needs.

[83] I have found that since the date of the marriage both parties have dissipated assets. I consider that these assets should be taken into account and divided equally between the parties. The husband dissipated £153,000 and the wife dissipated £104,000. On an equal division this means the husband must pay the wife £24,000.

[84] The wife also made allegations against the husband that he had failed to make discovery and that he had divested assets.

[85] As indicated earlier I am satisfied that both parties have now provided sufficient discovery to enable this court to make a decision with regard to a division of the property. In the event that material assets have not been disclosed the court can vary or rescind the order it now intends to make. I therefore do not consider that the alleged failure by either party to make discovery amounts to conduct which it would be inequitable for this court to disregard. I further note that both parties have divested themselves of large sums of money since the date of separation. I consider

that this is addressed by putting all these monies into the matrimonial pot and dividing them equally between the parties. Equalization means that the husband must pay £24,000 to the wife. I therefore consider in all the circumstances that it is unnecessary to otherwise take the conduct of either party into account in the division of the assets.

Findings of Fact regarding Litigation Misconduct

[86] I am satisfied that the husband failed to attend at the original court hearing without any good reason. In addition he failed to participate in the proceedings and refused to abide by a number of court directions. As a result he never filed any affidavit, provided no discovery and failed to file a statement of core issues. I am satisfied, as indicated by his failure to abide by a number of court orders that he failed to assist the court by filing affidavits or details of his income and assets. In his appeal notice he indicates that he had instructed solicitors to attend the hearing on his behalf. I do not accept that the husband instructed solicitors to attend especially as I found his evidence to be unreliable and because he produced no evidence to prove he contacted solicitors to attend court on his behalf. I am therefore satisfied on all the evidence that he deliberately absented himself from the court hearing by going on holidays without ensuring solicitors had been instructed on his behalf to attend.

Consideration

[87] In determining what order or orders should be made it is necessary to have regard to the Article 27 factors:

(a) The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future.

[88] As appears from my findings of fact I find that the husband has in the past earned approximately £40,000 per year. I do not accept his evidence that he is unfit to work at the present time or in the future especially as there is no medical evidence in support. I am further satisfied that he has a ready a source of work as his brothers have employed him in the past and they continue to operate as very successful property developers. I am therefore satisfied that he will continue to earn in or around £40,000 per year. In addition to his earnings he also has rental income from 60 Prout Grove, 58 Prout Grove and 8 and 10 Chapelside. In contrast the wife has reduced earnings because she is only able to work part-time because of her child caring responsibilities. The wife's role as child carer enabled the husband to remain working in London and to earn higher wages as a result. The wife is presently undergoing treatment for cancer and is making a phased return to work. Her ability to work in the future is therefore uncertain and I consider that her earnings may reduce by reason of ill health. Even if she does return to work I consider that it will probably only be on a part time basis and I am satisfied that she will not return to work at the level she did before she undertook her child care responsibilities.

[89] The parties own the following capital assets:-

JOINT ASSETS

- 58 Prout Grove, London which has an equity of £636,829
- Matrimonial Home at 12 Maloon Heights Cookstown which has an equity of £207,500
- 7 Springvale, Moneymore which is in negative equity of £54,500
- Barclays bank accounts ***898 and ***919 with total balance of £3909.51
- Friends Life Policy with value of £1,714
- Contents of matrimonial home

TOTAL VALUE OF JOINT ASSETS= £ 795,452.00

WIFE'S ASSETS

- Various bank accounts totalling £34,000 approximately
- Pension - TOTAL CETV = £353,000
- Total dissipated assets of £104,000

TOTAL VALUE OF WIFE'S ASSETS = £491,000.00

HUSBAND'S ASSETS

- 20% interest in 8 &10 Chapelside, London - £530,000
- 60 Prout Grove London with an equity of £412,500
- Various Bank accounts totalling - £34,000 approximately
- Pension with a total CETV of £87,000
- Dissipated assets totalling £153,000

TOTAL VALUE OF HUSBAND'S ASSETS= £1,216,500.00

GRAND TOTAL OF ALL ASSETS = £2,502,952.00

(b) The financial needs obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

[90] The wife continues to be responsible for the care of the children and this is a responsibility that will continue until they end full time education. She will continue to need a home for herself and the children and income to meet regular expenditure for food, utility bills, transport, clothes etc.

