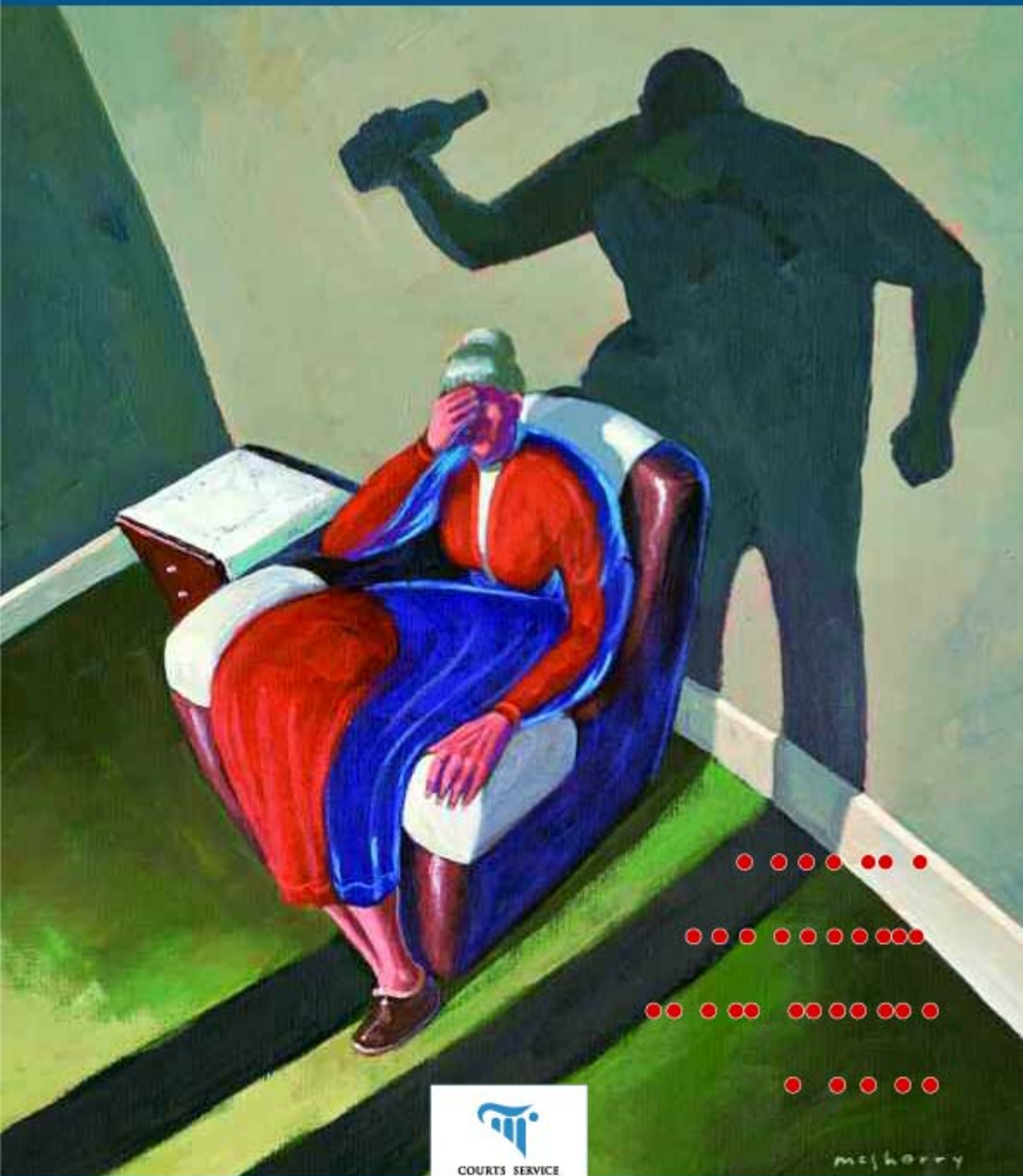


# Family Law Matters

Volume 1

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# Focus on District Court

This is the third issue of *Family Law Matters*, which is produced as part of the Family Law Reporting Pilot Project started by the Courts Service in October 2006. The project involves generating reports, judgments, trends and statistics in family law for use by the judiciary, legal practitioners and the general public. *Family Law Matters* attempts to present this information in an accessible and reader-friendly format.

