THE HIGH COURT

[2023] IEHC 160

[2022 No. 66 CAF]

IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 AND IN THE MATTER OF THE FAMILY LAW ACT 1995

BETWEEN

A

APPLICANT

–AND–

A

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 14th March, 2023.

SUMMARY

This is an appeal primarily concerned with alleged contempt, discovery, and maintenance.

1. Mr A and Ms A are an estranged couple. Mr A is in a new relationship. Mr A and Ms A have four children, two of whom present with particular needs. In the course of the proceedings

between them there have been a number of orders made by the court below. In anticipation of the as yet to be completed Circuit Court proceedings certain documentation was sought in the Circuit Court. The matter has now come on appeal to this Court.

2. By notice of motion of 23rd July 2021, Ms A has come seeking the reliefs identified in italics below. I set out in the court note after each requested order the position that pertains by reference to the evidence now before me:

> *"(1) An order that the Applicant is in contempt of court in failing to comply with the Court Order, made by* [Stated Circuit Court Judge] J. *on the 18th February 2019…that the Applicant discharge the amount of* [redacted] *to the Revenue and* [Stated Lender].
>
> [Court Note 1: The order in question provides that:
>
> "*The Court doth order (1) An order waiving the provisions of the undertaking of the Applicant to enable…[K] shares [to] be realised and authorise payment of* [redacted] *to the Applicant assuming the value of the shares is* [redacted] *for [the] purpose of dealing with Revenue and [Stated Bank]...*"
>
> This order only goes so far. It does not state what is to happen if the Revenue and [Stated Bank] are not satisfied to take those monies. As it happens the evidence before me is that there were proposals put to the Revenue and [Stated Bank] to satisfy a debt. However, these proposals did not meet with approval: the Revenue and Stated Bank were not satisfied to accept the monies in full discharge. In those circumstances the monies have been retained. I do not fully understand why the monies could not have been paid 'on account' to the Revenue Commissioners and/or [Stated Bank]. However, I do not see any contempt to present in this regard: the monies were released to enable Mr A to deal with the Revenue and [Stated Bank]. In effect, he received an answer of 'no deal' to his proposals and did not pay the monies over; so be it.]

(2) *An order that the Applicant and/or his solicitors,* [Stated Solicitors]…*return the monies discharged by the Applicant to them in the amount of* [redacted]....to enable the Respondent's Solicitors to discharge the…Revenue debts and [Stated Bank] debt…

[Court Note 2: There was an indication from Mr A's side that the [redacted] would be used to settle certain of his legal fees. I was relieved at the hearing to learn that this had not been done. That would have been a most serious matter if it had been done as that is not what the monies were released for. In fact the monies are being held in the client account of Mr A's solicitors and the clearest undertaking has been given that those monies will be retained until the proceedings are concluded. I respectfully decline to vary the order of 18th February so as to allow the onward payment to the Revenue/[Stated Bank] that Ms A contemplates. That said, there was suggestion from Ms A's counsel that if the said monies were held in the client account of Ms A's solicitor (subject, I assume, to an undertaking not to spend, dissipate, or use same in any way without express prior order of the court) that may assist Ms A in her efforts to negotiate an arrangement with the bank as regards the family home. I do not quite understand how this would strengthen Ms A's negotiating position. Either way the monies are still held subject to an undertaking to the court, so they are in no way monies that are ultimately assured of passing to Ms A. However, if the view from Ms A's side is that it would assist Ms A's negotiating position, I have no reason to believe otherwise. *All that said*, *however,* I see no reason why the [redacted] should not now be paid to Ms A in her own right in part-settlement of the amount of outstanding maintenance owed to her by Mr A. So I propose to order that such payment be made. (I am mindful that this proposed payment was not expressly canvassed at the appeal and will hear the parties further in this regard should they wish.)]

(3) *An order that the Applicant clarify and provide vouching as to how much monies he discharged to his…solicitors…in respect of the within proceedings.*

[Court Note 3: This would be a fair order if the [redacted] had been paid to Mr A's solicitors. But it was not. In light of Court Note 2 this order is no longer required.]