[91] The husband also needs 'a roof over his head' and income to meet daily living expenses.

(c) The standards of living enjoyed by the parties before the breakdown of the marriage.

[92] I consider that the family enjoyed a high standard of living prior to the breakdown of the marriage.

(d) The age of each party to the marriage and the duration of the marriage.

[93] The husband is aged 51 years. The court was not provided with details of the wife's age. The parties had been married for 15 years. Prior to this they co-habited for a period of 6 years. I consider that there was a seamless transition between co-habitation and marriage and therefore in the circumstances I treat this as a 21 year marriage which is a long marriage. In addition there are two children who are both minors.

(e) Any physical or mental disability of either of the parties to the marriage.

[94] The husband informed the court that he suffered from anxiety and depression. The wife is presently undergoing treatment for cancer and her prognosis is uncertain.

(f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution by looking after the home or caring for the family.

[95] I consider that the wife has made a substantial contribution to the welfare of the family by earning wages and by looking after the home and caring for the children. She initially worked full-time and thereafter continued to work part-time. Her income was used to pay household bills and to acquire matrimonial assets. Her role as child carer enabled the husband to continue working in London and to earn higher wages than he would otherwise have done. I also consider that the husband has made very substantial financial contributions to the marriage. He earned a good income throughout the marriage which was used to pay for household expenditure and to acquire various matrimonial assets including savings.

NON-MATRIMONIAL PROPERTY

[96] The husband submitted that although most of the property should be divided on an equal basis some of the properties should either not be taken into account or not divided on an equal basis because they consisted of non-matrimonial property. In particular the husband submitted that his interest in Chapelside should not be taken into account as it was pre-acquired. In relation to 60 Prout Grove and 58 Prout

Grove he submitted that as part of each of these properties was acquired by him by way of inheritance from his mother, this justified a departure from equality and he submitted that the court should divide these properties on a 70/30 basis in his favour.

[97] The wife submitted that although the husband's interest in Chapelside had been acquired by him long before the marriage the asset was a matrimonial asset as the rental income it generated had been used throughout the marriage to pay various household bills. She denied that any part of 58 Prout Grove had been acquired by way of inheritance. She further submitted that as it had been used as the matrimonial home and the rental income thereafter used to pay joint household bills it was therefore matrimonial property. In respect of 60 Prout Grove she submitted that although the property had been partly acquired through inheritance the property had become a joint matrimonial asset as the rental income was used throughout the marriage to pay joint matrimonial expenses.

Legal principles regarding Non-Matrimonial property

[98] A useful summary of the principles in respect of how the court should treat matrimonial and non-matrimonial property is set out in Privy Council decision of *Scatliffe v Scatliffe* [2017] AC 93 at paragraph 25 where Lord Wilson said as follows:-

“

(i) Section 26(1)(a) of the 1995 Act obliges the court to have regard to the "property and other financial resources which each of the parties ... has or is likely to have in the foreseeable future".

(ii) Thus, when a court finds that an asset is not one in which either party has any interest (such as, in the present case, Parcel 174, beneficially owned by the son Derwin: see para 17 above), no account should be taken of it.

(iii) It is, however, confusing for such an asset to be described as "non-matrimonial property".

(iv) It was when introducing the "yardstick of equality of division" in the *White* case, cited above, at p 605, that Lord Nicholls proceeded, at p 610, to refer to "matrimonial property" and to distinguish it from "property owned by one spouse before the marriage, and inherited property, whenever acquired". In the *Miller* case, cited above, at paras 22 and 23, he described the latter as "non-matrimonial property"; and he explained his earlier reference to "matrimonial property" as meaning "property acquired during the marriage otherwise than by inheritance or gift".

(v) So the phrase "non-matrimonial property" refers to property owned by one or other of the parties, just as the phrase "matrimonial property" refers to property owned by one or other or both of the parties.

(vi) Accordingly it is contrary to section 26(1)(a) of the 1995 Act for a court to fail to have regard to "non-matrimonial property". This raises the question: in what way should regard be had to it?

