Master 35

07/09/2004

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION (PROBATE & MATRIMONIAL)

E

Petitioner

And

E

Respondent

MASTER REDPATH

This matter was heard before me on 23 September and 1 October and after hearing, judgment was reserved until 7 October 2004.

The history of the marriage was as follows: -

The parties were married on 7 June 1975 and were separated in 2000. Accordingly, this is a long marriage of some 25 years duration. There are three children of the family, two of whom are over 18 and P who was born on 30 July 1990 and resides with the Respondent. A Decree Nisi was granted on 3 October 2002 founded on the unreasonable behaviour of the Petitioner on the Respondent's Answer and Cross-Petition.

The assets in the marriage are as follows: -

Joint assets -

(i) matrimonial home valued in December 2003 at £265,000;

(ii) a Prudential endowment policy valued at £13,305;

(iii) an account in joint names but for the benefit of P the child of the family.

The Petitioner's assets –

(i) various investments and savings valued at £63,945.

The Respondent's assets –

(i) savings and vehicles valued at £25,740;

(ii) pension fund CETV £130,574;

(iii) Prudential AVC's CETV £12,263.

This was a bitterly contested divorce and the Ancillary Relief was also contested on virtually every point. The case was made that the Respondent was living with a Mr C as man and wife and that this had been deliberately concealed from Mr E. Much of the time during the hearing was spent endeavouring to establish whether or not the relationship between the Petitioner and Mr C existed.

Aside from that the case itself was a relatively straightforward one given the assets and given that there are no taxation issues to contend with.

It was accepted that the assets held by Mrs E came largely from gifts to her from Mr E, which monies he had inherited from his father. These monies had been inherited and given to Mrs E in the relatively recent past.

The issue of inheritance in Ancillary Relief has been regularly analysed in recent cases by the courts both in Northern Ireland and in England and Wales. In the well known case of White –v- White [2001] 1AC 596, Lord Nicholls states at page 610: -

> "Property acquired before marriage and inherited property during marriage comes from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.
>
> Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account.

> He should decide how important it is in the particular case. The nature and value of the property, the time when and the circumstances in which the property was acquired are among the relevant matters to be considered."

Duckworths Matrimonial Law on Property states at C [25]: -

> "For the time being, however, as Lord Nicholls indicates, the inheritance factor is best seen as an aspect of contribution where its importance may be emphasised or muted according to the circumstances."

In the Northern Irish case of M -v- M (financial provision; evaluation of assets) (2002) 32 Fam Law 509, McLaughlin J deducted a figure of £400,000 from the total assets to reflect the value of the husband's inheritance. The Learned Judge however also says at pages 38 and 39 of the full judgment: -

> "It appears to me that the proper approach is firstly, to determine the assets available to the parties; secondly, to take account of the principles set out in statute and matters which bear on the fairness of the divisions of assets and thirdly, to set about the task of achieving fairness by dividing the value of those assets in such a way as to attain it. Once that has been done the Judge should stand back and test the potential result against the yard stick of equality."

It is against that background that any deduction has to be made regarding inherited wealth which a husband or wife brings to a marriage. In a recent Northern Irish case of G –v- G & J (unreported) there was a large estate of which a significant amount had been acquired by the parties through inheritance. This was very lengthy marriage and the learned Judge does not seem to have scribed any particular importance to the inheritance aspect of the case. Gillen J states at paragraph 48 of the judgment: -

> "In summary therefore, these authorities make it clear that the court has a very broad discretion to make financial awards under Article 25 and has, in big money cases increasingly chosen to guide the exercise of this discretion by the overarching objection of

> fairness. The courts have chosen to measure fairness of outcome by the adherence to the principle of equality unless there is good reason for variation such as wholly exceptional contributions by one party of family welfare."

In a recent case of GW –v- RW [2003] 2FLR 108, Nicholas Moston QC sitting as Deputy Judge at the High Court states at page 120: -

> "The case of White –v- White has emphasised that the law in this is not moribund but must move to reflect social value."

On page 124 he quotes Bennett J in the case of Norris –v- Norris [2003] 1FLR at 1142: -

> "Applying the words of the statue in my judgment, the court is required to take into account all property of each party. That must include property acquired during the marriage by gift, or succession as a beneficiary under a trust. Thus, what comes in by statue through the front door, ought not, in my judgment, be put out through the back door and thus not remain in the courts discretionary exercise without very good reason. In my judgment, merely because inherited property has not been touched or does not become part of the matrimonial pot is not necessarily, without more, a reason for excluding it from the courts discretionary exercise."

The learned Deputy Judge comments at page 125: -

> "This analysis cannot be challenged. I therefore propose to treat all the arguments advanced by Mr Marks on his second point as impacting on the question of contributions. It must be artifice and contrary to the express words of section 25(2)(a) of the Matrimonial Causes Act 1973, as Bennett J has pointed out, to exclude the non marital assets from the pool of assets to be divided."

I therefore intend not to exclude inherited wealth from this particular case but to regard it as one of the factors to be taken into consideration in applying the Article 27 checklist.