(4) *An order that the Applicant is in contempt of court in failing to comply with the Court Order made on consent on 22nd July 2019…*[whereby] *the Applicant was to discover the following documentation pursuant to the said Court order and failed to do so…*

(i) [K] *Account…245 of the position on 17th February 2019 to 3rd April 2019….*

(ii) [K] *Account 800 trading position on 17th February 2019 to 27th February 2019….*

(iii) *all accounts* [in which] *the Applicant placed the monies/encashment of shares,*

(iv) *and /or all cash accounts relating to such account,*

(v) *documents on headed paper from the appropriate financial institutions pertaining to the Applicant encashing the following shares as and from 15th September 2017…*[shares stated].

[Court Note 4: It is perhaps useful before considering point (4) and certain other of the paragraphs below to recall briefly what, to this time, *has* been discovered by Mr A to Ms A in respect of the [K] accounts. I have been referred (in the book of documentation handed up in court by counsel for Mr A) to

– a letter of 26th June 2019 from Mr A's solicitors to Ms A's solicitors stating how much the total amount received from the liquidation of the K shares and explaining how the amounts were to be distributed. Vouching is provided, including vouching from [K] Bank.
– a further letter of 19th July 2019 issued by Mr A's solicitors to Ms A's solicitors and enclosing a large amount of vouching documentation. In the letter it is stated as regards [K] bank account 245 that the account is

closed and that a statement for a requested date cannot be provided but that a date for the closest available date has been provided. The figures provided tally with the other figures provided.

- a further letter of 1st November 2019 issued by Mr A's solicitors to Ms A's solicitors in which the various elements of the consent order agreed before the Circuit Court on 22nd July 2019 are sequentially addressed. I do not see any issues to present with the responses given. To the extent that it is impossible for [K] Bank to generate certain documentation sought (an impossibility in respect of which correspondence from [K] Bank has been forthcoming), then it is impossible. One is not required in a discovery process to do the impossible (though one can reasonably be asked to explain and evidence the impossibility and such explanation and evidence has been provided here).
- a notably detailed letter of 15th July 2022 from Mr A's solicitors to Ms A's solicitors (in reply to correspondence from the latter) dealing with all of the points raised.
- vouching for the monies received for the unfair dismissal claim and fees paid out to the lawyers who acted in that matter.
- [K] Bank correspondence indicating, among other matters, that (i) cash current accounts and documentation concerning cash current accounts did not exist pre-2001 (astonishing but demonstrably true), and (ii) it is not possible for a [K] Bank Client to retrospectively calculate an historic position statement from transaction extracts. Again, one is not required in a discovery process to do the impossible (though one can reasonably be asked to explain and evidence the impossibility and such explanation and evidence has been provided here).
- [K] Bank documentation showing historical deposits and withdrawals on [K] Bank Account 245; it is this account that, the accountant, Mr Roberts takes issue with, not the smaller account. The figures tally with the figures otherwise provided.
- [K] Bank documentation of 27th September 2021 indicating that a quarterly report has been available since April 2018 but not, it seems, previously (and such MiFID reports as are available have been furnished – these show shares and share values).

– [K] Bank documentation of 22nd September 2001 indicating that [K] Bank account 000 was closed on 20th February 2019 and the monies transferred to [K] Account 245. This letter is especially relevant when one recalls that the respondent is seeking position statements in respect of 27th February 2019. Those reports, it is clear, cannot be generated and the account was closed seven days previously. Again, one is not required in a discovery process to do the impossible (though one can reasonably be asked to explain and evidence the impossibility and such explanation and evidence has been provided here).
– certain AIB personal account statements of Mr A (This deals with Ms A's complaint that no details have been received as to the account/s into which the share sale monies have been paid). The figures in the personal bank account tally with the other figures provided.
– a supplemental affidavit of Mr A sworn on 16th January 2019 in the context of a Circuit Court application allowing him access to certain [K] Bank monies at a time when he was in straitened circumstances. That avers that certain [X] shares were not subject to the undertaking provided to the Circuit Court on 12th July 2017, that they were sold in 2018 and used for living expenses and costs relating to the couple's children.

