

Neutral Citation No: [2023] NIFam 18	Ref: McB12328
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 23/079041
	Delivered: 13/11/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

FIONA JANE SINCLAIR

Applicant

and

EDMUND PAUL SINCLAIR

Respondent

**Ms Ramsey KC with Ms Downey (instructed by Kristina Murray Solicitors) for the
Applicant**

The Respondent appeared as a Litigant in Person

McBRIDE J

Introduction

[1] The applicant applies for a non-molestation and occupation order in respect of the former matrimonial home situate at 10 Browns Brae, Hollywood, Co Down.

[2] The applicant was represented by Ms Ramsey KC with Ms Downey of counsel. The respondent acted as a Litigant in Person.

Evidence

[3] The application was supported by a statement filed by the applicant dated 13 September 2023. The applicant gave oral evidence in which she adopted this statement as her evidence and further adopted as her evidence statements dated 27 January 2022 and 7 June 2023 which had been made in support of her previous applications at the Newtownards Domestic Proceedings Court for non-molestation and occupation orders.

[4] The respondent, despite court directions, did not file any replying affidavit or skeleton argument. He did, however, cross-examine the applicant and gave oral evidence on his own behalf and made legal submissions.

[5] Given the nature of the proceedings the court directed that the respondent file written questions for cross-examination which were then asked through the court. All follow-up questions were also put to the applicant through the court.

[6] I am grateful to counsel for their legal submissions, together with the bundle of authorities which proved to be of assistance to the court.

Background

[7] The parties were married on 10 September 2004. There are three children of the family who are all teenagers. The parties separated on 24 January 2021.

[8] The respondent is a solicitor who is presently under investigation by the Law Society. He is no longer working as a solicitor and the High Court appointed the Law Society to act as his attorney. Accordingly, the Law Society has power to deal with all his property and, in particular, can sign documentation in respect of the sale of the former matrimonial home.

[9] Since separation the applicant and the children of the family have resided at a property owned by her parents. The respondent has remained residing in the matrimonial home.

Court Proceedings

[10] As a result of arrears accruing on the mortgage the mortgagee, Bank of Scotland obtained a repossession order on 19 January 2023. This order was subject to a stay which expired in May 2023 and, accordingly, there is now an extant order for possession in favour of the Bank of Scotland. The parties agreed to sell the matrimonial home. There is now a proposed sale at £1,000,050. The matrimonial home is in negative equity.

[11] Divorce proceedings have been issued on the grounds of the respondent's unreasonable behaviour. The respondent denies the allegations but is not defending the proceedings. The applicant has also issued ancillary relief proceedings which have now been transferred to the commercial court. The court has made a number of directions in respect of the ancillary relief proceedings.

[12] In addition to the ancillary relief proceedings, there are several other proceedings before the court, including a judicial review; applications to vary injunctions obtained by the Law Society and committal proceedings. These applications have all been disposed of save for the committal proceedings which now stand adjourned generally and the variation of injunction application in respect of the

property at 27 Downshire Road, Holywood, which remains extant and in which the respondent has been directed to file a replying affidavit.

[13] On 27 January 2022, the applicant applied to Newtownards Magistrates Court for a non-molestation order. She was granted an interim non-molestation order, but the application was then withdrawn on foot of undertakings given by the respondent.

[14] On 7 June, the applicant applied to Newtownards Domestic Proceedings Court for an occupation order. On 28 July 2023 the court granted an occupation order for one day to facilitate inspection of the matrimonial home by surveyors in furtherance of the proposed sale as the mortgagee required a survey before it consented to sale to ensure the sale price represented market value and was otherwise acceptable to the bank. The inspection did not take place on that date for reasons set out later. This court then made an order on 25 September 2023 to facilitate inspection. Inspection by the surveyors took place on that date.

Oral evidence given by the applicant.

[15] The applicant gave evidence that she had been harassed and molested by the respondent and referred to a number of incidents when he was verbally and physically aggressive towards her. She adopted as her evidence the statement signed on 27 January 2022 which grounded the application in Newtownards Domestic Proceedings Court. In this statement she referred to a number of incidents when the respondent had subjected her to verbal abuse and harassment. In particular, on 24 January 2022 when she was in the process of returning her son to the matrimonial home, the respondent approached her in a very aggressive manner and tried to open the car door as she reversed out of the driveway. She locked the door and opened the window a little to speak to him. He proceeded to shout at her and said that she was a “fucking bitch” and then thumped the bonnet of her car.