(vii) As was recognised in *Charman v Charman (No 4)* [2007] EWCA Civ 503, [2007] 1 FLR 1246, at paras 65 and 66, it was decided in the *White* and *Miller* cases that not only matrimonial property but also non-matrimonial property was subject to the sharing principle. In the *Miller* case, Lord Nicholls, however, suggested at para 24 that, following a short marriage, a sharing of non-matrimonial property might well not be fair and Lady Hale observed analogously at para 152 that the significance of its non-matrimonial character would diminish over time. Lord Nicholls had also stressed in the *White* case at p 610 that, irrespective of whether it fell to be *shared*, a spouse's non-matrimonial property might certainly be transferred in order to meet the other's *needs*.

(viii) In *K v L* [2011] EWCA Civ 550, [2012] 1 WLR 306, it was noted at para 22 that, notwithstanding the inclusion of non-matrimonial property within the sharing principle, there had not by then been a reported decision in which a party's non-matrimonial property had been transferred to the other party otherwise than by reference to the latter's need.

(ix) Indeed, four years later, in *JL v SL (No 2) (Appeal: Non-Matrimonial Property)* [2015] EWHC 360 (Fam), [2015] 2 FLR 1202, Mostyn J suggested at para 22 that the application to non-matrimonial property of the sharing principle (as opposed to the needs principle) remained as rare as a white leopard.

(x) So in an ordinary case the proper approach is to apply the sharing principle to the matrimonial property and then to ask whether, in the light of all the matters specified in section 26(1) and of its concluding words, the result of so doing represents an appropriate overall disposal. In particular it should ask whether the principles of need and/or of compensation, best explained in the speech of Lady Hale in the *Miller* case at paras 137 to 144, require additional adjustment in the form of transfer to one party of further property, even of non-matrimonial property, held by the other."

[99] For the reasons already set out I find that 58 Prout Grove was not partly acquired by way of inheritance. It was used as the matrimonial home and after the parties returned to Northern Ireland the rental income was used to pay joint household bills. I am therefore satisfied that it is matrimonial property. In respect of 60 Prout Grove this property was partly acquired by inheritance. This occurred during the marriage. The property was used as a joint matrimonial asset as the rental income was used to pay joint bills. I therefore consider that it is matrimonial property.

[100] The husband holds a 20% interest in 8 and 10 Chapelside, Bayswater. These premises were acquired by him many years before the marriage at a time when he was still a minor. Notwithstanding that this is a long marriage case and the rental income from these premises was used to pay joint household bills, I consider that this asset is non matrimonial property because of the date when it was acquired and the nature of the interest held by the husband. I therefore consider that it should only be taken into account if it is required to meet “needs”.

DIVISION OF CAPITAL

Legal Principles

[101] Duckworth, “Matrimonial Property and Finance”, Family Law at B3 states that the following principles emerge from the authoritative exegesis of the Matrimonial Causes legislation by the House of Lords in *White v White* [2000] 1 AC 596 and *Millar v Millar* [2006] 2 AC 618:-

1. The goal of financial provision is fairness.
2. Fairness does not mean equality. It means an absence of discrimination
3. The discretionary nature of the legislation means that the outcome is often unequal division of assets but before making a decision the judge should check his tentative views against the yardstick of equality.
4. Equality is a starting point in respect of matrimonial property.
5. The existence of non-matrimonial property is a good reason to depart from equality although the longer the marriage the less this will be a decisive factor. Where the dominant or magnetic factor is inherited property the award will generally be based on “needs” rather than sharing - See *K v L* [2011] 2 FLR 980.
6. The boundary between matrimonial and non-matrimonial property is not rigidly defined but non-matrimonial property can include pre-marital property, extra-marital property, post-marital property and unilateral property.
7. The rationales for the exercise of the court’s discretion to adjust property rights is :- need, compensation and sharing. These may overlap.
8. The court should where ever possible bring about a clean break between the parties. This is especially so when the financially stronger spouse is able to

make available sufficient capital to satisfy the housing needs and make the other spouse self-sufficient in other respects.

