

Neutral Citation no. [2008] NIFam 8

Ref: **MOR7137**

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

Delivered: **07/04/08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION
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BETWEEN:

SUSAN EVELYN STEVENSON

PETITIONER;

AND

ADRIAN STEVENSON

RESPONDENT;

AND

LISA STEVENSON

THIRD PARTY;

AND

OLIVIA MOORE

FOURTH PARTY;

AND

ROBYN BRACKENRIDGE

FIFTH PARTY.

MORGAN J

[1] This is an application for ancillary relief and property adjustment by the petitioner wife. Ancillary relief proceedings were filed by the petitioner on 12 September 2003 seeking a periodical payments order, secured provision, a lump sum order, a property adjustment order in relation to a house in Helen's Bay, County Down and a pension adjustment order. On 27 April 2004 a further summons sought property adjustment orders in relation to certain properties in Bangor and any other property in which the respondent had an interest. On 4 November 2005 the petitioner made an application seeking to set aside the payment of any part of the proceeds of a life policy to the third party and by a further summons of the same day the

petitioner sought an order setting aside any agreement between the respondent and the fourth party in relation to the receipt of part of the proceeds of that policy. The fifth party is the partner of the respondent and is joined to these proceedings because she claims an interest in some property which she occupies and holds with the respondent.

The history of the marriage

[2] The petitioner and respondent married on 28 May 1979. They had three children all of whom are now in their 20s. They separated in February 1999 and thereafter the respondent formed a relationship with the fifth party which continues. The respondent and the fifth party live together.

[3] At the time of the hearing the petitioner was 46 and the respondent 50. At the time of the marriage the respondent was working as an electrician and in 1982 he started to build up an electrical contracting business. The petitioner worked within the business until 1986. Thereafter she concentrated on the home and the children. In 1988 the respondent's mother came to live with the family occupying an adjoining apartment. The petitioner took a great deal to do with the care of this lady who was then in her 70s and greatly loved by all members of the family. The electrical contracting business appears to have prospered and in the 1990s the respondent extended his business activities to include property development.

[4] In 1994 the respondent decided to engage in some prudent financial planning by setting up a life assurance policy on the life of his mother. The policy was issued by Allied Dunbar Assurance PLC on 30 January 1995. The sum assured was £315,020 and the initial contribution was £1667 per month. These payments were financed out of the electrical contracting business. During this period the respondent also set up a recruitment business called Bangor Business Services. The two shares in this business were held by the petitioner and the fourth party. The bulk of the work was in fact carried out by the fourth party. As a result of business arrangements concerning that business in 1997 the respondent entered into an agreement with the fourth party that up on her agreeing to contribute on a monthly basis towards the payment of the life assurance policy premiums she would share appropriately in the policy payout. An agreement has been reached between the respondent and the fourth party in relation to that which was not challenged in these proceedings.

The period after separation

[5] In March 1999 the respondent consulted solicitors and had an agreement drawn up which the petitioner signed on 1 May 1999. All parties are agreed that the agreement is only of historical significance but its principal terms were as follows:

1. The respondent was to pay a lump sum of £15,000 within 14 days.
2. The respondent was to continue to discharge payments in relation to the matrimonial home for three years or as long as his mother continued to live there. At the end of the three year period the respondent was to transfer the property to the petitioner.
3. The respondent was to pay £250 per week to the petitioner for three years.
4. The ASK Electrical pension was to be equally divided between the parties.
5. The proceeds of the policy on the respondent mother's life were to be divided equally between the parties on her death.
6. Certain properties in Bangor and Belfast were to be sold in 10 years time and proceeds divided 1/6 to the petitioner, 2/6 to the respondent and 1/6 to each child of the family. The partnership entitled Victoria Developments to be dissolved and the respondent to operate as a sole trader under the same name.
7. If the petitioner sold her interest in Bangor Business Services Ltd then the respondent to be entitled to 50% of the net proceeds due to the petitioner.

[6] The petitioner continued to live in the former matrimonial home and continued to look after the respondent's mother. The respondent visited regularly and it is clear that there was substantial contact between them. In 2000 the respondent decided to move his mother who was now in her 80s into supported accommodation. On 8 June 2000 he had a further agreement drawn up by his solicitors and I am satisfied that he presented it to the petitioner requiring her to sign it as the only possible resolution which would preserve the integrity of the business and thereby ensure the prosperity of the parties. The main terms were as follows.

1. The ASK Electrical Ltd pension was to be divided equally to a value of £170,000 with the respondent entitled to anything over that value.
2. The petitioner was to receive a lump sum of £100,000 from the sale of the matrimonial home in Bangor with any shortfall in the proceeds of sale to be met by the respondent.
3. The respondent to cover of the outgoings of the petitioner's car.
4. The respondent to pay £350 per week to the petitioner until the insurance policy on his mother's life paid out.
5. The petitioner to receive 50% of the net proceeds of the sale of two properties in Bangor in June 2010.
6. The petitioner to receive 25% of the net proceeds of sale of one property in Belfast in June 2010.