[16] On the subsequent date she described that when she was out running the respondent drove so close to her that she feared he was going to knock her down.

[17] She further described an incident when she returned to the matrimonial home to retrieve her belongings. The respondent was very angry and “stormed at her” and then came at her with his fists clenched and had a red angry face and was shouting and swearing at her. He then manhandled her out the door causing her distress and upset.

[18] In addition to these incidents, the applicant referred the court to a number of text messages which the respondent had sent her. In these he stated, inter alia, “police now you have stolen funds”; “... not providing statements potential for a criminal offence”; “now trying to put the dad of our children in prison Well Done”; “up to your parents to pay school fees.”

[19] The applicant stated that she felt harassed and intimidated by these messages and she felt that he was doing it to make her unwell.

[20] Since the hearing in January 2022 she blocked the respondent's number, and she stated that since that time he has not texted her, but he had sent abusive text messages to her parents and also to the children of the family in which he has been threatening and derogatory about her. She said that these texts make her feel anxious and bullied.

[21] The applicant gave evidence that her son had advised her that on one occasion when he was out driving with his father when they passed her father the respondent made a one finger sign and called him an "English cunt." Her son was very upset by this incident.

[22] The applicant also stated that the children told her the respondent told them about the court proceedings and had made derogatory comments about her stating "your mother wants me in prison and to take everything from me and then there will be no money for you, no money for car insurance ..." She said the children were very upset by these comments and felt conflicted as they love their father. She stated that all this behaviour is having an adverse effect on the children and, in particular, the eldest boy is very anxious, his schoolwork has been adversely affected and he now attends counselling. She also said that it was adversely affecting the other children who look worried and are often tearful. She gave evidence about an incident when the respondent threatened suicide. The children were very worried about him and constantly rang him. He refused to pick up the phone which led to the eldest son being so worried that he felt he needed to go down to the home to check on his father. When the applicant took her son down to the matrimonial home, they found the respondent sitting on the couch with his phone in his hand drinking a glass of wine.

[23] The applicant stated that prior to this court hearing the respondent had approached her father. When he refused to engage with him the respondent said, "I'll be sure to tell the children." Later outside the court the respondent kept pointing his finger at the applicant and said, "On your own head be it." The applicant stated that she found all this behaviour very intimidating and upsetting.

[24] In relation to the matrimonial home the applicant gave evidence that the respondent remained living in it after separation and since May 2021 has failed to pay the mortgage. As a result of the arrears the mortgagee sought and obtained a repossession order in January 2023 and the stay on that order was lifted in May 2023. The respondent continues to fail to pay the mortgage and accordingly, the debt increases daily. The parties agreed to sell the matrimonial home and recently there has been an offer on the home which is acceptable to both the bank and the Law Society. The offer is for £1,000,50 which is the valuation placed on the property by both the bank and the plaintiff's valuers.

[25] The applicant stated that the respondent is deliberately seeking to frustrate the sale of the matrimonial home as he wishes to harass her. He knows that if he frustrates the sale that this will put her in a precarious financial position as she is jointly and severally liable for the debt which is increasing on a daily basis. The increasing debt will adversely affect her credit rating and, more importantly, it has the potential to adversely affect her employment. As part of her job she sits as a Trustee on a number of Boards and if she is made bankrupt or is subject to an IVA, she will be unable to sit on these Boards which are an intrinsic part of her work and in such an event she may be unable to continue in her current employment. This prospect makes the applicant very anxious, concerned and distressed. She stated that she worries about the debt and that the stress overwhelms her, that she wants to get the house sold to get some calm in her life to be settled and then to move forward.

[26] As a result of her concern about the respondent's failure to facilitate the sale she obtained an occupation order at Newtownards Domestic Proceedings Court for one day on 28 July 2023. This was to permit the surveyors to inspect the property so that the sale could proceed. The respondent was present at Newtownards Domestic Proceedings Court on the day the order was made and was aware of it. Notwithstanding this the respondent failed to comply with this order and on 20 July 2023 when the surveyors attended, although he was present in the home, he refused to allow them to enter. He had installed a bolt on the doors and when challenged he stated that he had not been served with the court order. As a result, the surveyors were unable to enter to inspect and this delayed the sale progressing and had potential to derail the sale. Subsequently, this court made an order that the respondent vacate the property from 2pm to 5:30pm on 25 September 2023 to allow the surveyors to enter. The respondent complied with that order and the surveyors have now completed their inspection.

