

THE HIGH COURT

[2023] IEHC 377

Record No:

**[See Appendix to ‘Previous
Judgment’ as defined below]**

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

BETWEEN

X

APPLICANT

– AND –

Y (2)

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 13th June 2023.

SUMMARY

This judgment deals with the orders to be made following on my judgment in X v. Y [2022] IEHC 584 (the ‘Previous Judgment’) and certain related matters, including the order that I will now make as to costs.

1. This is a brief further judgment following on the Previous Judgment. The applicable facts are as stated in the Previous Judgment.

2. The first issue that I must deal with is that of costs. Ms Y succeeded in the application that was the subject of the Previous Judgment. Mr X did not succeed. However, I am mindful that these are family law proceedings and I see no reason to depart from the usual (albeit not unfailing) approach to costs in family law proceedings whereby no order is made as to costs. There is nothing in Mr X's approach to the application, no unnecessary protraction of the application, and nothing in what he argued or how he argued and no other factor that would incline me to take a different view. To put this in the language of s.169 of the Legal Services (Regulation) Act 2015, having regard to the particular nature and circumstances of the case and the conduct of proceedings by the parties, it seems to me that there should be no order as to costs.

3. At the hearing it was agreed that I would await an imminent judgment of the Court of Appeal (the 'Imminent Judgment') on the issue of whether or not the courts can continue to measure costs. As I am making no order as to costs, the Imminent Judgment, though it will doubtless be instructive, ceases to be of relevance to this application.

4. The fact that I will be making no order as to costs also means that the costs/taxation issues addressed at pp.16-30 of Mr X's written submissions do not now require to be considered because (i) they cease to be of relevance given that I will be making no order as to costs, and (ii) many if not all of the issues raised therein, were the subject of argument before the Court of Appeal at the hearing that will yield the Imminent Judgment and are outside the agreed scope of this judgment.

5. In terms of the order now to issue, I will issue an order in the form to which I make reference in paras. 16 and 17 of the Previous Judgment, subject to two amendments:

(1) counsel for Ms Y contended in his submissions that 14 days would be long enough for Mr X. Mr X did not touch on this point in his submissions. However, as I indicated in para.17 of the Previous Judgment, the 14-day timeframe seems very short to me. Thus, I will amend the time for compliance to 30 days. (In truth, Mr X has known since the Previous Judgment issued what he will need to do and I am giving him in effect an extra month in which to do it).

(2) Ms Y has, I understand from Mr X's submissions at the hearing of the costs application, been copied by the Solicitors' Disciplinary Tribunal on everything that has been furnished by Mr X to that Tribunal. If that is so, then it is unnecessary to require Mr X to provide a comprehensive list of the material so furnished. I am mindful that Mr X's submissions were only submissions (*i.e.* not evidence) so if this presents some issue, the parties, in particular Ms Y, have liberty to make whatever further brief application they think necessary in this regard before the order is made.

6. I do not see that in the particular circumstances here presenting, merely asking Mr X (i) to list all such documentation he has previously provided to a solicitor, which (ii) was obtained in *in camera* proceedings and (iii) was provided to the solicitor without the prior leave of the court, would intrude on the confidentiality of client-solicitor communications. I am mindful in this regard, *inter alia*, of the fact that Mr X (a) has been open about the fact that he visited a named solicitor in the course of deciding whether and how to make the complaints that he has made or may yet be minded to make, (b) has indicated in general terms what that solicitor-client consultation was about and what actions it prompted, and (c) is merely being asked to list what documents protected by the *in camera* nature of the family proceedings were provided to that solicitor without prior leave of the court, not to describe the substance of same or make further comment (albeit, I accept, that the substance of such documents will be known to Ms Y given that they were part of the *in camera* proceedings).

7. It became clear at the costs hearing that Mr X intends (and will need) to make a separate application for leave to release all such documents he has already previously released. The parties were agreed that it makes sense for me to hear that future application. It occurs to me as I write this judgment that, in fact, if Mr X wishes to make such application he will in any event end up making a list of all of the said documents and providing same to Ms Y's legal team in advance of the leave application, so it may be that the orders that I am now making are ordering what would in any event have occurred as a part of the leave application that Mr X clearly intends to make imminently.

