

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

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

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FAMILY DIVISION

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**BETWEEN:**

**McC**

**Petitioner;**

**and**

**McC**

**Respondent.**

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**Master Bell**

[1] In this application the petitioner (to whom I shall refer, for ease of reference, as “the wife”) seeks Ancillary Relief pursuant to a summons dated 16 November 2007.

[2] The parties are requested to consider the terms of this judgment and to inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

[3] At the hearing both parties gave oral evidence. An affidavit was sworn by the wife on 16 November 2007 for the purpose of these proceedings. An affidavit was sworn by the respondent (to whom I shall refer, for ease of reference, as “the husband”) on 21 February 2008. For the reasons I will set out later in this judgment there were difficulties in respect of both parties’ credibility. Each counsel also advanced her client’s case by means of oral submissions and relied upon the affidavits of the parties. I also had the

benefit of helpful submissions by Mrs Hyland on behalf of the wife and Miss Ranaghan on behalf of the husband. I delivered a judgment in respect of the application on 19 November 2010. Subsequently, however, counsel raised an issue in respect of the calculations implementing my decision. I therefore asked for the matter to be relisted for further submissions by both counsel and as a result now deliver this judgment in which I have corrected the calculations.

### **THE ASSET**

[4] The only asset which was the subject of the hearing was the matrimonial home. It has an agreed valuation of £207,500. The approximate equity in the property was agreed to be £91,000. The house was purchased in 2002, some six months before the parties separated. It was financed by means of a mortgage from the Bank of Scotland and a £19,000 deposit derived from the proceeds of sale from the husband's first business.

[5] The issues in the application before me were, firstly, what should be the size of the respective portions of the equity which each party should receive and, secondly, how certain borrowings which occurred after the original mortgage should be treated as between the parties.

### **THE HISTORY OF THE MARRIAGE**

[6] The parties were married on 6 July 1996. They were separated in November 2002 and a Decree Nisi was granted on 5 June 2007. There are three children of the marriage: a son aged 15, a daughter aged 12 and a son aged 8. All of the children live with the wife, although the husband has overnight contact with them on one night per week and alternate weekends. There was a dispute between the parties as regards whether, after the date of separation there was a significant period of reconciliation. The wife gave evidence that the parties made moves towards a reconciliation. The husband gave evidence that reconciliation had been achieved. I did not accept the husband's view. While the parties stayed overnight in each other's accommodation and went on occasional trips together, the evidence did not satisfy me that they again resumed that full cohabitation or mutual sharing of their lives which is the core of a marriage relationship.

### **WIFE'S SUBMISSIONS**

[7] The wife seeks that the matrimonial home be sold and the equity be divided on a 60- 40 % basis in her favour.

[8] The wife argues that, while she agreed to the first extension to the mortgage on the matrimonial home, she did not agree to the second, larger extension which was used by the husband to pay personal debts. Accordingly, she submits that the husband alone should be responsible for this.

### **HUSBAND'S SUBMISSIONS**

[9] The husband submitted that the division of the equity in the matrimonial home should be on a 50-50% basis.

[10] The husband also submitted that the wife should share responsibility for both extensions of the mortgage, she having had full knowledge of the debts which the mortgage extensions were designed to deal with and she having given her agreement thereto.

### **THE ARTICLE 27 FACTORS**

#### Welfare of the child

[11] Article 27 of the Matrimonial Causes Order (Northern Ireland) 1978 provides that first consideration must be given to the welfare while a minor of any child of the family who has not obtained the age of 18. There are three such children, aged 15, 12 and 8.

#### Income and earning capacity

[12] The wife gave evidence that her income was as follows : she received Income Support of £113 per fortnight; Child Benefit of £36.40 per week; Child Tax Credit of £138 per week and a CSA payment of £80.22 per month. In examination in chief she indicated that she had met a Mr McGlenaghan through a friend of a friend and had offered to type a few letters for him. She had accompanied him to court on a few occasions as well as he was dealing with bankruptcy proceedings. Under cross examination she said she had met him in March 2009 and he had proposed that she do some work for him. She indicated that she thought this would be good experience for her. He therefore telephones her on occasion and she goes and helps him. The last occasion this had occurred prior to her giving evidence had been some six days before the first day of the ancillary relief hearing. The wife said she generally helped him out two days a week between the hours of 10.00 am to 3.15 pm. She did this even during the summer holidays when the younger children were at a summer scheme. Despite it being suggested to her in cross-examination that this was an incredible version of events that she should meet a stranger through a friend and, at that first meeting, agree to work for him voluntarily and without payment, she maintained her version of events.