[27] The applicant stated that she believes this conduct shows that he will do anything to frustrate the sale and she is concerned that he will now refuse to vacate the property on the date of proposed completion. The date of completion is projected to be within the next few weeks. If this sale is frustrated the applicant is concerned that she will lose this buyer, that the arrears will continue to accrue, and this will cause her ongoing stress and upset.

[28] The applicant then referred the court to a report prepared by her GP. As appears from this and her oral evidence, the applicant has developed eczema and has difficulty sleeping due to the stress and worry. She is presently on medication, and she stated that she lacks concentration, and this affects her ability to work.

[29] The applicant stated that her net income is £2,200 per month plus £360 universal credit. She then gave details of her outgoings which were in excess of her income. At present she lives in a property owned by her parents, but she stated this cannot continue indefinitely. She stated that the respondent obtains a rental income from a property in her name at Downshire Road and that he also earns income through sub-leasing other properties through Airbnb.

[30] The applicant was cross-examined by the respondent. He essentially put to her that he had paid all the bills and that since separation she had enjoyed holidays abroad, purchased a new car, bought jewellery and had taken most of the contents from the matrimonial home. The applicant accepted that she had taken contents from the home to enable her to furnish the house in which she is living especially for the children. She stated that she holidayed at her parents' home, and they had assisted her with expenses and that she had been only able to buy a new car by selling her old car, by selling clothes on Vinted and by paying for items through credit card.

[31] The respondent also put to her that she had refused to sell the matrimonial home when there had been an offer of £600,000. The applicant accepted that there had been this offer, but it was unacceptable to her as it fell well below the value of the home which was in excess of £1m and would have led to a much higher shortfall being due to the bank when compared to the present offer. She stated that although the respondent had stated he would meet the shortfall, when asked by her solicitors to provide proof that he would do so, this had never been provided.

[32] She also responded that she believed the respondent was deliberately frustrating the sale to assert financial control over her as failure to sell the home would cause her financial ruin, affect her credit rating, her employment and her ability to purchase a new property in the future for herself and the children.

The evidence of Mr Sinclair

[33] Mr Sinclair then gave evidence. He denied all the allegations made by the applicant and said that he was not prepared to consent to an occupation or non-molestation order. He stated that he did not believe there was a genuine sale of the property, and that the buyer may be in some way connected with the applicant. He denied trying to thwart the sale and said that he had only approached her father at court to try and sort things out. He denied that he had ever harassed the applicant and said that after the proceedings at Newtownards Domestic Proceedings Court, he never texted her or spoke directly to her.

[34] He stated the applicant was the person who had refused to co-operate in the sale of the matrimonial when an earlier offer had been made of £600,000. He stated that he had indicated to her that he would cover the shortfall and notwithstanding this she refused to facilitate this sale.

[35] When senior counsel put to him that he would not co-operate with the sale and would seek to frustrate it by not leaving the home on the day of completion the respondent replied, "the police will have to take me, I have nowhere else to go and I have nothing to offer."

The relevant legal principles

[36] This application is made pursuant to the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Under Article 20 the court may make a non-molestation order if the application is made by a person “associated with the respondent.” It is accepted that the applicant has standing to bring this application as she was married to the respondent (article 3(3)).

[37] Under article 20(1) the court can make an order “prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent” and under article 20(5) in deciding whether to exercise his powers under this article and, if so, and in what manner the court shall have regard to “all the circumstances including the need to secure the health, safety and well-being – (a) of the applicant; or, in the case following within para 2(b), the person for whose benefit the order would be made; and (b) of any relevant child.”

[38] The order can be specific or general and can be for a specified period or until further order.

[39] In *C v C* [1998] 1 FLR 554, the court noted that there was no legal definition of molestation in the equivalent England & Wales statute, but held that the term molestation “implies some quite deliberate conduct which is aimed at a high degree of harassment of the other party, so as to justify the intervention of the court.” Sir Stephen Brown P also noted that non-molestation occupation orders are found in Part 4 of the Family Law Act 1996 which is concerned with the general topic of domestic violence and therefore the misconduct must amount to molestation as envisaged by the legislation.