7. When BBS Ltd was sold the net proceeds of sale were to be divided equally between the parties.
8. The insurance policy held on in the respondent's mother should be divided equally between the parties namely the sum due to the respondent after payment is made to the fourth party.

The petitioner consulted solicitors promptly in relation to this agreement and on 13 June 2000 they wrote to the respondent indicating that the petitioner did not consider herself bound by it. I am satisfied that this agreement was entered into by the petitioner without legal advice, without disclosure and under pressure from the respondent that she had to sign it there and then.

The campaign to hide assets

[7] The respondent believed and was entitled to believe that he was effectively controlling the distribution of assets between himself and the petitioner up to this period. In 2000 he embarked on a property development in conjunction with a business associate having purchased a plot of land at Helen's Bay on which he and his associate developed 3 houses, one of which was sold and the other 2 being retained by them as dwellings. The purchase of the site was funded from a mortgage financed out of the business. It is clear to me that thereafter he began a campaign characterised by dishonesty and deception to prevent the petitioner identifying his assets or getting access to them. I am also satisfied that the third party, who adores her father in the way that only a daughter can, has actively lent herself to this campaign both by her refusal to disclose relevant information and by the misleading and dishonest testimony which I consider that she gave in the course of these proceedings. The actions of both of these parties have contributed significantly to the length and expense of these proceedings and I will have to consider how I should address that both in the substantive aspect of the proceedings and on the question of costs.

[8] Under the terms of the life insurance policy the premiums payable in respect of the respondent's mother were escalating as indeed was the assured sum. On 28 January 2003 the respondent's mother executed a deed of appointment whereby she made the third party a 50% beneficiary of the lump sum. I am entirely satisfied that this delightful lady was a strict Brethren who led a closeted life. I accept the evidence that she had never travelled on a train and never gone on holiday. She had a small pension which she was always concerned to ensure was collected for her. Money matters such as those relating to the life assurance policy would have been entirely outside of her grasp. The attempt to suggest to this court that this lady decided of her own volition to amend the deed of appointment is grossly misleading. The insurance policy was an arrangement established by the respondent as part of an investment strategy and the premiums were paid out of the business. His mother's execution of the appointment was entirely at his direction. I have no

reason to think that she was unwilling to comply with his direction and although there was some evidence of confusion recorded in 2003 I do not consider that it is open to me to set aside this transaction on grounds of capacity.

[9] The respondent's mother died on 10 January 2005. The total sum insured had by then risen to approximately £960,000. The third party signed a claim form on 17 January 2005 and in February 2005 she received a cheque issued by the insurance company from her father for £480,601. She lodged the money to her account and continued to make arrangements for the sale of her house in order to facilitate a trip to Australia. She left Northern Ireland in May 2005 having given her father a mandate to look after her accounts. She says that he asked her for sums of money on occasion and that he transferred approximately £660,000 of her money and his out of her current account in order to facilitate a transfer to Spain. The third party says that she was well aware that there were acrimonious ancillary relief proceedings ongoing at this time and I have no doubt that she was well aware that this transaction and the respondent's control of her account was to enable assets to be hidden and that she was perfectly willing to provide her account for that purpose.

[10] In 2004 and 2005 the respondent bought 2 properties in Spain. The legal title to both properties is held by the respondent and the fifth party jointly but the evidence before me satisfies me that the purchase of these properties was funded by monies taken out of ASK Electrical Ltd by the respondent. The respondent did not disclose the existence of one of these properties in his initial disclosure and misleadingly in his company records the source of funds is described as work in progress. He accepted before the Master that the accounts were false in that regard. At the same appointment before the Master on 20 January 2006 he gave evidence that he had no idea what happened to the money which the third party received as a result of the insurance payout. It is clear that this was entirely false and was designed to distance himself from the scheme which I am satisfied he in fact set up.

[11] In or about October 2005 the petitioner became aware of the terms of the deed of appointment and made efforts to contact the third party by e-mail in Australia. The third party accepts that she did receive some e-mails from the petitioner but claims that she was unaware of the issues surrounding the deed of appointment. I am satisfied that this is entirely false. The only explanation offered by the third party for not opening and deleting without reading certain e-mails from the petitioner was because the third party realised that they might have something to do with the divorce. Having heard her give evidence I am entirely satisfied that she was in regular contact with her father in relation to this matter and that her evidence that her discussions with her father did not include discussion about this matter is again false.

The assets

[12] I now want to turn to the assets held by each of the parties. In relation to the house in Helen's Bay, Co. Down, the legal title is held in the name of the respondent and the mortgage was paid out of his bank account until the freezing order. The property is situated on the site developed by him and the business associate on which three houses were built. The fifth party claims a 50% beneficial interest. She relies on her affidavit but decided not to give evidence. She points out that her income of £200 per week derived from ASK Electrical Ltd. was paid into the same account from which the mortgage was paid. She says that it is the intention of the respondent and herself to marry. I consider that the fact that the legal title is in the name of the respondent, that he provided the initial capital and that the mortgage payments were made out of an account in his sole name as strong indicators that he is the sole beneficial owner of the property and I so find.