This time around there is more material largely thanks to a panel of additional reporters who recently joined the project. They were drawn from the ranks of newly-qualified lawyers already entitled to attend family law proceedings under the Civil Liability and Courts Act, 2004.

They are also covered by the Regulations which the Minister for Justice, Mr McDowell, made following the enactment of the 2004 Act. These listed those entitled to attend family law proceedings under the Act, in addition to barristers and solicitors, and included people engaged by the Courts Service to prepare reports on family law. As part of the family law reporting project they are all bound by the Draft Protocol on Family Law Reporting, designed to protect the anonymity of the parties to family law proceedings.

Their contribution has made it possible to publish a substantial volume of reports from District Courts and they also contributed to certain other reports. Most applications about continuing matters in family law disputes – domestic violence, guardianship, custody of and access to children, maintenance – are heard in the District Court which processed almost 21,000 such applications last year.

As this issue was in preparation the High Court was examining the right of an unmarried father to custody of his children in the context of a child abduction case. He had not previously obtained guardianship, but had brought such an application following the removal of his children from the jurisdiction. The case has been fully reported elsewhere, but in this issue we publish a few typical examples of such applications as they occur daily in the District Court.

We also revisit case progression. In our first issue Limerick County Registrar Pat Meghen described a pilot project in his area where he held case conference meetings with solicitors and/or their clients to isolate issues in dispute before the case went for trial. The various parties tried to agree as many issues as possible



and make progress on others such as the production of documents. I attended some of these meetings and then observed cases being finalised in court. The process is described in this issue. This necessitated a slight departure from my usual practice of not naming courts outside of Dublin and Cork, but this was unavoidable in the circumstances and the draft protocol was fully observed.

This issue, like the previous two, also contains judgements, one from the Circuit and one from the High Court, and a statistical analysis of orders from the South-Western Circuit. I have also continued here the practice of publishing contributions from people who have an input into the family law system, though they may not be directly involved in the courts. In issue two Pensions Ombudsman Paul Kenny outlined the problems that can arise with pension adjustment orders and how to deal with them. In this issue we are very happy to publish an article by Karen Erwin, president of the Mediators Institute of Ireland, in which she considers why mediation is not used more and how that could be addressed.

*Dr Carol Coulter*

# Shouldering an enormous caseload

Most of Ireland's family disputes are resolved in the District Courts – in 2006 alone up to 20,900 family law applications were processed. The reports that follow go some way to providing an overview of day-to-day business in this highly active arena, writes **Carol Coulter**

The District Courts deal with an enormous volume of family law applications each year, many concerning unmarried couples and their children. These include guardianship applications from unmarried fathers, custody and access, usually though not always from fathers, and maintenance applications, usually from mothers for child maintenance.

Married couples also sometimes go to the District Court, either where a divorce or judicial separation is pending and they want interim orders for children and maintenance issues, or where they have been granted a divorce or judicial separation in the Circuit Court and issues of custody, access and maintenance are referred to the District Court.

In 2006, of 5,027 applications for custody and access in the District Court, 3,453 were granted with 1,417 withdrawn or struck out. Only 157, about 3 per cent, were refused.

Of the 1,742 applications for guardianship from unmarried fathers, 1,268 were granted and 432 were withdrawn or struck out. Forty-two, or 2.5 per cent, were refused.

There were 4,207 applications for maintenance, 2,652 of them relating to unmarried couples. While 2,909 were granted, 1,204 were withdrawn or struck out and 94 were refused. In all, there were 10,976 applications relating mainly to children in the District Court last year.

The other main area of family-law-related applications in the District Court is domestic violence where the District Court can make several orders to protect a spouse, a non-marital cohabitee or the parent of an adult

child from violence, the threat of violence or harassment.