The husband gave evidence that the wife had told him she was working for Mr McGlenaghan and that he often kept the children while she worked. He also gave evidence that she seemed to have more money available than someone with just benefits at their disposal. I did not find the wife's evidence on this issue at all inherently probable or persuasive and I was not satisfied that she was telling me the truth. I therefore concluded that she has more income at her disposal than she admitted to.

[13] The husband is a self-employed bread salesman. His Profit and Loss Account for the year ending 31 October 2008 declares a pre-tax net profit of £14,120. However his drawings exceed his profits and his Balance Sheet as at 31 October 2008 shows a debit balance of £41,755.

#### Financial needs, obligations and responsibilities of the parties

[14] There was no evidence placed before me of unusual financial needs in respect of the parties. The husband currently resides in the matrimonial home. The wife and the children reside in private rented accommodation. Once the matrimonial home is sold, the husband will have a need for accommodation.

#### The standard of living enjoyed by the family before the breakdown of the marriage

[15] Both parties enjoyed a modest standard of living prior to the breakdown of the marriage.

#### The age of each party to the marriage and the duration of the marriage

[16] The wife is aged 37 and the husband is 36. The marriage lasted six years until the separation.

#### Any physical or mental disability by the parties of the marriage

[17] There was no evidence that either party suffered from any such disability.

#### The contribution made by each of the parties to the welfare of the family

[18] The evidence before me was that the contribution made by each of the parties to the welfare of the family was equal.

#### Conduct

[19] Neither party made a case that there was conduct which was such that it would in the opinion of the court be inequitable to disregard it. Although

the wife gave evidence that the husband had forged her signature on a mortgage application form, and the husband admitted this, the evidence was offered not as part of a conduct case but in the context of a submission that the wife should not therefore be held responsible for the loan.

Value of any benefit which by reason of dissolution of the marriage a party will lose

[20] There were no such matters referred to me.

Other matters taken into account

[21] Article 27 of Order requires the court to have regard to 'all circumstances of the case'. There are therefore matters which not do fall within the ambit of Article 27(2) (a) to (h) but which may unquestionably be relevant in a given case.

**CONCLUSION**

[22] Article 27A of the Matrimonial Causes (NI) Order 1978 requires the court to consider whether it would be appropriate to exercise the powers afforded by Articles 25 and 26 in such a way that the financial obligations of each party towards the other would be terminated as soon after the grant of the Decree Nisi as the Court considers just and reasonable – the 'clean break' approach. In the words of Waite J. in *Tandy v Tandy* (unreported) 24 October 1986 'the legislative purpose... is to enable the parties to a failed marriage, whenever fairness allows, to go their separate ways without the running irritant of financial interdependence or dispute.' The use of the word 'appropriate' in Article 27A clearly grants the court a discretion as to whether or not to order a clean break. The particular facts of each individual case must therefore be considered with a view to deciding the appropriateness of a clean break. I have concluded that a clean break in this case is both possible and desirable.

[23] The first issue which requires to be determined is to decide how the equity in the matrimonial home should be shared between the parties. The starting point is that after a marriage of some duration, each party can reasonably expect to receive a half share. However a party's share may be increased up or down, but only on a strict application of the Article 27 criteria. Taking into account the full facts and circumstances presented to me, I conclude that it is appropriate to divide matrimonial assets in terms of 55% to the wife and 45% to the husband.

[24] In *M v M* (Financial Provision: Evaluation of Assets) (2002) 33 Fam Law 509, McLaughlin J stated:

“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, 66.66/33.3 it means that one party gets two thirds of the assets but double what the other party will receive. Likewise, if a 60/40 split occurs, the party with the larger portions gets 50% more than the other and at 55/45 one portion is 22% approximately larger than the other. Viewed in this perspective of the partner left with the smaller portion – the wife in the vast majority of cases – some of these division may be seen as the antithesis of fairness and I commend practitioners to look at any proposed split in this way as a useful double check.”