[13] There was considerable debate before me about the extent to which I should include a figure for goodwill in relation to ASK Electrical Ltd. There had been extensive discussions between the accountants retained on each side prior to the case. As a result of those discussions a nil figure was agreed for goodwill. That was affected in particular by a poor year in 2005. I accept the evidence of Ms Niblock that small companies involved in the construction industry such as this are subject to volatility and although there must be a question mark over of the accuracy of the accounts having regard to the established dishonesty of the respondent I am not satisfied on the evidence that I should allow any figure for goodwill.

[14] The respondent seeks to set up a liability of £39,144 to the third party on the basis of certain monies used by the respondent during 2005. I am entirely satisfied for the reasons set out above that these monies were freely given by the third party to the respondent without obligation to repay.

[15] The legal title to the Spanish properties is held in the name of the respondent and the fifth party. I am satisfied that I have no jurisdiction to deal with the legal title which must be for the Spanish courts. I am, however, entitled to consider that beneficial interests. The monies for these properties were extracted from ASK Electrical Ltd. and I have no doubt that a substantial part of the reason for this was to seek to put these assets beyond the reach of the petitioner. The respondent has demonstrated in relation to his conduct over the insurance monies that he is prepared to use the fifth party for that purpose. I am entirely satisfied that he is the beneficial owner of both Spanish properties.

[16] Another dispute concerned the insurance monies paid to the third party. For the reasons set out above I consider that the respondent and the third party conspired to try to hide these monies from the petitioner. I am

satisfied that the monies have become the property of the third party but that she is perfectly prepared to make all of those monies available to the respondent as he requires them.

[17] In relation to the assets of the petitioner the only matter of dispute was the allowance by the respondent's accountants for the balance of funds received by the petitioner and unaccounted for. The petitioner gave evidence that she had lost substantial sums in respect of a Romanian property which she had attempted to buy. This evidence did not in my view suggest any element of dissipation or attempt to secrete any asset or indicate any excessive lifestyle. I do not consider that any allowance should be made for it.

Principles

[18] The principles on which the court should act are now to be derived from the 3 House of Lords cases, *White, Miller* and *McFarlane*. These are reviewed in detail at B3 paragraphs 13 and 14 of Duckworth on Matrimonial Property and Finance. I do not intend to repeat the detailed analysis carried out in those paragraphs but I rely on it. I accept that in a case of this kind the underlying principles are those of fairness and non discrimination.

[19] There are a number of matters which I am obliged to consider by virtue of article 25 of the Matrimonial Causes (Northern Ireland) Order 1978. Both parties have demonstrated an earning capacity. The petitioner has been employed full-time as a practice manager. The respondent has available to him substantially greater assets including that sum held in the name of the third party.

[20] Each of the parties recognised their obligations to their children and each of them will have needs in relation to their ongoing lifestyles which were comfortable prior to the breakdown of the marriage. The length of the marriage and the contribution by each in terms of home life and work strongly points to an equal division of assets. That applies with some force in relation to the care of the respondent's mother by the petitioner. Neither party suffers physical or mental disability which should affect the Order.

[21] The conduct of the respondent in seeking to dissipate and hide assets has been outrageous. It is entirely proper to bring into account in full the amounts which he sought to hide in the third party's name. I have considered whether there is any further adverse inference I should draw against him in relation to other undisclosed assets but I do not find an evidential base for so inferring.

[22] I bear in mind that these parties have not lived together for a period of some nine years and each of them has moved on in their lives. The respondent has argued that in particular the property development carried

out by him as a result of which he established the matrimonial home is an asset generated after the breakdown of the marriage and consequently ought to be treated differently from matrimonial property. I consider that there is some force in this submission in relation to this asset because although the funding was essentially generated by the business which had developed during the marriage there was a real development venture and I will make some allowance for it. I do not consider that the same can be said of the Spanish properties. Those properties were simply substituted for matrimonial property. Funds for these investments were generated from the business which was built up during the course of the marriage. Even if it can be said that they are not matrimonial assets I consider that there is no reason to depart from the principle of equality in relation to their consideration.

[23] Applying these principles I consider that I should seek to achieve a clean break between the parties with a 50/50 split in relation to the assets except for the house in Helen's Bay, Co. Down which in my view should be split 55/45 in the respondent's favour. I am concerned that the valuations in relation to the properties are now some considerable number of months old and I intend, therefore, to allow a further 14 days for each party to submit any further valuation evidence in writing in relation to the properties. In light of those valuations I invite the petitioner and respondent to submit, without prejudice, proposed draft orders to give effect to this judgment by 24 April 2008.

[24] I will promulgate a final order in this case on 28 April 2008. On that date I will hear submissions in relation to costs. I particularly want to be addressed in relation to my powers to order costs against the third party in favour of the petitioner having regard to the way in which I have found she has intermeddled in these proceedings contributing to the length and expense of them.