The orders are: a barring order which prevents the person against whom the order is made from entering the family home or threatening the spouse/partner or other family member; an interim barring order which can be taken out in the absence of the person pending a hearing of the full application – this must be within a short time; a safety order prohibiting a person using or threatening violence in the home, but leaving him/her in the home; and a protection order pending the hearing of an application for a safety or a barring order.

In 2006, 9,924 applications were made under the Domestic Violence Act, 605 of these were for interim barring orders 544 of which were granted, 35 were withdrawn or struck out and 26 were refused. There were 3,132 applications for barring orders, of which 1,357 (less than half) were granted, and more than half (1,682) were withdrawn or struck out. Ninety-three, about 3 per cent, were refused.

Applications for safety orders showed a similar pattern with 3,050 applications made, 1,221 being granted and 1,726 being struck out. 103 were refused.

A much higher proportion of protection orders were granted, however, with 3,137 applications made, of which 2,845 were granted. Only 193 were withdrawn or struck out and 99 were refused.

Thus in all there were 20,900 family law applications in the District Court in 2006, according to the Courts Service annual report, which were split fairly evenly between

*In 2006, of 5,027 applications for custody and access, 3,453 were granted, 1,417 withdrawn or struck out and only 157, about 3 per cent, were refused*

domestic violence and child-related applications. There is no way of knowing from existing statistics how many of these related to the same family dispute or were repeat or alternative applications – but some were. Nonetheless they show the enormous volume of family law processed by the State's various District Courts.

This volume means that 70 or more cases can be listed on any one day. In a commuter town one judge showed a family law reporter his lists for a period, showing that 70 applications in one day were by no means exceptional. This judge said he called through the list and anything that was likely to take less than five minutes was given a new number and proceeded with immediately, before the matters requiring a longer hearing. The matters taking longer were then dealt with in the afternoon.

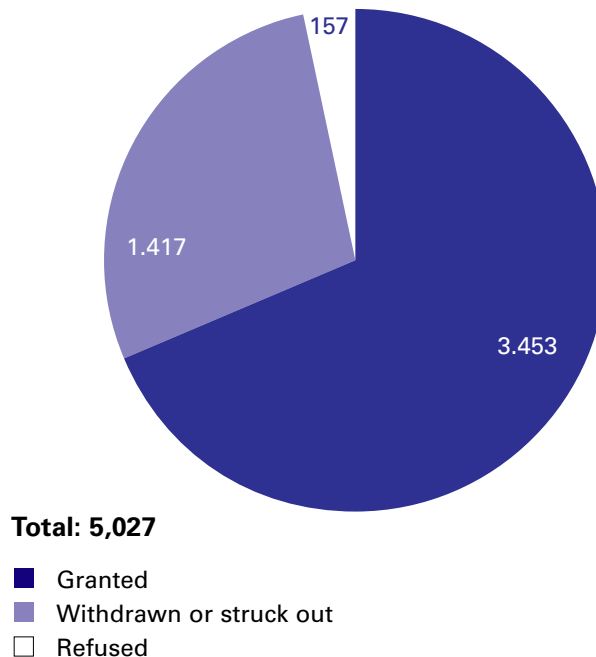
But this situation was not satisfactory, he said, as cases listed for a full hearing could amount to over 30. Often they had to be adjourned, or were not given adequate time. He told the reporter that this was not a satisfactory service where the organisation of people's lives and the welfare of children were at stake. Judges were being put in a position where they could not give cases a long period for hearing, leaving people feeling that hugely important matters in their lives were not being respected and appreciated by the court system.

The figures above compare with 5,835 family law applications (divorce, judicial separation and nullity) in the Circuit Court and just 90 in the High Court in 2006. Often such cases are more complex, sometimes involving division of assets, but this should not obscure the fact most family disputes in Ireland are dealt with in the District Court.

Many litigants seeking the court's assistance in a family law dispute, or who appear before it as respondents, are unrepresented. They rely on District Court staff to help them fill application forms for relief and for information about seeking further assistance from the Garda Síochána or the Legal Aid Board.

