

**THE HIGH COURT
FAMILY LAW
IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT, 1996**

BETWEEN

M

APPLICANT

AND

M

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Jordan delivered on the 29th day of April

2022

1. This matter comes before the court in relation to a jurisdiction issue. The position is that proceedings were issued in the Circuit Family Court in Dublin bearing record number 01278/2021 on 23rd July, 2021 pursuant to the Family Law Divorce Act 1996.

2. In para.1 of the endorsement of claim, the applicant pleads that she was married to the respondent in Cork in November, 2012 and it is pleaded that the respondent carries on his occupation in the City of Dublin and within the jurisdiction of this honourable Court.

3. The position is that the respondent is a solicitor by profession and is employed in one of the big firms. The position in relation to the issue of jurisdiction is that there was an objection to jurisdiction which was dealt with by the Circuit family judge on 20th October, 2021. Having heard the submissions on behalf of both parties the judge struck out the divorce proceedings and at para. 2 refused the application of the applicant in relation to jurisdiction, noting that the applicant's legal representatives made reference to s.38(3) of the Divorce Act 1996. Against that determination, the applicant has appealed to this Court and both sides have filed affidavits and exhibited documentation which the court has read and considered carefully. The position is that the Family Law Divorce Act 1996 in s.38(3) states that: -

“The jurisdiction conferred on the Circuit Family Court by this Act may be exercised by the judge of the Circuit in which any of the parties to the proceedings ordinarily resides or carries on any business profession or occupation.”

Just in relation to that last section, the reference is to “any business profession or occupation”, and an occupation is simply a job or a profession.

4. The applicant contends that the respondent does work as a solicitor in Dublin and in fact the respondent in his own affidavit confirms that he does work as a tutor for the Law School of the Law Society on an occasional basis. That is confirmed by a letter from the Law Society of 20th August, 2021 which is exhibited in the respondent's affidavit. It does seem quite clear in relation to that work that it is very occasional, yields perhaps €2,000 or so per annum and is a small commitment by the respondent, perhaps as tutoring goes, largely for the prestige of the work and to keep himself up to date in the area in which he is tutoring in. I accept that that is likely to be so. It also seems that during Covid that work was done largely remotely and it

appears to be so at present. But whether or which the position is that the respondent has this job as a tutor with the Law Society in Dublin.

5. Secondly, insofar as the respondent's work as a solicitor is concerned, his own profile on the internet describes the work he does, and again I appreciate that this is a profile generated probably by the respondent himself and is in the nature of things there to generate business and good publicity with a view to marketing himself as a solicitor and his firm as a reputable solicitor's firm, but nonetheless it lays out his experience in commercial litigation e.g. in alternative dispute resolutions, judicial review cases, injunctions, cyber claims, commercial disputes and personal injury actions.

6. The reference to the Superior Courts and the reference to the Commercial Court is of some significance because the Superior Courts, the High Court, the Court of Appeal and the Supreme Court are based in the Four Courts here in Dublin apart from the occasional provincial sittings. The position in relation to the work which the respondent does in the Commercial Court is significant in that the Commercial Court sits exclusively or almost exclusively, I think it is exclusively, but it may be that there are occasional sittings at provincial venues which I am unaware of, but the Commercial Court does sit throughout the year at the Four Courts here in Dublin.

7. It seems to me that I would be doing a significant injustice to the plain meaning of the section if I was to hold that the Circuit Family Court in Dublin does not have jurisdiction to entertain the proceedings brought before it. The principal rule of statutory interpretation is that the words of the section are given their plain and ordinary meaning. The section is very straightforward. The jurisdiction conferred on the Circuit Family Court by the Act may be exercised by the judge of the Circuit in which any of the parties to the proceedings ordinarily resides. We are not dealing with

ordinary residence here, we are dealing with the next part, or carries on any business profession or occupation. How could I find that the respondent does not carry on any business profession or occupation in Dublin? It would be doing an injustice to the plain meaning of the Act if I was to find that because he does work in Dublin. He is a solicitor in a large firm and he does work in the Superior Courts as he says himself in his profile and in the Commercial Court in addition to working as a tutor on an occasional basis at the Law School of the Law Society in Dublin. It does not seem to me that the decision of the Circuit Court judge is correct. I can understand the arguments concerning the mischief that might be caused if litigants were to set about forum shopping and trying to find the most beneficial venue for proceedings and using for that purpose a tangential or very minor connection with the jurisdiction chosen in terms of the business profession or occupation of the respondent. That is not what we are dealing with here. It might well be if such an application as this came before the court where somebody was clearly clutching at straws in terms of trying to ground jurisdiction, it may well be that the court would have to adopt a very different approach in order to prevent an abuse of the process and in order to prevent the mischief of forum shopping. That is not the situation I am dealing with here. This is a situation where the respondent works as a solicitor in Dublin, granted he is based in the South West, but on his own account he works in Dublin as a solicitor when advising clients, instructing counsel in the Superior Courts and in the Commercial Court and indeed when tutoring in the Law School of the Law Society. I cannot ignore the plain meaning of the section, so I am reversing the decision of the Circuit Court judge and I am finding that the Dublin Circuit does have jurisdiction to entertain and deal with the Family Law Civil Bill bearing record no. 01278/2021 which Family Law Civil Bill was issued on 23rd July, 2021.

8. In relation to the High Court proceedings which have been issued on behalf of the applicant *i.e.* the proceedings bearing record no. 2021/115M and dated 28th October, 2021, I am striking out those proceedings with no further order and I will hear the parties in relation to any further matters which arise.

9. [Further submissions were then made and particularly in relation to costs].

10. I am going to make no order as to costs in relation to the High Court proceedings and I am going to make an order for costs in favour of the applicant in relation to the costs of the appeal. I indicated that I would either measure the costs or award a percentage of the adjudicated costs to the applicant. The respondent, having consulted with his legal team, has indicated that his preference is for an order that the costs be adjudicated and, on the basis, that I would set a percentage of the adjudicated costs as the liability of the respondent to the applicant. I will direct that a percentage of the costs of the appeal hearing in this Court be awarded to the applicant, Ms. M. I will direct that following adjudication of the costs of the appeal and having regard to the fact that the applicant is successful on the main issue, the issue of jurisdiction, that the respondent pay to the applicant 75% of the costs adjudicated.

11. I am having regard to the fact that I have struck out the High Court proceedings instituted by the applicant with no order as to costs and I am also striking out the respondent's motion concerning those proceedings which is a motion asking that those proceedings be struck out by reason of duplication. I am striking out that motion with no order as to costs.

12. I have heard the application for a stay on behalf of the respondent. The application for a stay is an application for a stay on payment of the costs which have yet to be adjudicated - or 75% of the costs as adjudicated - until the conclusion of the proceedings. It seems to me that it would be inappropriate to grant a stay in the

circumstances. The fact of the matter is that what has arisen is as a result of the contesting of jurisdiction in the Circuit Court - which to my mind should not have occurred. Both parties have incurred significant costs as a result of what I consider to be, and have found to be, a misconceived objection to jurisdiction in the Circuit Court. The position is that the applicant is not working and she is here with private representation. I have awarded her 75% of the adjudicated costs of the appeal hearing which no doubt will take a period of time to have adjudicated, the sooner the better in my view, but in any event I am refusing the application for the stay in relation to the payment of those costs. I am refusing the application for a stay on payment of 75% of the adjudicated costs pending conclusion of the proceedings. In other words, liability for payment of those costs arises when the adjudication process is finalised.