[40] Section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2001 defines domestic abuse at section 1 as follows:

- “1. – (1) A person (“A”) commits an offence if –
- (a) A engages in a course of behaviour that is abusive of another person (“B”),
 - (b) A and B are personally connected to each other at the time, and
 - (c) both of the further conditions are met.
- (2) The further conditions are –
- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and
 - (b) that A –

- (i) intends the course of behaviour to cause B to suffer physical or psychological harm, or
- (ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) The references in this section to psychological harm include fear, alarm and distress.”

[41] Abusive behaviour is defined in section 2. It defines that behaviour is abusive if it is violent or threatening or amounts to coercive control.

[42] Accordingly, I consider that the test for a non-molestation order is met if the court is satisfied, on the basis of the evidence:

- (a) That the respondent has engaged in abusive behaviour towards the applicant.
- (b) That he has done so with the intention of molesting and harassing the applicant.
- (c) That the respondent’s conduct has had a harmful effect on the applicant.
- (d) That the conduct and degree of harassment is at a level which requires the intervention of the court.

[43] Under Article 11 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998, the court has power to grant an occupation order to a “person entitled.” It is accepted that the applicant has locus standi. Under article 11(3) the court may make a variety of types of occupation orders and under article 11(6) in deciding whether to exercise its powers under para (3) and, if so, in what manner, “the court shall have regard to all the circumstances including:

- (a) The housing needs and housing resources of each of the parties and of any relevant child;
- (b) The financial resources of each of the parties;
- (c) The likely effect of any order, or of any decision by the court not to exercise its powers under para (3), on the health, safety or well-being of the parties and of any relevant child; and
- (d) The conduct of the parties in relation to each other and otherwise.”

Questions for the court to determine

[44] In deciding whether to grant a non-molestation order the court must make findings of fact about the following matters:

- (a) Has there been abusive behaviour by the respondent towards the applicant?
- (b) Did the respondent intend to harass/molest the applicant by his behaviour?
- (c) Did the abusive behaviour cause harm to the applicant?

[45] If the court finds that (a), (b) and (c) are satisfied, the court must then go on to consider whether the degree of harassment and its effects on the applicant are such that the court's intervention is required.

Findings of Fact

[46] I have listened to and carefully observed both the applicant and respondent throughout the course of the hearing as well as when they were both giving evidence. I have concluded that the applicant is an honest witness who presented to the court as a person who is overwhelmed with stress as a result of the respondent's behaviour. I accept her evidence in respect of the incidents on 24 January 2022, 25 January 2022, the running incident and the respondent's behaviour when she attended the home to collect her belongings. I also accept that he sent her abusive texts. When I observed the respondent during this case, I noticed when he was cross-examining the applicant and when he was giving evidence himself that he acted in an aggressive and controlling manner. In particular, at one point when cross-examined by senior counsel he answered the question by pointing his finger and thumping the desk. At one stage he had to restrain himself from using an expletive. I also noted the intimidating and threatening manner in which he looked at and spoke to the applicant when she was giving evidence. I further consider that his failure to engage legal representation was done deliberately so that he could intimidate the applicant further by cross-examining her in court.

[47] Although the respondent denied these events took place, he did not put his version of events about these incidents to the applicant so that she could respond to them and at no stage did he put forward any alternative version of events. Accordingly, I am satisfied that all these incidents took place, and I am also satisfied that he sent abusive texts to the applicant in the past.

[48] Although the applicant also sought to rely on abusive texts messages sent to her parents, I do not find that these amount to abusive behaviour towards her as they were not sent to her. I do accept, however, that the respondent has made derogatory comments about her to the children and that these have adversely affected the children's health and school studies and that all of this has been done to cause upset and distress to the applicant.

[49] I also accept her evidence that the respondent approached her father in court and said, "I'll be sure to tell the children", and I further accept that outside the court he pointed his finger at her and said, "on your own head be it." I accept this evidence because it replicated what I observed in court, and I am satisfied that he made these statements to intimidate and harass the applicant.

[50] Although I am satisfied that since the making of the original interim non-molestation order and the subsequent undertaking, the respondent has not directly texted or contacted the applicant, I find that he continues to harass her in a number of ways. I am satisfied that he is seeking to deliberately frustrate the sale of the matrimonial home as a means to make her life difficult and to intimidate and harass her.

