

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

<i>Delivered:</i> 8 February 2013
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
FAMILY DIVISION

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BETWEEN:

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Petitioner;

and

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Respondent.

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**MASTER REDPATH**

[1] The late Charles Haughey, formerly Taoiseach, when describing an unusual set of circumstances coined the acronym GUBU; standing for Grotesque, Unbelievable, Bizarre and Unprecedented. That acronym could apply to this particular case.

[2] It is in short the most unusual, by some distance, ancillary relief application that I have heard since I started hearing such applications in 1996.

[3] Amongst the more singular features of the case, and not in any particular order, are as follows:-

1. The husband alleged that the parties had been in a brief relationship for some months, eighteen years prior to the marriage, that some considerable time later they had got together again, been married, lived together for a short

period of months after which time they separated and divorced.

2. It was the case of the wife that they had been in a committed, cohabiting, relationship throughout that time amounting to a period in excess of twenty years.

3. The wife alleged that the petitioner husband had divorced her in Ballymena County Court without her knowledge; that he had fraudulently got her to sign various documents agreeing to the divorce and to a financial settlement under which she received virtually nothing, also without her knowledge.

4. The husband claimed that she was aware at all times of these transactions.

5. The case was made on behalf of the wife that the husband had transferred, what was on her case, the matrimonial home into his sole name upon payment of £20,000.00 to her (this being a gross undervalue).

6. This was done, on the wife's account, in the following circumstances. She said the husband came to her in December 2005 and told her that a friend had tipped him off that he was about to be investigated by the Assets Recovery Agency concerning the provenance of cash held by him. He told her he would have to get the property they were living in into his sole name. He also told her that they would have to divorce but once the Assets Recovery Agency had gone away they would remarry!

7. The husband was dismissed from his employment with Northern Ireland Water as a result of sending Freedom of Information Enquiries concerning a post he had failed to secure on his own behalf by using assumed names.

8. Despite this he seems to have been re-employed in essentially the same job by the Roads Service in the Department of Regional Development before the appeal procedure relating to his dismissal had finished.

[4] I will not go into detail concerning the assets in the case at this stage but the value seems to exceed £600,000.00. The reason that I am not going into detail is that I have been asked to set a percentage figure in the circumstances of this particular case and allow counsel to endeavour to agree a division of the assets in the most sensible way that can be devised. The bulk of the assets are in the same vicinity and it would be much better if they could be divided up by agreement rather than the court endeavouring to carry out what might prove to be an artificial exercise leading to an unworkable solution.

[5] Despite all of the above, in the end the case really came down to two points. The first concerned the credibility of the parties concerning the length of the pre-marital and indeed, post-marital cohabitation. The second issue was the effect that any pre-marital cohabitation, and the length of the marital cohabitation has on the proper division of the assets in the case.

[6] Both parties had a significant number of affidavits supporting their case and this in some respects reflects some of the uncertainties in the case. One of the husband's witnesses, it has to be said, is now serving a substantial sentence of imprisonment. However at the end of the day it came down to evidence given by the parties in court.

[7] It was my misfortune to have to listen to the evidence of the husband over the course of some days. He lied consistently and he lied persistently. Indeed if he were to tell me that today was Friday I would have to go and check. It would be futile to list the full number of untruths that he advanced from the witness box. Amongst the very very many are the following; and this is only a very small sample:-

- (i) Mr O'Donoghue QC for the wife opened the case by showing the wedding DVD in which the petitioner husband thanked his new wife for putting up with him for the last eighteen years. This did not sit well with his evidence that for the vast bulk of that eighteen years he had no relationship with his wife other than as a friend.
- (ii) Having heard evidence about the emails that were sent requiring the Department to answer the Freedom of Information Enquiries concerning the post that he did not get I formed the settled view, despite his denials, that he was undoubtedly the source of these emails which were being sent from a house which he claimed he very rarely entered and from a computer that he claimed he did not use.
- (iii) At one stage of the cross-examination Mr O'Donoghue put a Christmas card to the husband from one of the husband's brothers sent two years after the husband claimed he and the wife were separated. This card was addressed to both the husband and the wife. When asked by Mr O'Donoghue had he not told his brother that he had been separated for two years he conceded that he had not. When he was asked why he had

not told his brother his reply was “sure he lives in Comber”. The petitioner husband lives in Dunloy and during this period appeared to be visiting a lady in Saintfield.

