Neutral Citation: [2010] NIFam 17 | *Ref:* **WEI7977**

Judgment: approved by the Court for handing down | *Delivered:* **22.10.10**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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PROBATE AND MATRIMONIAL OFFICE

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08/8514

ESTHER PAULINE CARSON

Petitioner;

-and-

WILBERT WESLEY CARSON

Respondent.

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WEIR J

[1] On 23 August 1965 the petitioner married the respondent when he was aged 21 and she was aged 16. On 24 January 2008, some 42 years later, she issued a petition for divorce in the Family Division of the High Court on the ground of five years' separation asserting that, due to unhappy differences between the parties, she had left the matrimonial home in November 1993 and that there had been no resumption of co-habitation thereafter.

[2] On 12 May 2008 Ms McMahon, a solicitor in the firm of P J McGrory and Company, the solicitors acting for the petitioner, swore an affidavit in support of an application issued on 18 June 2008 to have service upon the Respondent deemed good in which she averred, inter alia;

(1) That the original Divorce petition had been served upon the Respondent at his home address by first class post on 25 January 2008.

(2) That a reminder had been sent on 27 March 2008 asking the Respondent to sign the acknowledgment of service.

(3) That certified copy divorce papers were then personally served upon the Respondent at his place of work by a Mr Millar Robinson.

[3] Mr Robinson, a legal executive in the firm of Millar, Shearer and Black, solicitors of Cookstown, in turn swore an affidavit on 9 May 2008 in which he averred that on 16 April 2008 he attended at the Respondent's place of work where he saw the respondent whom he had known for years. He told the Respondent that he had documents for him but the latter declined to take them so Mr Millar touched the Respondent on the shoulder with the envelope containing a sealed copy of the Divorce Petition together with forms M5 and M6 and left them with him.

[4] On 30 June 2008 Master McCorry made an order deeming good the service upon the Respondent. No answer or cross-petition was filed and accordingly on 23 September 2008 the hearing of the petition as an undefended suit came on before Coghlin LJ. The respondent has informed me that on that day he attended in person and told the Court that he did not agree to be divorced and wished to defend the suit on the basis that sexual relations between the parties had continued after the alleged date of separation. It appears that the Lord Justice pointed out to the Respondent that, provided he were satisfied that the parties had in fact separated on the date claimed by the petitioner and that there had been no resumption of cohabitation or continuance of sexual relations, the respondent had no basis on which to defend the suit. He accordingly declined to adjourn the matter as to do so would be pointless and proceeded to hear the petitioner's evidence. Plainly the Lord Justice must have been satisfied in relation to the issue that the Respondent had raised because he granted a decree nisi. It is implicit that he did not accept the assertion made that there had been a resumption of sexual relations between the parties.

[5] The Respondent did not appeal against the granting of the Decree Nisi and the matter then came before the Masters in the normal way for the determination of the ancillary relief aspect of the suit. The Petitioner swore an affidavit on 30 October 2008 in which she set out her account of the sad history of her long married life with the Respondent, deposed to her assets and what she knew of those of the Respondent including in his case a number of farms for which valuations have been obtained on her behalf totalling in excess of £1m.

[6] Just as the Respondent failed to participate meaningfully in the initial divorce proceedings until his last minute attempt to prevent a hearing, he has similarly failed to co-operate with the Masters' endeavours to discover the extent of his assets and any liabilities.

[7] Master Bell made orders as follows:

(1) On 19 January 2009, that the Respondent make and file an affidavit of his means and assets and file copies of eleven categories of documents within 21 days.

(2) On 2 March 2009, that the Respondent file the affidavit ordered at (1) above by 15 April 2009.

(3) On 20 April 2009, that the respondent file the affidavit and documentation ordered at (1) above.

[8] The respondent did not comply with any of the orders made by Master Bell. The hearing of the ancillary relief proceedings was accordingly delayed, being adjourned by Master Redpath on 5 June 2009, 29 June 2009, 14 October 2009, 18 November 2009 and 3 December 2009. On the latter date Master Redpath ordered that the Respondent provide details of all bank accounts that he operates and file an affidavit within 28 days and further adjourned the matter until 14 January 2010.

[9] The Respondent did not comply with any of the Masters' orders. He does seem to have appeared in person before the Masters on some occasions when he reiterated his objection to the Decree Nisi having been pronounced. All efforts by the Masters to secure his co-operation so as to advance the ancillary relief claim came to nothing.