8. I note in passing my assumption in the second sentence of paragraph 5 of the Previous Judgment. Counsel for Ms Y has asked me expressly to confirm that in stating that,

‘I also assume for the purposes of this judgment that he [Mr X] has acted at all times in good faith’,

I was not making a finding that Mr X has acted at all times in good faith. Counsel asked me to confirm this as Mr X has apparently understood me to have made a finding in this regard, rather than my simply proceeding on an assumption. I am satisfied to confirm that the sentence means what it expressly states, *i.e.* that I was assuming for the purposes of my judgment that Mr X had acted at all times in good faith; I did not make any finding in this regard.

9. The solicitors acting for Ms Y and also Mr X have respectively sought leave to notify the fact and/or substance and/or to provide a copy of this judgment to certain third parties. The judgment is now publicly available on *www.courts.ie* so I do not see that any leave is needed. The parties should note that, for the reasons stated in para.18 of my previous judgment, the Record Number of these proceedings is not stated in the part of that judgment which has been made publicly available on *www.courts.ie*, is not stated in this judgment, and is not to be disclosed.

10. I turn now to deal with various points that were made by Mr X.

11. First, Mr X has asked that I waive of my own motion the *in camera* rule in respect of (i) all the documents that he has previously provided, (ii) all the documents that he has previously provided to An Garda Síochána, (iii) all the documents that he has previously provided to the Legal Services Regulatory Authority. I have essentially dealt with this already. Mr X will need to bring an application on notice, identifying what documents he wants released and why. Ms Y and her lawyers will of course get to oppose that application (if they are minded to oppose the disclosure of all or any of the documentation in respect of which leave to disclose is sought, and they may or may not be so minded).

12. Second, Mr X objects to any order being made to disclose the substance of the documents that he provided to the solicitor whom he consulted about making the reports (before making those reports). No such order was ever to be made nor is it being made.

13. Third, Mr X objects to any order being made in respect of the solicitor whom, he asserted in his submissions, acted for him in the family law proceedings (Mr S—). If Mr S— was the

solicitor who had carriage of the family law proceedings for Mr X then the order that is now to issue will not apply as regards Mr S——. I do not understand Mr S—— to have been engaged in any event in respect of the making by Mr X of his complaints.

14. Fourth, Mr X seeks what he styles ‘reciprocal orders of disclosure’ should be made against Ms Y, *i.e.* what is ordered of him should be ordered of her. No such relief was sought at the hearing of the application that led to the previous judgment and thus I do not see that it can properly be ordered now.

15. Fifth, Mr X wishes to make complaint about a particular solicitor. He notes that a solicitor is an officer of the court and, consistent with the ‘power and duty’ of a court to regulate its own affairs as it sees fit, as referred to by Abbott J. in *JD v. SD* [2013] IEHC 648, para.16, Mr X has suggested that I have an obligation to make a report (he did not specify to whom) in light of the grievances that he has raised in these proceedings, elements of which are touched upon by the judge in the judgment referred to at para.18 of the Previous Judgment. Of course, there may be (in truth, almost certainly will be) some instances where certain behaviour is so obviously wrong that a judge confronted by such behaviour in an action before her/him might feel it appropriate, *e.g.*, to make complaint to a regulatory body and/or to refer a matter to An Garda Síochána. In the present case, however, the judge who heard the previous action and made the powerful criticisms which have, I understand, prompted Mr X to make (or, at least, buttressed Mr X in making) the complaints that he has made to this point, did not deem it necessary to make any report to any third party despite his having made those criticisms. I do not see that I can second-guess what a fellow High Court judge has decided and, even if I could, I do not see that I am in any position at this remove from an application that I did *not* hear to reach a contrary conclusion to the decision made by the judge who *did* hear the application not to make any form of report.

16. The order to be made is relatively complex. It may make matters more efficient if counsel for Ms Y drafts the order and provides same to the registrar, copying Mr X. If Mr X objects to any element of the draft order, he has liberty to raise this before me (having given due prior notice to Ms Y of his intention to do so).