- (iv) In July 2006 the relationship effectively ended whenever a lady with whom the husband was in a new relationship appeared at the house in which the wife lived. This lady queried why the wife was on the premises and told the wife the premises were owned by the husband. This apparently came as news to the wife who knew nothing about that. It was also put to her by this lady that she was divorced. This also came as news to the wife. The wife knew that the husband was at that very time pouring concrete into a cattle pen he was erecting in the fields. She gave this lady a pair of wellington boots to replace her shoes and the two of them walked down the field to confront the husband. One would have thought that for most men this would have been a fairly cathartic experience and one that they might remember. The evidence of the husband was that whilst he remembered the two ladies coming to see him he did not recall what was said. I found that entirely unbelievable.
- (v) Despite knowing, though she did not, that he had obtained a Decree Nisi, the husband, post-divorce attended IVF consultations with the wife and looked into the possibility of fostering.

[8] As I have said this was only a flavour of the evidence that I had to listen to in this case from the husband and this evidence was given despite repeated warnings from myself.

[9] That said some of the evidence of the wife was also a little odd. Despite hearing evidence from the two solicitors involved in the transfer of the house and the divorce, both of which it was alleged by the wife took place without her knowledge, it was difficult to come to any precise view on how this could have happened. However, the solicitor involved in the conveyance of the house never saw the wife. There were aspects of the speed with which paperwork in the divorce was dealt with which gave me cause to doubt yet again the husband’s evidence. For instance the acknowledgement of service was returned a day after it issued from the matrimonial office. Furthermore the fact that the post in the case was delivered to a post box some distance from where the wife was living and to which the husband had access led me to the clear view that she may not have seen a great deal of documentation in this case. Furthermore at the end of the day it would appear that the husband consented to the rescission of the decree in the County Court and that in itself must be taken as an admission that all was not above board with the divorce.

[10] Accordingly I much preferred the evidence of the wife to that of the husband.

[11] Her position is best set out in paragraph 4 of her affidavit dated 18<sup>th</sup> May 2009 which I will set out in full:-

“In relation to the allegations that we were not together, these are absolute nonsense. The Petitioner and I lived together as husband and wife from 1986 to 2006. The petitioner states our relationship ended shortly after it commenced however I have copies of a cutting from newspapers in 1988 describing us as a couple in 1988 when the Petitioner was involved in a sectarian attack and I am cited as his ‘girlfriend’. I have previously referred the Honourable Court to the Valentine card he sent me in 2006, saying that 20 years were the best. I have countless other pieces of evidence proving we lived together as a couple including a copy of our wedding video where both the Petitioner and his various family members referred to the length and nature of our relationship. I can provide the court with a copy of our wedding video. I have Christmas Cards from all our family members for consecutive years addressed to both of us. I have many cards from him for birthdays and Christmases. I do not believe the petitioner was prompted into buying all these cards by a newsagent. I have little notes he used to write to me and leave around the house [using] “Wee-face” a special name he had for me. I have invitations prior to our marriage where we were invited to various events as a couple, I have numerous photographs of us as down through the years couple including ones in 1992 at a friend’s wedding and 1995 taken by a newspaper from a party held in Ballymoney when his brother returned from South Africa. I have a photo of the petitioner’s graduation. We did spend our wedding night together. We were together as a couple through this time and for the petitioner to claim we were just ‘good friends’ is simply ludicrous. We did not go on many holidays as we were always busy with the land and farms trying to make a better life for ourselves. We lived in our own home for the duration of our marriage not eight weeks as indicated by the petitioner. I put the petitioner on strict proof of all of these other women he speaks of in his affidavit particularly [S] and would be obliged if he can confirm to the Court that these women will be attending court to give evidence in relation to said relationships”.

[12] All of the paragraph above was amply proven by the evidence, oral and documentary, presented to me.

[13] This then leads us on to the issue of what effect pre-marital cohabitation has on this application for ancillary relief.