[10] The Masters having concluded that they could make no further progress transferred the matter to me and it was first listed before me on 11 March 2010. On that occasion Mr Carson appeared in person and I caused him to be sworn. He was both truculent and unco-operative, for example denying that he knew the beneficiaries under his late mother's Will or the acreage of his farm (although when pressed he was able to tell its number of hectares). I pointed out to him that he would have to comply with the court orders to disclose the details of his assets and advised him to obtain legal advice. The matter was then adjourned until 15 April 2010 by which stage the question of the title to the farmland had been clarified (though not through any co-operation on the part of the respondent) and the respondent was shown to be the full owner, his late mother having had merely a life interest. The Respondent did not appear at that hearing and the petitioner's counsel applied for an adjournment to see whether a firm of solicitors in Cookstown who had previously acted for the respondent could be re-involved on his behalf. On 23 April 2010 the petitioner's solicitors issued a summons before me that the respondent show cause why he had failed to comply with the orders of Master Bell made on 19 January 2009, 2 March 2009 and 20 April 2009 and requiring him to file an affidavit of his means and assets.

[11] I next reviewed the matter on 18 June 2010 when the Respondent did attend. In the meanwhile the Cookstown solicitors had written to the petitioner's solicitors to say that they would not be coming back into the matter as the Respondent had not signed the requisite legal aid application form. On that occasion I had another lengthy discussion with the Respondent in which I strongly advised him to return to his solicitors and to apply for legal aid to defend the ancillary relief proceedings. In an endeavour to uncouple the vexed issue of the Decree Nisi to which he continued vociferously to object, I advised him to consider appealing against it out of time but in any event to obtain legal advice. I further adjourned the matter until 10 September 2010.

[12] On that date the respondent again appeared without representation. He had plainly made no effort to advance the matter in any direction and equally plainly had no intention of doing so. I warned the Respondent that he was in contempt of court and that unless he complied with the orders recited above by 24 September I was minded to commit him to prison for a term of 14 days.

[13] The respondent still did not comply with any of the orders and on 20 September 2010 the Cookstown solicitors wrote out of courtesy to the petitioner's solicitors saying "We have not heard from Mr Carson for some time now and are not instructed in this matter." The petitioner's solicitors therefore applied to have the matter re-listed before me and I directed that they write to the respondent advising him that the matter would be listed before me on 15 October 2010 and that he would have to show to cause why he had failed comply with court orders made in this case. The solicitors did write to the Respondent accordingly but on 15 October the Respondent did not appear.

[14] It is I think clear from the foregoing history that the respondent has quite wilfully and deliberately failed, despite being given every possible latitude and consideration both by the Masters and by me, to comply with the orders of the court. That failure has now persisted for a period approaching two years and I am quite satisfied that it is due not to ignorance, neglect or incompetence but to a calculated resolve not to co-operate in the mistaken belief that nothing can be done to advance the petitioner's claim for ancillary relief if the Respondent fails to co-operate as ordered. His attitude in this mirrors his similar failure to co-operate in relation to the service and then the proper defence of the Divorce Petition.

[15] Fortunately there is now sufficient information available to enable a reasonable estimate of the Respondent's principal assets to be made and it will be his own fault if he continues to fail to disclose to the court details of any other liabilities or assets that he may have so as to allow a more precise assessment. I therefore propose to remit this matter to Master Redpath to

proceed to hear and determine the ancillary relief application on the basis of the information now available to him.

[16] There remains the question of how the court should punish the respondent's wilful contempt in failing either to comply with the court orders or to show cause for not having done so. I have re-considered my initial view that a period of imprisonment is appropriate because I suspect that the respondent would welcome what he would consider an opportunity for martyrdom and because he has farm stock that would be liable to suffer during any period of his imprisonment. Nor do I see why the public should bear the considerable expense involved in his incarceration. Instead I have decided that the respondent be fined the sum of £10,000 to be paid within 28 days of the date of the order. I will consider remitting the fine in whole or in part if, within that period of 28 days, the Respondent complies in full with the court orders that he has thus far steadfastly flouted.

[17] Finally, I add for the consideration of the Master my view that in assessing the share due to each party in the ancillary relief the amount of the fine, if it becomes payable, should be reckoned solely against the Respondent's share as the Petitioner has had no responsibility for incurring and should therefore suffer no reduction in her share in respect of any proportion of that sum.