There are 23 District Court districts, each of which (apart from the Dublin Metropolitan District) can contain anything up to 13 District Courts sittings from time to time. Emergency

**Figure 1 Children: Custody and Access**



family law applications can be brought to any of them, while the major cities have about a day a week devoted to family law. In the Dublin Metropolitan District there are three to four family courts sitting permanently in Dolphin House in the city centre.

It would clearly be impossible for the Family Law Reporting Project to have reporters present at all family law hearings. Earlier this year, however, a panel of family law reporters was assembled by the Reporting Project from the ranks of recently qualified lawyers. They have been deployed in District Courts over the past number of months.

Between them they covered 22 District Courts, where almost 400 cases were listed. Almost a third of these cases resulted in agreement between the parties without a court hearing and about the same number were adjourned or struck out. Of the 156 that were heard, 61 were matters concerning maintenance, 42 concerned guardianship, custody, access or a mixture of these, 36 concerned domestic violence, 12 were HSE applications concerning children in care, and five fell under another heading. A few of the cases involved multiple applications.

What follows is a selection of the reports of contested cases from the reporting panel.

*Many litigants seeking the court's assistance in a family law dispute are unrepresented and rely on District Court staff for help*

# Regulating children's custody and access

Guardianship applications, often accompanied by applications for custody or disputes about access, form a significant part of the work of the District Courts

## Father and grandparents granted joint custody

*The boy's mother was involved with a man listed on the sex offenders register*

A father sought custody of his child in a northern District Court. The boy had been living with his maternal grandparents during the week and spending weekends with his father in the North of Ireland.

The child's mother had recently become involved with a man who was named on the list of registered sex offenders and accepted by gardaí to be a paedophile. One afternoon, the mother was expected to collect her son from football practice but had not shown up and her son had not seen her since. She had left her parents' house where she and her son lived.

The boy's father was applying for sole custody. His solicitor told Judge Sean MacBride that his client feared the mother might arrive at her parents' house and ask to see her son and that the child could be exposed to a paedophile.

He said he had "big fear" of his son remaining with his grandparents: "My biggest concern is his mother turning up."

He told the judge that the grandfather was very close to his daughter [the child's mother] and that the grandfather's primary concern was his daughter and not his grandson. He told the court that he did not

have a problem with his son visiting his grandparents but he was afraid that if his former partner tried to contact them they would accede to her demands, putting his son in danger.

The judge asked about the living arrangements the father envisaged for his child should he be granted sole custody. He answered that he finished work at 5.30 pm, that he would drop his son to school shortly after 8 am and that there were breakfast clubs in the local school.

After school there was football and GAA practice twice a week and playgroups organised on the other days. He said he was due to marry next year and that the three would live as a family unit. He accepted that his son would be starting in a school where he knew no one and that it would be difficult for him.

The judge then took evidence from the grandparents. The grandmother said her grandson had a lot of friends in school and in the neighbourhood and he was a member of local soccer and GAA clubs.

"My client is reasonably and fairly concerned that your husband [the grandfather] will facilitate access for the child's mother," the father's solicitor said.

The grandmother replied: "There's no way I'd let her." The grandfather added: "She does not have contact with us at the moment."

The judge asked them if their daughter was living outside the jurisdiction. They did not know. The judge emphasised the importance of knowing where the mother was residing, adding that he could not be expected to make a decision without first hearing evidence from gardai on where her partner was residing. He stated that he should also hear evidence from the social worker.

Before asking the child some questions in the absence of the parties, the judge stated that he was very impressed by both parties. He noted that the father was "very dedicated" and that the grandparents were "loving, caring and kind" and essentially acting as parents and so he would consider his decision very carefully.

The judge then asked the child some questions. From this conversation, he said the child had clearly indicated that he wanted to stay with his grandparents but would like to visit his father. The judge reiterated the importance of ascertaining the "physical whereabouts of the mother's partner". He added that the only way he could grant joint guardianship to the grandparents was if they agreed not to have contact with their daughter again.

The judge directed that a Section 47 report be procured and that the matter be

adjourned for mention until the following month. On the consent of both parties, he appointed the grandparents and father joint guardians and made a further order that interim joint custody be awarded to grandparents and father.

