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1985 No. 868, Sp.

THE HIGH COURT

IN THE MATTER OF THE MARRIED WOMEN'S STATUS ACT 1957 AND IN THE MATTER OF THE FAMILY HOME PROTECTION ACT 1976 AND IN THE MATTER OF THE PARTITION ACTS 1868 TO 1879

B.

.v.

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Judgment of Mr. Justice Mac Kenzie delivered the 22nd day of April 1986

In this action the Plaintiff (wife) brings proceedings for a declaration that she is entitled to financial interest in the house and contents of the family home and asks for an Order determining and fixing the amount of her interest or share.

It is necessary briefly to set out the history of the marriage which took place in September, 1967, of which marriage two children were born, one in February, 1971 and the other February, 1974. At the time of the marriage the husband was a young professional man at the commencement of his career. The wife was in skilled employment working as a Public Relations Officer for a prominent business in Dublin. She claims that at that time the husband was earning very little and that I accept.

They commenced life in a flat, the property of a friend of the wife and she claims she made the rental payments in respect of their premises.

Shortly afterwards they moved to another flat where they lived for over a year.

All this time the Plaintiff was working full-time and

claims that she paid her earnings towards the everyday living of the couple including rent.

In 1970 a dwelling-house was purchased in South County Dublin for a sum in the region of £5,000. Insignificant divergences of this amount were given by the parties.

It is clear, however, that in respect of the purchase price £1,000 was given to the husband by his mother and the remainder of the purchase money was financed by a loan which was in effect a mortgage. The repayments were made by the husband.

The husband claims that he paid the rent due on the flats referred to above and that in addition he gave his wife a weekly sum. He also claims that he paid the E.S.B. and other like bills.

After the purchase of the house alterations and refurbishing were carried out and these were paid for by the husband.

As the husband progressed in his profession the parties decided to purchase a substantial house again in South County Dublin. The price was £47,500 or thereabouts. The sale was completed by a payment of £27,500 mainly from moneys realised from the sale of the first house and the balance was a loan which the husband negotiated with the Royal Trust Repayment Scheme for £4,450 per year. All payments in respect of the mortgage have been discharged by the husband.

After the purchase of this substantial house the following sums were expended

1. Central Heating £3,000 to £4,000
2. Bathroom and main bedroom £6,000
3. Conversion of study £3,000
4. Conversion of spare bedroom £3,000
5. Kitchen £7,000
6. New luxurious bathroom £20,000

All of these were discharged by the husband.

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An Aga cooker costing approximately £2,000 was installed. The wife claims that she paid for this by monthly payments to Campbell & Sharpe dealers in that type of stove. The husband claims that he made these payments.

The husband claims that he paid for such gardening as there was. He paid the rates when they were operative, the ground rent, the E.S.B. and the telephone and the monthly bill from the butcher in addition to giving his wife a weekly allowance which weekly amount, he says, went up year by year.

In addition he recounted numerous holidays which were at Easter and Whit and alternative years in the summer, all of which he paid for.

After the break-up of the marriage, he claims that she showed him a document from a financial institution showing that she was the holder of "Grow Bonds" valued £10,000.

He said that when the marriage broke up practically all the furnishing was removed from the house. He claims she is in possession of an enormous amount of furniture. He claimed that the entire house, apart from the study, had to paraphrase his evidence been stripped apart from carpets and curtains. He went so far as to say that this included lights in the hall and the principal bed. It was his evidence that anything that the wife purchased for the house was now in her possession.

The wife's version of the marriage is that she paid the initial rents of the two flats. At that time she was in permanent employment, as I said, with a prominent business firm in Dublin City at a salary of £100 a week. Because of her position she said she was able to purchase goods, including furnishings, at a substantial discount.

Before they took up residence in the dwelling-house the

subject matter of these proceedings her employment had become part-time with another prominent firm in respect of which she was paid a fee of £600 a month. She also made in the year of the break-up of the marriage 1983, approximately £2,000 a year on independent consultancy work giving her an income of some £8,000 a year.

Her case distinctly amounts to the proposition that right from the commencement of the marriage she made such a significant contribution to the expenses and expenses incidental to the family and marriage that the husband was enabled to discharge the mortgage repayments and to accumulate the other capital outlays more readily than he could have done if at all had she not put a substantial portion of her earnings into the furtherance of the family life and marriage. The husband refutes this. He claims she made no financial contribution to the marriage, that he never knew what her income was, he never discussed money matters with her and that she made no contribution to the household budget. He claimed that she had other interests on which she spent her money, namely, a passion for horses.

I was referred to the following cases.

1. C. .v. C. 1976 Irish Reports, page 254
2. MG. and RD. Judgment of Mr. Justice Keane delivered the 28th of April, 1981, unreported.
3. R. .v. R. 1979. Unreported judgment of Mr. Justice McMahon
4. W. .v. W. 1981 Irish Law Reports monthly, page 202.