So what is the general approach which should be taken in cases of this type? As I have already indicated, this was a 25 year marriage and in GW –v- RW, the learned Deputy Judge decided that after 20 years equality of contribution should be assumed. He notes that in the case of L –v- L (financial provisions; contributions) [2002] 1FLR 1642, the Court of Appeal specifically criticised the trial judge for failing to give sufficient weight to the length of the marriage. The learned Deputy Judge then goes on to say at page 121: -

> "It seems to me that the assumption of equal value of contributions is very obvious if the marriage is over 20 years. For shorter periods this assumption seems to be more problematic."

Duckworth states at B3 paragraph 13, summarising the propositions that emerge from White –v- White: -

> "(1) Although MCA 1973 section 25 is couched in terms of the widest discretion, guidelines are needed to ensure consistency of judicial decision making and to limit people's exposure to costs;
> (2) The implicit objective of section 25 is to achieve a fair outcome, giving first consideration to the welfare of any children;
> (3) Fairness is a flexible concept but can move with the times. But in current conditions, it means at the very least that there can be no discrimination between the husband and wife's role;
> (4) The mere fact that one spouse stays at home while the other goes out to work (or that any other division of labour is agreed upon) is immaterial;
> (5) Fairness generally implies equal division, though not invariably so. There will be many situations where, having carried out the section 25 exercise, the judge's decision will be that one party will receive a bigger share of the assets."

He then quotes Lord Nicholls in White –v- White at page 605 where Lord Nicholls state: -

> "Before reaching a firm conclusion in making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only to the extent that there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the courts to focus on the need to ensure the absence of discrimination."

If I run through the Article 27 checklist in this particular case I find as follows: -

(1) Financial needs of the child

Mr E will carry the burden of supporting P.

(2) Income and earning capacity

In this case the Respondent is an electronics consultant whose net salary is £2145.00 per month. He will continue to work earning at that rate. By contrast the Petitioner earns £802.00 net per month.

(3) Financial needs and obligations of the parties

Each of the parties will continue to have financial needs, in particular, the Petitioner has no home and shares rented accommodation with Mr C. Her evidence was that she intended to purchase a house for herself at the conclusion of the proceedings.

(4) The standard of living enjoyed by the family before the breakdown of the marriage

Both parties enjoyed a good standard of living prior to the breakdown of the marriage.

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

I have already dealt with this aspect of the case, this was a long marriage. The Petitioner is now aged 51 and the Respondent 55.

(6) Any physical or mental disability by the parties of the marriage

Both the parties are fit and well.

(7) The contribution made by each of the parties to the welfare of the family

Again I have already dealt with this issue. This was a long marriage and the contributions of the parties should be seen as equal.

Two matters in this case justify a departure from the principle of equality in my view. I cannot overlook the recently acquired inherited wealth that has been used to the advantage of the Petitioner. I also place a great deal of importance on the fact that since the separation, the Respondent Mr E has cared for the remaining child of the family, P. The Petitioners financial contribution to P's welfare has been minimal; her contribution was rather pathetically documented by receipts that the Petitioner had got P to sign every time she gave him money. This is a practice which should be discouraged.

In short, the total assets in the marriage amount to £367,990.00. From this, needs to be deducted various debts which Mr E has. I have not taken into account the debts due on account of his legal fees at this point in time and take the view that these liabilities amount to, on his estimate, approximately £42,000. This leaves net assets of £325,990.

On page 39 of his judgment on M –v- M, McLaughlin J states: -

> "Where the division is not equal, there should be clearly articulated reasons to justify it. That division will ultimately represent a percentage split of the assets and care should be exercised at that stage to carry out what I call a 'reverse check' for fairness. If the split is, for example, 66.6 – 33.3 it means that one party gets two thirds of the assets but double what the other party will receive. Likewise a 60 – 40 split occurs the party with the larger proportion gets 50% more that the other. And if 55 – 45, one portion is 25% approximately larger than the other. Viewed in this way from the perspective of the partner left with the smaller portion - the wife in

> the vast majority of cases - some of these divisions may be the antithesis of fairness and I commend practitioners to look at any proposed split in this way as a useful double check."

In this particular case I place particular emphasise in the fact that Mr E has maintained, with very little assistance, P, the child of the family. It is anticipated that P will attend University and Mr E has already indicated that he will take on the expense of any tertiary education that P undergoes. Accordingly I intend to order as follows: -

1. That upon payment of the Respondent to the Petitioner of the sum of £75,000 within 3 months, the Petitioner shall transfer her interest in the former matrimonial home to the Respondent.

2. That the Petitioner shall within 3 months assign her entire interest in the Prudential endowment policy 707JC515 and her interest in the Direct Line policy held in joint names for the benefit of P to the Respondent with the Direct hire policy continuing to be held for P's benefit.

3. That the parties shall otherwise retain any assets held in their own names.

4. That there should be a pension sharing order with the pension being split 30% to the Petitioner and 70% to the Respondent.

5. That each party should bear their own costs.

Allowing the Petitioner to retain her investments and adding the £75,000 to it, gives her approximately £140,000. This leaves the Respondent with net assets valued at £186,000. This gives a percentage split 43% to the Petitioner and 57% to the Respondent leaving the pension fund and P's account to one side. Applying the reverse checklist as recommended by Mr Justice McLaughlin, I consider this to be a fair division of the assets.