It should be clear from the foregoing that there has been very extensive discovery and that as much as can be provided appears, on the evidence before me, to have been provided. There is nothing to suggest that the consent discovery order was entered into in bad faith or that certain documentation which Ms A might have expected to receive could not in fact be generated or provided. All such documentation as can be provided appears to have been provided, on headed notepaper as appropriate, and the figures tally and cross-tally. All that can be done in furtherance of that order has, it appears on the evidence before me, been done. It follows that no contempt presents in this regard. I note that the only adjudication that I am asked to make is whether contempt presents in this regard: it does not.]

(5) *An order pursuant to the report of Robert Nathan Accountants regarding the family keytrade accounts held in the sole name of the Applicant in respect of the disclosure expected but not received namely:*

(i) *the official investment position/holding statements for…*[K] *account 242 regarding the position as at 11th July 2017,*

(ii) *the official investment position/holding statements for…*[K] *account 000 regarding the position as at 11th July 2017,*

(iii) *full detailed transaction statements and/or reports from the date of undertaking being 11th July 2017 to the date of encashment being 25th February 2019 generated by…*[K] *Bank X for…*[K] *Account 245 as follows:*

a. which are identifiable as originating from the…[K] *Accounting system.*

b. Which fully balance with the running balances where applicable covering the full period from commencement to the date of ultimate encashment (to be presented clearly and in appropriate manner).

(iv) *An Order that the applicant provide full transaction statements and/or reports from the date of undertaking being 11th July 2017 to the date of encashment being 25th February 2019 generated by…*[K] *Bank X for…*[K] *account 000 as follows:*

a. which are identifiable as originating from…[K] Accounting System

b. which fully balance with running balances where applicable covering the full period from encashment

c. (to be presented clearly and in an appropriate manner).

(v) *An Order that the Applicant provide the official cash account statements on…*[K] *headed notepaper from*

the date of undertaking, 11th July 2017 to the date of encashment being 25th February 2019 in respect to…[K] *account 245.*

(vi) *an order that the Applicant provide the official cash account statements on…*[K] *headed notepaper from the date of undertaking being 11th July 2017 to the date of encashment being 25th February 2019 in respect to…*[K] *account 000.*

[Court Note 5: This is in effect an application for a second tranche of discovery in a context where Ms A has already brought an application for discovery which was compromised. However, as to (i) and (ii), as is clear from the list of documentation that I have run through above, position statements are available only from April 2018 and that there cannot be historical re-generations. As to (iv), all that can be obtained is the position statements and the cash statement showing withdrawals that were made. The further documentation sought, it seems from Mr A's documentation, just cannot be procured. (I must admit that I am not convinced that this documentation is in any event necessary, given the other extensive documentation that has been provided. It seems more a 'nice to have' than a 'necessary to have'.) As to (v) and (vi) it is astonishing that cash account statements cannot be provided but it is clear from the evidence before me that they cannot be provided because it is impossible to provide them. That is the end of that.]

6. *An order that the Applicant provide all details pertaining to shares not disclosed and as set out in the Accountant's Report of Mr Peter Roberts* [of] *Robert Nathan Accountants….*

[Court Note 6: This is just too broad a category of documentation of discovery. It is essentially a request for anything that Ms A has not expressly sought to seek at point 5. There is an obligation on parties to formulate a discovery request with some level of precision. This is too imprecise a category of discovery to seek and will not be ordered.]

7. *An order that the Applicant provide full disclosure in respect of the dissipation by him with regard to the family bank/share account namely TBW which contained the value of [redacted] on 7th July 2017…and now contains circa. [redacted] only.*

[Court Note 7: I have already treated with this aspect of matters in the context of the supplementary affidavit of Mr A. Mr A can be cross-examined on this affidavit before the Circuit Court but Ms A now has the applicable documentation and the averments that Mr A has made as to what happened to the shares (they were, he avers, encashed) and how the encashment monies were used. I do not see what else falls to be ordered in a discovery application.]

