

Neutral Citation No: [2021] NIFam 32

Ref: KEE11573

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

ICOS No: 13/050137/01

Delivered: 09/07/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

JAMES SEALES

Appellant/Respondent

v

ALISON ELIZABETH SEALES

Respondent/Petitioner

IN THE MATTER OF AN APPLICATION FOR AN INTERIM LUMP SUM

Ms Cathy Hughes (instructed by Gillen & Co Solicitors) for the Appellant
Ms Adele O'Grady QC with Ms Caroline Steele (instructed by Keown Nugent Solicitors)
for the Respondent

KEEGAN J

Introduction

[1] The parties can consider the terms of this judgment and inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published in this un-anonymised form. If the office is not so informed within that timescale then it will be published in its present form.

[2] This is an appeal by the appellant husband pursuant to a Notice of Appeal dated 10 March 2020 of an order made by Master Bell on 3 March 2020 wherein he ordered as follows:

“Under Article 25(3)(a) of the Matrimonial Causes
(Northern Ireland) Order 1978 that the sum of £197,115.32

shall be paid out by Keown Nugent Solicitors to the petitioner.”

[3] The parties accept that this was effectively an interim lump sum order. This sum of money arose from the sale of property and lands which were the subject of Chancery proceedings in 2013/2014. The Master made the order and adjourned the ancillary relief for a nine month period. This was to allow the appellant husband to gather information he wanted to put before the court in relation to his application to the Criminal Cases Review Commission (“CCRC”) pertaining to his criminal conviction.

Background

[4] The context of this case is important to state. The husband is a sentenced prisoner having been convicted of murder. The wife remains resident in the former matrimonial home. The parties have some assets which are estimated to be worth in the region of £1m. It is clear that the issue of ancillary relief has been before the court for a long period of time. It appears that the proceedings have adjourned on many occasions mostly at the behest of Mr Seales in relation to his applications to the CCRC. Mr Seales has also dispensed with his legal representatives on a number of occasions. The papers assert that six FDRs have been vacated and the case has suffered delay, which is adversely affecting Mrs Seales.

[5] This appeal has also taken more time than it should. Originally, Mr Seales was self-representing and a number of adjournments were granted. Happily, on 20 May 2021, Gillen & Company came on record for Mr Seales and I am very grateful to them and counsel for presenting a legal argument which has allowed me to reach a decision in the case.

[6] The net point on appeal is essentially whether or not the court actually had jurisdiction and power to release an interim lump sum in ancillary relief. Subsequent to this decision, Master Bell has in fact issued a comprehensive written decision in this area in a case of *M & M* [2021] Master 2 which I provided to the parties. In that case, the Master indicated that the application for an interim lump sum could not prevail. He also said at paragraph 23:

“It is, of course, well-known that the court has the power to order periodical payments. In the event that the wife is prevented from purchasing a home, I would be willing to grant an order for periodical payments to enable her to pay rent and purchase any necessary furnishings for an unfurnished rental property until such times as the ancillary relief proceedings have concluded and she is in a position to purchase the house she plans to.”

[7] In *M & M*, the court also echoed the need for legislative reform in this area.

The Legislative Provision

[8] The law at issue is contained in the Matrimonial Causes (Northern Ireland) Order 1978. Article 25 reads as follows:

“25.—(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.”

[9] In terms of the law, it is broadly accepted between counsel that the court has no power to order an interim lump sum. This is established in the case of *Wicks v Wicks* [1999] Fam 65 CA and *Bolsom v Bolsom* [1983] FLR 21. Counsel have also pointed to the leading text book, *Matrimonial Property and Finance* by Peter Duckworth which states at B2.65:

“It was intended in 1996 to give the court power to award interim lump sums, by a new NCA 1973 section 22A. In the event, however, that part of FLA 1996 was not brought into force and probably never will be. Instead, a power has come into being under sections 22ZA and 22ZB to award a costs allowance, which is a kind of interim lump sum for legal costs. A similar power exists in applications under the Children Act 1989, Schedule 1, where a costs allowance is seen, in appropriate cases, as a lump sum award for the benefit of the child (see *F v KM*) Financial Provision for Child: Costs of Legal Proceedings [2010] EWHC 1754 Fam Charles J.”

[10] In the written arguments, reference is made to an unreported decision of Mr Justice O'Hara who made an interim order for a wife's legal costs in a matrimonial case. I have also been referred to a number of cases, namely *S v S Matrimonial Home: Interim Order for Sale* [2018] 4 WLR 111 and *SR v HR and another* [2018] EWHC 606 Fam.

[10] It is clear from all of the above that there is a difficulty with the making of an interim lump sum, which was in this case to allow the wife to purchase an alternative property. So this was not a case of specific costs such as legal costs or some other costs. It is quite clear that Mrs Seales needs to move and there are issues that she raises about her safety. However, as I pointed out during the hearing these are matters that should be capable of resolution or disposal on ancillary relief. I am sympathetic to Mrs Seales who says that she is suffering the effects of ongoing delay in this case and I entirely agree that this case needs determined. However, on the basis of the authorities before me, I cannot see that the law provides for an interim lump sum of this nature to effectively allow the wife to rehouse. I agree with the analysis of Master Bell in *M and M*.

[11] In the alternative, the wife has asked that the court could allow for rental or other expenses such as a deposit on a house. I have formed no view in relation to this. If such an application is feasible it should be brought before the Master for determination and evidence should be provided.

[12] Finally, during the course of these appeal proceedings, mention was made of the fact that funeral expenses needed to be paid due to the tragic deaths of two sons. I could not quite understand why this was controversial and helpfully at the end of the proceedings Ms Hughes said that there was no objection to those expenses being paid. Of course, they should be paid immediately.

Conclusion

[13] It follows from the above that the appeal will be allowed and the order of Master Bell will be set aside as far as the payment of the interim lump sum is concerned. The matter will be returned to Master Bell immediately for further directions. If the wife wishes to make a further application in relation to discrete expenses she should do so immediately. I also see no reason why this ancillary relief should not be progressed. It is clear that it needs active case management and in due course that should happen before the Master or the matter may be returned to the High Court Family Judge upon request.