W. and W. was relied upon by the Plaintiff where it was stated by the then President

"Where a wife contributes either directly towards the repayment of mortgage instalments or contributes to a general family fund thus releasing her husband from an obligation

which he otherwise would have to discharge liabilities out of that fund and permitting him to repay mortgage instalments she will in the absence of proof of an inconsistent agreement or arrangement be entitled to an equitable share in the property which had been mortgaged and in respect of which the mortgage was redeemed approximately proportionate to her contribution to the mortgage repayments."

The facts in the present case are different to those facts found in W. .v. W. where at the time of the marriage both parties applied their savings to stocking and improving a farm. The wife brought horses to the land and indulged in successful bloodstock activities and took an active part in the work on the lands and paid £1,800 into the farm bank account. As a result many improvements were made. A modern milking parlour was erected and equipped, the finance for which came from a mortgage on the lands. The mortgage was redeemed.

In W. .v. W. the wife claimed the equitable interest on the basis of her industrial, financial and bloodstock contributions which made income for the farm out of which all encumbrances were discharged and her work on the farm added to the farm income out of which improvements were made.

On the principle outlined above it was held the wife's contribution during the period when charges were being redeemed was 50%. Therefore her beneficial interest was held to be half of the proportion represented by the amount of the charges redeemed.. her claim for a beneficial interest based on contribution to improvements was not sustainable. On considering the facts of the present case and on the probabilities the wife has not proved any direct contribution towards the redemption of the mortgages

charged on the two family homes. Nevertheless, Mr. Finlay relied upon the judgment of Kenny J. in C. .v. C. above where it was said at page 257 that the contributions may be either by payment to the husband of moneys which she has inherited or earned or by paying the expenses of the household so that he has the money which makes it possible for him to pay the mortgage instalments. The Judge pointed out that

"When the spouses are living happily together, they do not think of stipulating that payments by one of them are made to acquire a share in the matrimonial home or furniture."

Mr. Kelly for the husband submitted to me that taking the Plaintiff's own case and accepting every part of it on the law she was still not entitled to the relief which she claims in this action.

What the wife claims is as follows:

- (a) She paid the rent for the dwellings before the first house was purchased.
- (b) She bought furniture for the houses.
- (c) She devoted all of her money to the family and for food.
- (d) She purchased the Aga cooker for £1,500 and paid what was due in respect of that.
- (e) She was building up a home. She bought her own clothing and food so that the husband would have had the use of moneys which he otherwise would have to pay.
- (f) She claimed that all she earned was put into the house, that her husband didn't give her enough to keep the house going.

And he, Mr. Kelly, relies on the judgment of Keane J. in MG. .v. RD. referred to above.

In that case the Judge came to the conclusion that the Plaintiff's contribution to the joint expenses of the household over four years of marriage amounted to one fifth of those expenses:

the wife being an Air Hostess and the husband in that case a Bank Official. The law was analysed in great detail by Keane J. in that case.

His conclusion was that

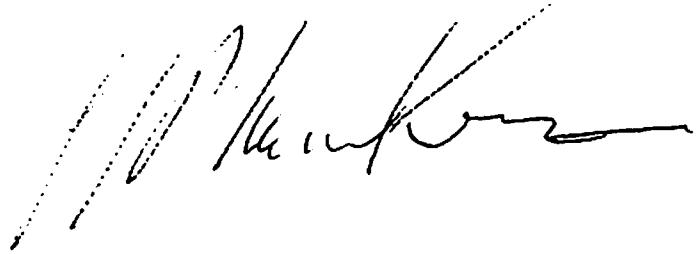
"The parties lived together for less than four years. The Plaintiff was working before her marriage and continued to work after it. She maintained an independent bank account. There is nothing in the evidence to suggest that either she or the Defendant thought for a moment that the fact she was regularly using her income to defray expenses for which he was responsible meant she was acquiring a part ownership of the house in which they were living. Both the Plaintiff and the Defendant were obviously used to a reasonable standard of living before the marriage. The Plaintiff by making the payments she did helped to ensure that something approximating to the same standard of living was enjoyed by both of them after the marriage. That is all perfectly understandable but the fact remains that there is nothing in the evidence to suggest that prior to the break-up of the marriage it crossed the mind of either party that any change in the legal ownership of the property would result. Yet the contributions amounting as I have found to approximately one fifth of the joint household expenses can hardly be regarded as insignificant. It follows that if the law in this country were that substantial contribution by a wife to household expenses which were the responsibility of the husband and which left him with more money to repay mortgage instalments automatically entitled the wife to a beneficial interest in the relevant property the Plaintiff in the present case will succeed. For the reasons I have

given I am satisfied that this proposition does not correctly state the law and I accordingly dismiss the Plaintiff's claim."

In MG. and RD. the evidence of the contribution to the family fund and the alleviation of the mortgage repayments thereby was more probable than in the present case, and in the case of the President W. and W. the financial contribution of the wife to the family fund to the advancement of the family farm and bloodstock business were extremely evident and substantial.

I am obliged in these proceedings to follow the judgment of Mr. Justice Keane which as I have said represents the law as it presently stands in this country which as far as the wife is concerned is victorian and unjust. Until there are changes either by legislation or by a Supreme Court decision I must adhere to it and regret that I must dismiss this action.

22nd April 1986

A handwritten signature in dark ink, appearing to be 'M. Keane', written in a cursive style.