

Neutral Citation No. [2009] NIFam 10

Ref: **McCL7550**

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

Delivered: **16/06/09**

2004 No. 048759

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION MATRIMONIAL OFFICE

BETWEEN:

EILEEN LOGAN

Petitioner;

-and-

FRANCIS GERARD LOGAN

Respondent.

McCLOSKEY J

[1] The background to this present ruling can be gleaned from an earlier judgment given by me on 16th January 2009, to which I refer.

[2] At this stage of the proceedings, I propose to determine two inter-related applications brought on behalf of the Petitioner. Each of these applications is based on a specific aspect of the order made by Master Redpath on 16th April 2007. By the terms of this order, the Respondent was required to pay to the Petitioner maintenance of £500 per month, on the last day of each month, the first payment to be made on 30th April 2007. To date, the Respondent has made none of the stipulated payments.

[3] The first of the two aforementioned applications is constituted by a judgment summons dated 3rd June 2008, whereby the Respondent was summoned to appear personally before the court “... *to be examined on oath of which you have made default [sic] and also to show cause why you should not be committed to prison for such default*”. At that stage, the judgment arrears totalled £7,000. On 11th September 2008, Weir J permitted the summons to be amended, in the following material terms:

*“You are hereby summoned to appear personally ... (etc.)
... to be examined on oath:*

(i) As to whether any and what debts are owing to you and whether you have any and what other property or means of satisfying the above-mentioned order.

(ii) Of which you have made default [sic] and also to show cause why you should not be committed to prison for such default.

And take notice that the judgment creditor intends to apply to the court at the hearing of this summons pursuant to Rule 8.28 [of the Family Proceedings Rules (NI) 1996] and judgment summons for leave to enforce arrears which became due more than twelve months before the date of this summons”.

The judgment debt specified in the amended summons was £8,500.

[4] At the hearing before me on 20th April 2008, Mr. Lannon, counsel for the Petitioner, sought the permission of the court to make a further amendment of the above-mentioned summons. This was unopposed. The amended passages recite, in material part:

*“And take notice that the judgment creditor intends to apply to the court at the hearing of this summons pursuant to Article 34 of the Matrimonial Causes (Northern Ireland) Order 1978 for leave to enforce arrears which became due more than twelve months before the date of this summons
... ”*

And the Petitioner claims:

1. *An order granting leave to enforce arrears which became due more than twelve months before the date of this summons.*

2. *An order attaching debts in respect of monies due to the Respondent from the Department of Agriculture and Rural Development.*

3. *An order for payment to the Petitioner of attached debts in respect of [the DARD monies – cf. paragraph [7], infra].*

4. *An order attaching the arrears due from the Respondent to the Petitioner to the land of the Respondent.*
5. *Such further or other relief as this honourable court deems just.*
6. *Costs."*

[5] The second summons of which the court is seised is the product of the passage of time. It is couched in essentially the same terms as the first summons, as amended and seeks relief in the form of attachment of debts (or "garnishee") in respect of the further arrears of maintenance which have accrued during recent months. There is also an application to amend this summons, again unopposed.

[6] Article 34 of the Matrimonial Causes (Northern Ireland) Order 1978 provides:

"(1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of the court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(2) The court, on an application for the grant of leave under this Article, may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may limit the payment of the arrears or any part thereof."

Part VIII of the 1996 Rules makes extensive provision for the enforcement of orders. It creates a variety of enforcement mechanisms. The provisions of Rule 8.2 are arranged under the banner "Garnishee Proceedings - Attachment of Debt due to Judgment Debtor". This rule establishes a two-stage process. In essence, it contemplates the making of a conditional order of garnishee, followed later (if appropriate) by the making of an absolute order to this effect. The critical power conferred on the court is expressed in Rule 8.2 in the following terms:

"On the application of the judgment creditor where there is an amount remaining unpaid by the judgment debtor under a matrimonial order ... the court may ... order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy the order and the costs of the garnishee proceedings".

In garnishee proceedings, the garnishee is the third party in a triangular equation, who is asserted to be in debt to the judgment debtor and the issue for the court is whether, in the language of Rule 8.2, there exists “*any debt due or accruing to the judgment debtor from the garnishee*”.