Division of matrimonial assets

[102] In light of my finding of fact set out above I find that all the joint assets are matrimonial property. Having regard to the Article 27 factors and particularly the length of the marriage and the contributions made by each party to the acquisition of these assets, I consider that fairness dictates that the joint assets, save the matrimonial home should be divided equally between the parties. I further consider that the negative equity in Springvale should be divided equally between the parties. No one disagreed with this approach.

[103] The husband alleges that he made 80% of the contributions to the Barclays Wealth fund. This was denied by the wife. Having heard the evidence of the parties I consider that this fund was accumulated from joint matrimonial income and capital resources. Accordingly I do not consider that this court should interfere with the 50/50 split which occurred when the fund was paid out in accordance with a variation of the Mareva injunction.

[104] The husband accepted that the equity in the matrimonial home should be divided 60/40 in his wife's favour to reflect her child caring role.

[105] I further consider that all the wife's assets presently held in her sole name were acquired throughout the marriage and are therefore matrimonial property and should therefore be divided equally.

[106] I consider that 60 Prout Grove should be treated as a matrimonial asset even though part of it was originally acquired by way of inheritance. Accordingly it should be divided equally. I further consider that all the husband's assets in his sole name, save his interest in 8 & 10 Chapelside are matrimonial assets as they have been acquired during the marriage and treated as matrimonial assets. Accordingly all these assets should be divided equally between the parties.

[107] In relation to the monies dissipated by each party, I consider that these were all matrimonial assets and therefore to equalise division the husband owes the wife £24,000.

[108] The wife has not shown that her needs require Chapelside to be taken into account. There are sufficient other assets to meet her housing needs and to make her self-sufficient in other regards. In accordance with the legal principles in respect of non-matrimonial assets set out above, I do not include it in the pot for division.

Legal Principles regarding Periodical Payments

[109] Duckworth gleans the following principles in respect of periodical payments from the relevant jurisprudence:-

- (a) Income claims may be awarded where the assets are not large enough to bring about a clean break; or the claimant's share of capital assets is not sufficient to end his or her dependency; or the claimant has earned the right to share in the breadwinner's future income; or the claimant has suffered some personal detriment eg lost career that makes it unfair for the breadwinner to keep all the fruits of his higher earning capacity.
- (b) In setting the quantum of periodical payments the court takes into account the Article 27 criteria.
- (c) The term of periodical payments cannot extend beyond the joint lives of the parties or remarriage of the claimant. The court can however in its discretion order that periodical payments continue for a fixed term or until a specified event. Alternatively the court can capitalise periodical payments.

[110] Since the date of separation the wife has had primary care of the children. She had substantially less income than the husband and therefore had a dependency on him. Despite this the husband failed to pay any spousal or child maintenance since separation. To maintain herself and the children the wife had to use capital assets to meet regular expenses for herself and the children. As appears from the evidence set out above the wife expended approximately £105,000. I consider that she is entitled to a lump sum payment to reflect a capitalization of arrears of periodical payments due to her.

[111] In addition there is an argument that the wife, by reason of her disadvantage in the market place, caused by her role as primary carer of the children, is entitled to a right to share in the husband's future income. I consider however that the wife's share of the capital assets is sufficient to end her dependency and I therefore do not make any order for future periodical payments.

[112] There are no hard and fast rules about calculating the appropriate multiplicand or multiplier for periodical payments. Coleridge J in *V v V* [2005] 2 FLR 697 adopted a percentage figure of 40%. He said at paragraph 37:-

“There is almost no guidance or authority in relation to the way in which the court should determine this aspect of an ancillary relief claim. ...There can be no hard and fast rules...section 25 are the only real criteria”

Having regard to the respective incomes of the parties, the length of the marriage, the contributions made by the wife and the needs of the wife to pay for living expenses for herself and the children I consider that an appropriate figure for periodical payments is £20,000 per annum. This is approximately 44% of joint incomes. It is higher than the figure adopted in *V v V* because it includes a figure for maintenance due to the children. I further consider that the multiplier should be 6 years given that the parties have been separated since 2012 (to reflect discount for

capitalization) which gives a total lump sum of £ 120,000, for past periodical payments due.