8. *An order that the Applicant provide full disclosure with regard to the child benefit he obtained from the [Stated Member State] authorities and to include the months and years the said monies were obtained by him to include how much per year he received together with disclosing the total monies received with regard to the dependent children of the parties.*

[Court Note 8: Mr A has averred that he received in effect a tax rebate in the amount of the differential between the amount of child benefit payable in Ireland and the balance to which he was entitled by way of a rebate. This is not a matter which it falls to me to adjudicate upon. I expect that in the Circuit Court it will require evidence from Mr A's accountant. However, it is not part of my function to assess the merits of whatever might be stated in this regard. My task is to determine whether there should be discovery made. In this regard, I note that there is an extraordinary level of documentation which Ms A already has in respect of this point (as averred to in Ms A's grounding affidavit, esp. paras. 27 and 28 and the exhibits referred to thereat). When one has regard to (i) that extraordinary level of documentation, (ii) the fact that the monies received have been documented, and (iii) the fact that Mr A can be cross-examined in the Circuit Court on this issue, I do not, with respect, understand why

discovery of this category has been sought. Again, Ms A has everything needed to undertake the fullest and most thorough cross-examination of Mr A in the Circuit Court. In other words I do not see that the documentation sought vaults the basic test of necessity, for Ms A already has the documentation reflecting what was received in respect of each child, how much was paid per month and per annum, what total figure was paid, and Mr A will have to give his own evidence in the Circuit Court as to how the monies were applied to the benefit of his children.]

9. *An order that the Applicant provide full disclosure with regard to the following:*

   i. *monies paid in fees to his solicitors in* [Stated Member State] *with regard to his unfair dismissal action….*
   ii. *the bank account into which his unfair dismissal claim/monies was paid….*

[Court Note 9: As should be clear from the consideration previously above of the documentation that has already been discovered, this information has already been provided.]

[It became clear at the hearing that Items 9(iii)-13 are no longer sought]….

14. *An order that the Applicant provide full vouching in respect of his current remuneration, including any bonuses* [in his capacity as an employee of XYZ Ltd] *and any other sources of additional income* [of]…*which he is in receipt….*

[Court Note 10: An affidavit of means will have to be sworn by Mr A. In the context of the appeal concerning maintenance to which I turn later below, Mr A has sworn another affidavit of means. All of this documentation will have to be provided but it can and I understand will be done in the Circuit Court proceedings. It is not appropriate or necessary

for me to make an order in this regard at this point. In fact, given the somewhat volatile nature of the enterprise in which Mr A is involved an affidavit of means sworn closer in time to the Circuit Court proceedings will in any event be of more use.]

15. *Such further and other Order as to this…Court seems fit.*

16. *An order providing for the costs of the within proceedings.*"

3. I note in passing that if a person considers that there is an infirmity or inadequacy in what is discovered during the process of discovery the next step is to seek further and better discovery. Offhand I cannot conceive of an instance in which the appropriate next step would be to seek to have the person making discovery held to be in contempt of court. Maybe there is such an instance but, if there is, this case does not, with all respect, present an example of such an instance.

4. Mr A has appealed the entirety of the Circuit Court order, including the order as to maintenance. However, he has not complied with the existing maintenance order for *some years*. Mr A says that he has made some payments to his children on a personal level. However, there are a number of problems with how he has proceeded:

• first, a court order is a court order and, even if appealed, must (unless it is stayed) be complied with in the form that it issues until varied or set aside on appeal. It was not open to Mr A to vary a court order; and it was not for him to decide what his wife should get (or, more accurately, should *not* get [given that for some time now he has been paying her nothing]).
• second, a great deal of thought goes into maintenance orders. All the evidence and arguments are considered; and the needs of any children and of the estranged spouse are considered. As part of that process courts have regard to the fact that where one of the spouses has a household with children to run, that spouse needs to know that Total Sum €X (being the monies earmarked for that spouse and the children of the former relationship) will come in on Y date each month. That way the spouse with day-to-day care of the children can budget for all household expenses and knows, *e.g.*, to put Unexpected Expense Z on the credit card this month and pay it off next month. That carefully calibrated exercise collapses where, as here, the earning spouse decides, of his own volition and in breach of a court order, that he will pay money to his children directly.

• third, there is an obvious problem with paying children money directly. Although maintenance may be earmarked for children, sometimes it will be spent on a household expense. Suppose for example that the boiler breaks down this month and there is no heating in the house. Clearly in that case, the spouse caring for the children and to whom maintenance is paid (including maintenance for the children) may use some of the monies technically earmarked for the children so that the boiler can be fixed. That way everybody stays warm, the children included. Judges, when they make their maintenance orders, are entirely conscious of the kind of financial juggling that goes into running a household with children and factor this into their considerations. But again Mr A by paying the children directly has frustrated that process.