[51] I am satisfied that the respondent has sought to frustrate the sale of the matrimonial home. In particular, he failed to admit the surveyors into the property to carry out a valuation despite the existence of a court order. He knew that this order was made as he was present in court and despite this, on the day when the surveyors attended, he deliberately bolted the door and would not allow them to enter. This led to the need for a subsequent court order to facilitate the inspection and all of this, I find, was done to delay and frustrate the sale. I am further satisfied that he will seek to frustrate the sale by failing to give up vacant possession on the day of completion. He made it clear when he was giving his evidence when pressed about leaving the home voluntarily that the police would have to come, and I therefore conclude that he fully intends not to give up vacant possession and in this way is seeking to prevent the sale of the home. I am further satisfied that the respondent is behaving in this way deliberately to harass the applicant. He has been unwilling to resolve the matter in any way meaningfully. At present there is a possession order in place and therefore, the matrimonial home will be sold sooner or later. If the home is sold later there will be a greater shortfall as the arrears continue to increase. If the home is sold now the shortfall will be limited and the applicant hopes that she can negotiate with the bank to stop bankruptcy or an IVA. The Law Society and the bank are also satisfied that the sale is at market value.

[52] In all these circumstances, there is no reason why the sale should not be facilitated by the respondent. I find that he is frustrating the sale simply to harass the applicant as he knows if the sale does not occur there will be an increase in debt which will cause her upset and distress and affect her health because she is jointly and severally liable for this debt. He also knows it has the potential to damage her credit rating making it difficult for her in the future to get on the property ladder and he knows it could have a disastrous effect on her employment, as in one text he said to the applicant, "probably affect your job." I, therefore, conclude that there is no other reason for the respondent not to co-operate in the sale save to harass the applicant and I am completely satisfied that he will do everything in his power to frustrate this sale.

[53] I am therefore satisfied the respondent has engaged in a course of behaviour which is abusive of the applicant, with the intention of harassing, molesting, and causing distress, upset and harm to the applicant.

[54] On the basis of the applicant's oral evidence and the medical evidence I am satisfied that the respondent's behaviour has caused her harm, in particular, psychological distress. She is presently on medication, and she has difficulty sleeping and concentrating. She also presented to the court as someone who is overwhelmed by the stress arising from his conduct.

[55] I consider that the behaviour demonstrated by the respondent is over and above the normal friction and tensions which arise between divorcing couples. Even making allowances for the acrimony which can arise in such circumstances, I am satisfied that the respondent's behaviour is of an entirely different nature and constitutes deliberate conduct designed to harass the applicant. The nature of the abusive behaviour and its adverse impact on her is of such a magnitude that I consider the intervention of the court is required. Accordingly, I make an immediate non-molestation order prohibiting the respondent from molesting the applicant. This order will remain in place until further order.

[56] In addition, I have decided to exercise my powers to make an occupation order by requiring the respondent to give up vacant possession of the matrimonial home on or before noon on 27 November 2023, and thereafter, he is prohibited from entering this matrimonial home until further order of the court. If the sale does not proceed this matter should be referred to this court for further review of the non-molestation and occupation orders.

[57] I make an occupation order as I am satisfied for the reasons set out above that failure to make this order would have a serious detrimental impact on the health, safety and well-being of the applicant. I also consider, in light of the conduct of the respondent that such an order is necessary to stop further harassment of the applicant by the respondent.

[58] I have also considered the housing needs and resources of each party and their financial resources. I find that, due to the existence of the repossession order, the matrimonial home will be sold at some point and, therefore, each party will need to secure alternative accommodation. The applicant has presently secured temporary accommodation, but in the future, she will need to get back on the property ladder to provide permanent accommodation for herself and the children. Accordingly, the level of debt needs to be kept to a minimum to ensure that she can achieve this. This is best secured by ensuring the sale of the matrimonial home is not frustrated. I find that the respondent and the applicant are in similar positions in terms of securing alternative housing accommodation. I also find that each party has similar needs and resources and, therefore, on the basis of all the criteria set out in article 11(6) I consider that it is appropriate for me to exercise my powers to make an occupation order.

[59] The existence of the non-molestation and occupations orders, I trust, will ensure that vacant possession is achieved in an amicable way and that the sale proceeds on the proposed date. In the event of breach of these orders the respondent is liable to arrest. Accordingly, I direct service of the orders by police. I make no order as to costs save legal aid taxation of the applicant's costs in accordance with the second schedule.