Pensions

[113] There is a significant disparity between the value of the wife's pension and the husband's pension. The husband indicated that he wished to obtain a lump sum in lieu of pension sharing. The wife did not demur from this approach. Like the parties I also consider that a lump sum payment in lieu of pension sharing is appropriate because it allows each party to retain their pensions intact in circumstances where the wife has ill health and there is sufficient money available to pay a lump sum without affecting the wife's needs in respect of housing etc., I intend to make an order off-setting the pension. Calculation of the appropriate figure in offsetting is not an exact science and the court was not assisted by any expert pension evidence. The total pension pot is £440,000. In the absence of expert evidence I consider that the husband is entitled to 35% of the pension pot to reflect the age of each party, the ill health of the wife, the length of the marriage, the disadvantage the wife has suffered in the labour market, the contributions each has made to the pension pot and the need to discount for an immediate lump sum payment. This amounts to £154,000. The husband already has a pot of £87,000 and therefore I consider the appropriate lump sum the wife should pay to the husband for offsetting is £65,000.

Litigation Misconduct

[114] Given my findings that the husband blatantly breached court orders and deliberately absented himself from the hearing in the lower court I consider that it is appropriate that he is fixed with the original order of the court whereby he was ordered to pay 30% of the costs of the original hearing. Otherwise I make no order as to costs in respect of this appeal.

CONCLUSION

[115] I therefore find that the wife is entitled to

- A maintenance lump sum of £120,000.
- Half the equity in 58 Prout Grove being £318,000.
- 60/40 split of the matrimonial home being £124,500.
- Half of the joint accounts including Friends Life Policy being £3,000
- Half her own bank accounts being £17,000
- Half of 60 Prout Grove being £206,000
- Half of husband's bank accounts being £17,000
- The sum of £ 24,000 to equalize dissipated assets
- Less half the negative equity in Springvale being £27,250
- Less £65,000 due to the husband for pension off setting.

This gives a total payment due to the wife of £737,250

[116] I consider that this can be met by the following order:-

- A. The husband shall transfer to the wife all his legal and beneficial interest in the matrimonial home, 60 Prout Grove, joint bank accounts with Barclays numbered ***898 and ***919, joint Friends Life policy and his Ulster Bank account *****083 and Barclays bank accounts numbers *****712 and *****897, and shall pay a lump sum of £34,000 (in lieu of Chapelside account ***7748) within 28 days of the date hereof and the wife shall take all necessary steps within her power to secure the release of the husband from the mortgage on 60 Prout Grove and she shall be solely responsible for payment of the mortgage from the date of transfer.
- B. The wife shall transfer all her legal and beneficial interest in 58 Prout Grove and 8 Springvale to the husband who shall take all necessary steps within his power to secure the release of the wife from the mortgages on the said properties and the husband shall be solely responsible for payment of the mortgages from the date of transfer.
- C. Each party to otherwise retain all assets in their respective names including pensions.
- D. Each party to be responsible for own tax.
- E. The Mareva injunction to be varied to enable the terms of this order to be complied with.
- F. The husband is to pay 1/3rd of the wife's costs in respect of the lower court. Costs to be agreed or taxed in default of agreement. Otherwise each party is to pay his or her own costs.
- G. The husband to be provided with the following contents from the former matrimonial home:- bible, some photographs, tools and his financial documents. Otherwise the wife is to retain all contents in the former matrimonial home.

[117] Applying the yardstick of equality this order gives the wife assets worth in total £1,150,700.00. The husband retains assets worth £ 1,352,300.00. In terms of percentage split this means the wife receives 46% of the total assets and the husband receives 54% of the total assets. If Chapelside is excluded from the matrimonial pot it means the wife receives 58% of the total assets and the husband receives 42%. This inequality reflects the need to provide the wife with a home and assets to enable her to generate income to make her self-sufficient. Having regard to all the article 27

factors I consider that the proposed order represents a reasonable and fair division of the assets.

[118] Although the parties did not engage lawyers for the hearing of this appeal the nature of the Order this court has made is such that it will now be necessary for the parties to engage solicitors to execute its terms.