5. I was half-minded when writing this judgment not to adjudicate on Mr A's application for a reduction in maintenance until he pays the outstanding maintenance (and he will have to pay the outstanding maintenance). However, my sense from the hearing is that all the parties are having a tough time financially and I do not want to add to all the stresses presenting by not reaching a conclusion on the issue of maintenance; it is preferable to give a decision so that everyone knows where things stand.

6. By way of general note, it is very clear to me as a judge that on an emotional level family breakdown situations are very difficult for all involved. Leaving that emotional dimension aside, however, and focusing solely on the financial side of matters, I find that there are three broad categories of people who present in the High Court in breakdown situations:

• first, there are very rich litigants. There are a few of these each year. Their breakdown situations are, of course, painful in emotional terms. However, in financial terms they have no worries. In terms of the costs of their day-to-day living their lives will continue much as before.
• second, there are well-to-do litigants. These tend to be business or professional people or big farmers. There are quite a few of these cases. The breakdown situations of these people are, of course, painful in emotional terms. In financial terms they also face some level of strain but while they may have to watch the pennies more carefully than in their past lives, in financial terms, their lives will continue much as before.
• third, there are people who are not very rich and/or have hit a streak of bad luck. Their breakdown situations are, of course, painful in emotional terms. In financial terms, a lot of pain also presents. Mr and Ms A seem to me to come into the 'bad luck' category. They were very unlucky when the financial crash came in 2008/09. That seems to have placed a great strain on

them emotionally. It required Mr A to seek work in another European Union member state which seems to have placed pressures on their relationship. And of course it has caused a series of financial problems in their lives that have yet to resolve themselves. It is clear to me from the papers that Mr and Ms A have had a tough time of things financially and they have my respectful sympathies that this should be so.

7. Mr A has latterly become involved in what probably can still be described as something of a start-up venture, albeit one that appears to be teetering on some success. Two points arise in this regard:

• first, I have been shown a newspaper article in which the venture and its financial position are described in glowing terms. However, 'paper never refused ink', newspaper articles are not evidence, and the piece as a whole is cast in terms which might be described as 'trade puff'. So I do not read too much into it. If the suggestion is that Mr A has talked up his business in the article and talked down his business in court, I do not think that is quite fair. Mr A participated in a newspaper interview in which he talked up his business in the way any businessperson would. But when he has given evidence on oath in court, the truth of matters has appeared rather different. There is nothing unusual in that. One does not proceed on oath when speaking to a newspaper; one does proceed on oath in court; and hence a discrepancy can result in what one says in each context (and here has resulted). There is nothing before me which suggests that I am not being told the truth in court.
• second, there is suggestion by Ms A that as Mr A is largely in control of the new venture he can effectively pay himself as low or as high an amount as he wants, present himself in court as a poorer man on a lower salary than he could rightly command and then, when the court proceedings are completed, he can pay himself more. This seems to me, with respect, to be highly speculative. There is no evidence before me to suggest that Mr A is being paid a salary that is far lower than what he might command. And even if there was such evidence it may be (I do not know) that Mr A is satisfied to take a lower salary now because he thinks that if the business proves the success he hopes it will be that he will be able to 'cash in' big-time at that point. That is a perfectly legitimate approach for someone to take; and there is nothing to stop Ms A coming back for an upwards revision of the maintenance payable at some future time if that is Mr A's gameplan *and* if it comes to fruition (after all, nothing is certain in business).

8. All that said, notwithstanding that Mr A's salary is not the biggest salary in the world, there does seem to me to be some degree of surplus expenditure that could be curtailed without any need for a reduced maintenance order to Ms A. For example, if I look to the Fourth Schedule in Mr A's latest statement of means:

