

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

MATRIMONIAL DIVISION

BETWEEN:

\_\_\_\_\_  
DAVID McGOWAN

Petitioner

and

CHRISTABEL McGOWAN  
\_\_\_\_\_

Respondent

O'HARA J

JUDGMENT ON COSTS

[1] I have already given my judgment on the division of assets between these parties. This judgment deals solely with the issue of costs. The respondent contends that as a result of financial and litigation misconduct by the petitioner she is entitled to some or all of her costs in these proceedings.

[2] I have considered the very extensive volumes of documents put before me including the correspondence going on over many years between the parties, the evidence of the parties and the submissions made on their behalf. So far as costs are concerned the following points seem to me to be of particular significance:

- (i) It has taken far too long for this case to come to hearing. The parties separated in 2008.
- (ii) Mr Toner QC for the petitioner suggested in his opening that the respondent has been slow to launch and progress proceedings. In fact it had been agreed between the parties that the petitioner would do so but he then failed to act promptly on that agreement.
- (iii) The litigation process has been marked by repeated and substantial delays on the petitioner's side in providing discovery and basic essential information. It may be that this is partly explained by the fact that he has been represented at

various times by three different firms of solicitors but no matter how it has come about, the primary fault lies on the petitioner's side.

- (iv) It was not until July 2012 that the petitioner disclosed the property transactions in which he had been involved since separating from the respondent i.e. renting out his flat in London, selling that flat and putting a significant amount of the profit into a new holiday home in France owned by himself and his current partner. From 2009 and particularly during 2010 and 2011 the respondent was trying to see if progress could be made to settle this case. It is now apparent to her that she was doing so at a time when the petitioner was withholding information which was obviously relevant or potentially relevant to the disposal of the case despite him proclaiming his desire to engage in discussions "in a positive and transparent manner".
- (v) Despite these repeated delays and the withholding of relevant information on the part of the petitioner, the petitioner's solicitor accused the respondent in October 2013 of withholding disclosure and making no effort to expedite proceedings. In fact the most important disclosures relevant to the case had to come from the petitioner and were time and again slow and incomplete.
- (vi) FDRs which were listed in 2013 had to be adjourned because neither party was fully informed of the other's position. I do not however accept that these adjournments were solely the fault of the petitioner.
- (vii) The petitioner commissioned a medical report on the respondent's life expectancy from a consultant, which report was based on information supplied by the petitioner. At the hearing I was invited to disregard the report by Mr Toner QC for the petitioner. It was insensitive and inflammatory to obtain this report but most of all it was entirely unnecessary to do so.
- (viii) In May 2013 a policy was cashed by agreement between the parties. Despite the fact that the petitioner halved the maintenance he was paying to the respondent during that summer, it still took until October 2013 for the respondent's share to be sent to her. Even then it was only sent after a reminder had been issued by her solicitor.

[3] I accept that it is arguable in the circumstances of this case that there was some delay on the part of the respondent in advancing the case but only to a minor degree. The fault for the majority of the delay lies with the petitioner. That delay has led to the proceedings being unnecessarily protracted and therefore unnecessarily costly. I do not believe that it is appropriate to order the petitioner to pay all of the respondent's costs because there was at least one important issue about post separation pension accrual to be tried. It is my opinion however that in circumstances where there has been avoidable and unnecessary prolonging of the proceedings largely as a result of fault on the part of one of the parties, that fact

should be recognised in an order for costs. In the circumstances of this case I order the petitioner to pay one third of the respondent's costs.