[25] Applying the reverse check commended by McLaughlin J., I consider this to be a fair division of the assets in the light of a consideration of the Article 27 factors despite the departure from equality.

[26] The second issue to be resolved is whether any part of the mortgage extension should be the responsibility of the husband alone.

[27] It was common case between the parties that the husband had gotten himself into financial difficulties by early 2005. They discussed the question of whether the husband could borrow against the equity in the matrimonial home to deal with the debts. The wife agreed that, at a meeting in June 2005, she signed at the husband’s request an application to the Bank of Scotland which permitted an additional credit loan of £5,450 and which was secured against the matrimonial home. However her evidence was that this was the only additional borrowing she had agreed to. The husband’s evidence was that at the June 2005 meeting he had shown the wife paperwork which demonstrated the full panoply of his indebtedness. He therefore considered that she had consented to action to deal with the whole of his indebtedness. Accordingly, he applied for an additional £35,000 from the Bank of Scotland and was granted £25,446. His evidence was that this was obtained in order to deal with debts of £20,000 and to allow him to have some money to put into his business. (For example he spent almost £6,000 on a new van for his business.) He agreed that he forged his wife’s signature on the application form. He said that he did this because when the application arrived for the additional borrowing, it was marked urgent. He also acknowledged that by this point in time his relationship with the wife had broken down again and he was unsure that she would have agreed to sign the document. He

nevertheless considered that it was acceptable on the basis that he would be repaying the loan. When it was put to the husband in cross examination that he had been dishonest in completing the loan application (not only was the wife's signature forged, his statement of earnings was exaggerated) his reply was that both parties were dishonest, having for example inflated his profit figure for their original self-certification mortgage.

[28] Having heard the evidence of the parties, I am satisfied that the wife agreed only to the original mortgage and to the subsequent additional borrowing of £5,450. She did not agree to the further application for £35,000 in respect of which her signature had been forged. However this is not necessarily an end to the matter. Even if the wife did not agree to the loan, where the evidence is sufficient to show that she has nonetheless shared the benefit of some of it, it may be appropriate to consider that the parties be jointly responsible for that portion of it.

[29] The husband lived a lifestyle that was clearly beyond his means. His spending exceeded the income that his business was generating. He gave evidence that he did not want to lose the house and this was the reason he had to deal with the debts. His counsel argued that it was likely that, if the second loan had not been obtained, repossession proceedings would have been instituted and there would have been little in the way of equity left to divide between the parties. The loan therefore enable him to continue paying off the mortgage. (It could also be argued that the expenditure on a new van was important for his business and hence permitted him to continue to pay the mortgage. The wife has therefore indirectly benefited from its purchase. However, given that the van will, as an asset, remain with the husband it would not be a correct approach simply to suggest that the £6,000 expenditure should be a shared expense.)

[30] What constitutes fairness in the context of this case ? Some couple's finances are somewhat chaotic and lack a clear audit and attribution trail. In order to prepare for an ancillary relief hearing, invoices and receipts are gathered up by the parties in the hope that they will support a position to their benefit. It can be difficult for the court in such circumstances to make precise judgments as to which debts should be attributed to whom. In addition, it would be unfair simply to determine that, because the wife had not agreed to the second mortgage extension she should not responsible for any of it, regardless of whether she benefited from it or not. On the other hand, even if the wife did benefit directly or indirectly from the second mortgage extension, it may not be fair that she should be responsible for whatever direct or indirect benefit she received since she had no knowledge that that benefit was effectively coming out of the equity of the matrimonial home.

[31] I therefore cautiously determine that the wife has directly or indirectly benefited from £5,000 of the additional borrowing in respect of which her signature was forged. £20,446 of the additional borrowing is therefore borrowing of which he has had the sole benefit.

[32] As a result, once the house has been sold, the wife should receive an similar amount of £15,446 out of the proceeds. The remainder of the proceeds should be divided in the proportion of 55% to the wife and 45% to the husband.

[33] I so order.