[14] It would appear that the authorities would suggest that it is a matter that should be taken into account in the court's carrying out of the Article 27 exercise. It is something, in short, that the court must have regard to in the exercise of its discretion.

[15] This matter was considered by Mr Justice Gillen in the case of H v W [2006] NI Fam 15 when he stated at paragraph 21:-

“(i) I am satisfied that the period that the parties cohabitated prior to the marriage i.e. between October 2000 and May 2003 moved seamlessly into marriage. I believe the practical affect is to make the length of the marriage to which I should pay attention a total of fifty one months or thereabouts. This approach accords with a number of recent cases including M v M [2005] 2 FLR 533, CO v CO [2004] 1 FLR 1095 and Miller's case”.

This situation was re-enforced in a number of English cases, possibly most notably in GW v RW [2003] 2 FLR 108 per Nicholas Mostyn Q.C. sitting at that time as a Deputy Judge; he states at para 33:-

“I cannot imagine anyone nowadays seriously stigmatising pre-marital cohabitation as 'living in sin' or lacking the quality of emotional commitment associated within marriage. Thus, in my judgment, where a relationship moves seamlessly from cohabitation to marriage without any major alteration in the way a couple live, it is unreal and artificial to treat the periods differently”.

[16] However, it is also clear from such cases as Hewitson v Hewitson [1995] 2 FCR 588 that a period of cohabitation cannot necessarily be regarded in exactly the same light as a period of marriage. In Foley v Foley (1981) 2 FLR 215, the English and Welsh Court of Appeal held:-

“A period of cohabitation will not necessarily have the same effect as a period of marriage and it is not part of the ‘duration of marriage’ under Section 25 (1)(d) of the 1973 Act but the court must have regard to all the circumstances of the case and where, during a period of cohabitation preceding the marriage, the wife is a good mother and housewife and helps to build up the family assets this will be a weighty factor to be taken into account ...”.

However in Hewitson Butler Sloss LJ states at 592E:

“The rights of one who enters into cohabitation without marriage are substantially less satisfactory than under our matrimonial legislation”.

[17] Hewitson and Foley are by now somewhat aged cases in ancillary relief terms and as was pointed out in White v White [2001] 1 AC 596 the law in this area is not moribund and must move to reflect changing social values.

[18] Having heard the evidence in this case I have no doubt that the wife in this case built her life around this relationship. The husband did not, but undoubtedly misled the wife into thinking he did, even to the extent of attending IVF consultation with her after the first ‘divorce’ and making initial enquiries concerning the possibility of fostering as outlined above.

[19] How then do we apply that to the facts of this particular case? There are no children of the marriage and I am of the view having heard a lot of evidence in the case that the pre-marital cohabitation may not always have been as seamless as the wife indicated in her evidence. I have no doubt that the husband was involved in numerous other relationships during the period prior to the marriage, and indeed after the marriage, although the respondent wife may have known very little of these. However, I have no doubt that he did

spend quite a lot of time, not at the house that they had purchased, but at his mother's house. However taking that all into account I have no doubt that the proper approach to this case is that the house that they have purchased to live in as a marital home including the 60 acres attached to it for the purposes of any exercise in dividing the assets should be divided 50-50 as to value. Any other assets that were acquired by the petitioner husband (and that is the bulk of the assets) should be divided 70% to him and 30% to the respondent wife to include cash assets and a property purchased in Antrim. I had in mind a slightly higher figure for the wife than 30% but I have taken two things into account. It is almost inevitable, though I am prepared to hear some further submissions on the point and consider relevant correspondence, the husband will, given how he conducted the case, have to pay the bulk of the costs of these proceedings and those costs run well into six figures and may reach £250,000. I have also taken into account the fact that the husband paid a figure in the region of £31,000.00 to his former solicitor who, it is alleged, did not pay counsel and effectively absconded with the money. Although a claim may well rest with the Law Society for the return of those monies I am not convinced that that will happen. He has therefore effectively had to pay twice for his legal representation. In the event that he is condemned in costs my view is that given the continuing fall in property prices he may well be very fortunate to have any assets left whatsoever at the end of this case.

[20] I will now adjourn the matter for a month to see if some agreement can be reached on costs and the division of the assets in the case and will sit again in the matter on the 8<sup>th</sup> March 2013.