• the amount for children's savings could, I respectfully suggest, be reduced. While I admire Mr A's desire to set aside some savings for his children, the amount is not so great that it will ever arise to a very substantial sum and might perhaps more usefully be put to present expenditure in presently straitened circumstances;
• the amount for groceries per month seems remarkable for a household of three (and I do not know if Mr A's new partner is contributing to that household). That seems to me to be a figure that could readily be reduced.
• I do not understand why the work flights are built in as an expense. It may be that these are charged in the first instance to Mr A's personal credit card; however, they are surely reimbursed?
• the amount per month for multiple children to see Mr A in the other European Union member state could surely be reduced if Mr A (one person) was to visit his children more often in Ireland.
• I do not understand the VHI payment arrangement as I was advised in court that Ms A (because of Mr A's failure to pay her maintenance) has had to stop her membership of the VHI even though she suffers from a particular condition (and that condition is likely now uninsurable for a reasonable sum, if at all, because were she to renew her VHI it would now be a previously existing condition). If the amount for VHI is for the children that seems a perfectly sensible expense. But if it is for a Mr A then (a) I would query whether it is possible for someone who is resident abroad permanently to actually avail of VHI insurance (*i.e.,* it is not clear to me that VHI is in the business of 'passporting' its services abroad in this way) and (b) given that Mr X is in a part of the world with a famously good public health system then it *may* be that this is an expense which could usefully be revisited by Mr A. (I accept that there are a lot of unknowns in the foregoing and I am not familiar with Mr A's health history. So it may be that there is good and valid reason for the VHI payment. However, it does jump out as an expense that could usefully be revisited.)
• if I add the 'Children miscellaneous' sum, the Gifts, Toys, Leisure and Restaurant (largely for children) sums together that comes to a sum not too far shy of [redacted] per month which, with respect, seems quite enormous in all the circumstances presenting. With every respect I am sure

that the children value being with Mr A very much more than the amount of money that he spends on them when they are together.
• while the amount per annum for holidays does not seem excessive in and of itself it is, with respect, undoubtedly excessive when one has regard to the fact that Ms A cannot take holidays because Mr A has not been paying maintenance to Ms A.

9. As can be seen from the above analysis (and leaving aside the VHI expense) there are savings of well over [redacted] per month available to Mr A if he simply curtails his expenditure and, with respect, it does seem to me that he needs to do so. Having a sizeable number of children and two households in different parts of the European Union is, as he doubtless would acknowledge himself, very expensive, and as children proceed to university it will only become more expensive.

10. As I hope is clear from my various observations I do not see that there is any basis for reducing the maintenance payable each month by Mr A pursuant to the existing court order. By contrast, I do see that there is, as Ms A has requested, a basis for increasing the maintenance payable to her, given the clearly surplus income that exists within Mr A's income. I will therefore increase the monthly maintenance payable to her by [redacted] per month.

11. Mr A has pointed to an inheritance that Ms A has received as a reason why she should not obtain any increase in maintenance. In short, what is being suggested is that Ms A should live off her inheritance (and meet from that inheritance the expenses generated, at least in part, by their shared children) until that inheritance is spent. That is, with respect, a line of logic that no court would accept and which is not accepted by me.

12. To my mind, there are two obvious sources from which Mr A's arrears in maintenance can partly or wholly be paid: the [redacted] currently held by his solicitor; and/or the pension fund monies (to the extent that they can be accessed at this time). I have already indicated that I will order the payment of [redacted] to Ms A in her own right in part-settlement of the outstanding maintenance. Counsel for Ms A asked that the pension fund monies be ringfenced for future distribution (as there is a concern that Mr A may yet seek to place himself into some form of personal insolvency arrangement). That is a relief that was sought by counsel on her feet; there is no mention of such a relief in the pleadings; and so I will not grant it. However, pending the payment of the balance of the outstanding maintenance monies owed by Mr A to Ms A and

given the limited potential sources from which that outstanding maintenance can be paid, I will order that apart from any ordinary pension contributions that fall to be made into that fund, there are to be no dealings of any nature by Mr A as regards that fund, pending further order. I will order that Mr A advise the solicitors for Ms A by 1st May 2023 how he intends that the balance of the outstanding arrears will be made.

13. Though I am advised that Mr A has paid some monies directly to his children over the years, I have not been told how much he has paid. If those monies were in turn handed on by the children to Ms A then it seems to me that the amounts in question (so long as they are evidenced by bank statements or the like) can be deducted from the total amount of maintenance that is now owed to Ms A. If those monies were not handed on by the children to Ms A then it seems to me that the amounts in question were in effect gifts paid by Mr A to his children outside the terms of the Circuit Court order (in effect above and on top of what was ordered) and do not, as a consequence, fall to be deducted from the amount of maintenance now owed by Mr A to Ms A.