[7] In my earlier judgment delivered on 16th January 2009, I found that the Respondent may be able to establish a beneficial entitlement, which would probably not exceed one-third, in respect of certain DARD payments due to the farm business in which the Respondent was actively involved during much of his working life. I refer particularly to paragraph [22] of the earlier judgment. Having regard to all the evidence, I now find that the Respondent has such an entitlement. I base this finding on the evidence about his connections with and activities in the farm business and such inferences as may be properly drawn therefrom. In this context, I refer to the banking evidence, the accountancy evidence and the DARD evidence. I have selected the percentage of one-third, based on my further finding that during the period in question the Respondent and his two sons possessed equal shares in the business. In the event, as regards this discrete issue, no contrary argument was presented to the court.

[8] The outworkings of the aforementioned findings are as follows. By order of the court dated 20th November 2008, DARD was restrained from making any grant or subsidy payments. Subsequently, the evidence established that the amounts due totalled £38,659. I calculate that one-third of £38,659 is £12,886. At this point in time, the judgment debt due to the Petitioner totals £12,000. It follows that the amount of the Respondent’s entitlement to the DARD monies is sufficient to discharge the judgment debt. I hold that the order dated 20th November 2008 should now be varied as follows:

- (a) DARD is authorised to make a payment of £12,000 to the Petitioner’s solicitors.
- (b) DARD is further authorised to pay £25,773 to Padraig Logan and John Logan, or the firm of solicitors representing them.

According to my calculations, the new balance of the DARD fund will be, in consequence, £886.

[9] During the latter phase of these proceedings, both the Respondent and his sons have been represented by Seymour Major solicitors. At the hearing of this matter on 20th April 2009, the court was presented with an affidavit sworn by Mr. Major containing the following material averment:

“[3] I have taken the instructions of both the Respondent and the two sons ... in relation to the one-third of DARD money frozen by the court ...

They have all agreed that this money shall now be used and appropriated to pay all arrears of periodical payments, including any arrears built up since enforcement proceedings began."

At the hearing, Mr. Major confirmed that these were indeed his instructions. While this significant change of approach is rather belated, the Respondent and his sons are, nonetheless, to be commended for adopting it. Having regard to this development, the court enquired whether arrangements could be made for the payment of £12,000 by DARD direct to the Petitioner's solicitors and an adjournment ensued. In due course, the court was informed that this was not feasible, evidently because DARD was reluctant to make any payment in the absence of an explicit order of the court. Having regard to the terms of the order dated 20th November 2008, this is understandable. The effect of the order which will now be prepared, to reflect the conclusions in paragraph [8] above, will be to facilitate swift release of the funds, as directed.

[10] Having regard to the foregoing, I propose to make a garnishee order in the exercise of the court's powers under Rule 8 of the 1996 Rules. The garnishee is DARD and the amount involved is £12,000, representing the totality of the arrears of maintenance accrued to date. In the exercise of the court's power under Article 34(1) of the 1978 Order, I give leave to enforce that aspect of the order dated 16th April 2007 which relates to arrears that became due more than twelve months prior to the date when these proceedings were initiated, 5th June 2008. I further give leave to the Petitioner to amend the two summonses in the terms rehearsed in paragraphs [4] and [5] above. As the Petitioner has succeeded in her applications, it would appear that costs should follow the event. However, I shall allow further argument on this discrete issue before finalising it.

[11] The payment by DARD to the Petitioner is to be made by 4.00pm on 29th June 2009. The payment by DARD to Pdraig Logan and John Logan is to be made by 4.00pm on 6th July 2009. These payments will leave a new balance of £659. The order dated 20th November 2008, as hereby varied, is extended to midnight on 8th September 2009, when the court will next review this litigation. The order dated 10th November 2008 will similarly be extended. At present, there is no application before the court on behalf of the Respondent to discharge or vary this earlier order.

[12] Finally, the court is presently seised of an application on behalf of the Respondent to vary the order dated 16th April 2007 so as to reduce the maintenance payable by the Respondent to a nominal sum. A timetable for the generation and exchange of further affidavit evidence by both parties has been fixed. The court has also directed the parties to engage in a joint consultation. It would be regrettable if the limited personal resources available to the Respondent and his sons (on the one hand) and the public funds which finance the Petitioner, who is a legally assisted person (on the other) were to be depleted further by the prolongation of the dispute

between the parties to this litigation. The parties are strongly encouraged to employ their best endeavours to resolve the matters in dispute between them.

[13] The court will next review this case on 8th September 2009 and, in this respect, I refer to the directions given on 22nd June 2009. Furthermore, the costs order will be finalised on the next occasion: see paragraph [10], *supra*.