Conclusion

14. For the reasons indicated above:

• all the reliefs sought in Ms A's notice of motion are respectfully refused.
• I will vary the amount of the Circuit Court order for maintenance (payable by Mr A to Ms A) by increasing it by [redacted] per month.
• though I am advised that Mr A has paid some monies directly to his children over the years, I have not been told how much he has paid. If those monies were in turn handed on by the children to Ms A then it seems to me that the amounts in question (so long as they are evidenced by bank statements or the like) can be deducted from the total amount of maintenance that is now owed to Ms A. If those monies were not handed on by the children to Ms A then it seems to me that the amounts in question are in effect gifts paid by Mr A to his children outside the terms of the Circuit Court order (in effect above and on top of what was ordered) and do not, as a consequence, fall to be deducted from the amount of maintenance now owed by Mr A to Ms A.
• pending the payment of the outstanding maintenance monies and given the limited potential sources from which that outstanding maintenance can be paid, I will order that apart from any

ordinary pension contributions that fall to be made into the pension fund, there are to be no dealings of any nature by Mr A in that fund, pending further order.

• I propose to order that the [redacted] currently held by Mr A's solicitors be paid directly to Ms A in her own right in part-settlement of the amount of outstanding maintenance owed by Mr A to Ms A. (I am mindful that this proposed payment was not expressly canvassed at the appeal and will hear the parties further in this regard should they wish.)

• I will order that Mr A advise the solicitors for Ms A by 1st May 2023 how he intends that the balance of the outstanding arrears will be made.

15. I will hear the parties as to costs after Mr A has paid the outstanding maintenance monies in accordance with the order that I will now issue.

16. Both parties have liberty to apply.

TO MR A/MS A:

WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Ms A, Mr A

I have just written a detailed judgment about your applications. The judgment contains a lot of legal language which can be hard (even boring) to read. In a bid to make my judgments easier to understand by those who receive them I often now attach a note in 'plain English' briefly summarising what I have decided. I thought it might assist for me to add such a note in this case. In a bid to ensure that people do not know who you are, I refer to you in my judgment and in this note as Mr A and Ms A. This may all seem a bit artificial. However, I think it is for the best. This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is written to help you understand what I have decided. Your lawyers will explain my judgment in more detail.

For the reasons indicated in my judgment:

• all the reliefs sought in Ms A's notice of motion are respectfully refused.
• I will vary the amount of the Circuit Court order for maintenance (payable by Mr A to Ms A) by increasing it by [redacted] per month.
• though I am advised that Mr A has paid some monies directly to his children over the years, I have not been told how much he has paid. If those monies were in turn handed on by the children to Ms A then it seems to me that the amounts in question (so long as they are evidenced by bank statements or the like) can be deducted from the total amount of maintenance that is now owed to Ms A. If those monies were not handed on by the children to Ms A then it seems to me that the amounts in question were in effect gifts paid by Mr A to his children outside the terms of the Circuit Court order (in effect above and on top of what was ordered) and do not, as a consequence, fall to be deducted from the amount of maintenance now owed by Mr A to Ms A.
• pending the payment of the outstanding maintenance monies and given the limited potential sources from which that outstanding maintenance can be paid, I will order that apart from any ordinary pension contributions that fall to be made into the pension fund, there are to be no dealings of any nature by Mr A in that fund, pending further order.

• I propose to order that the [redacted] currently held by Mr A's solicitors be paid directly to Ms A in her own right in part-settlement of the amount of outstanding maintenance owed by Mr A to Ms A. (I am mindful that this proposed payment was not expressly canvassed at the appeal and will hear the parties further in this regard should they wish.)
• I will order that Mr A advise the solicitors for Ms A by 1st May 2023 how he intends that the balance of the outstanding arrears will be made.

I will hear the parties as to costs after Mr A has paid the outstanding maintenance monies in accordance with the order that I will now issue. In the unlikely event that there is a conflict between the text of this letter and the text of the main body of my judgment, the text of the main body of my judgment shall prevail.

Yours sincerely

Max Barrett (Judge) *Date: 14th March 2023.*