He stressed that the grandparents should not have any contact with their daughter or her current partner.



# Unmarried father's guardianship application adjourned

An unmarried father sought guardianship of his young son in a midlands District Court. He and the child's mother were no longer a couple and had not been since the birth. He said the relationship had broken down completely.

He told Judge Oliver McGuinness that soon after his son was born, the child was removed from the hospital without his knowledge or consent. He later found out that his name was not recorded on the birth certificate, an omission that had cost him a lot to rectify. He added that he and his family were excluded from the christening which was very distressing for his elderly mother.

The father said he not seen his son for over eight months and that even then he was

allowed to spend only a short time with him in a crowded hotel lobby. He said this was of great distress to him and his extended family. He went on to say that he had tried several times to re-establish a civil relationship between himself and his son's mother but that he felt her extended family prevented this from happening.

He said that as a father he was now concerned for his

child's welfare because he knew little about where the child was or who was caring for him on a daily basis.

The solicitor representing the child's mother told the court how his client and her family regularly felt threatened and harassed by the applicant. His client had already brought a case against the father in another court where he had been found guilty of assaulting her and he was now awaiting sentencing.

Having heard both parties the judge said as the father of this child the man should have access to his son, but added that his behaviour could qualify his right to access.

Judge McGuinness said: "I cannot care less about either your or the respondent's adult problems, I am only interested in this child's welfare and I am concerned that this child is being used as a football."

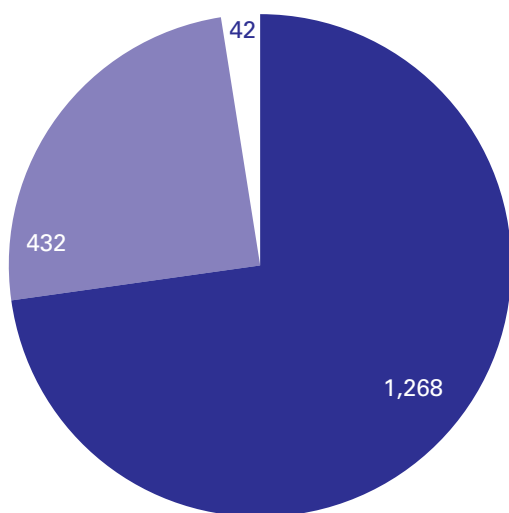
He also felt that one or other or both parties did not have the child's best interests at heart and that one or other or both parties were not acting in a selfless manner. "You are both the parents of this innocent child and now find yourselves sitting in court and it is a shame on both of you that this child is being deprived of love, be it maternal or paternal love," he said.

The judge advised the father that in future he should engage a solicitor to fight his battles in court. The man explained that as the matter had gone on for so long, he could no longer afford representation.

The judge told him the court would make an exception and contact the Legal Aid Board on his behalf. He then adjourned the matter pending the outcome of the sentencing matter and to allow the man to secure legal representation.

*'I am concerned that this child is being used as a football'*

**Figure 2 Children: Guardianship**



**Total: 1,742**

- Granted
- Withdrawn or struck out
- Refused



## In Brief

### Father wants access to ensure child benefit goes to him

In a suburban District Court, the parents of a 15-year old boy appeared with their son seeking variations of maintenance and access orders. Judge Brian Joseph Sheridan indicated that only the mother and father should be present.

Once the youth had left, the father said that instead of paying €65 maintenance weekly he wanted to pay the sum monthly on the first Thursday after he was paid.

The mother was amenable and so the judge made an order on consent, directing the father to pay €281.66 monthly.

When asked what increased access he wanted, the father said his son had told him six weeks ago that he wished to spend more time with him.

The original access order in place stipulated that the child would spend every second weekend with his father and any other access that could be agreed between the parties. That order had been

varied to allow for joint custody of their son.

When questioned again on access, he replied that he would like to have access to the child benefit payments and so would need to have an order granting him custody of his son for more than 16 days a month.

The mother said she had a difficulty with this request. She had never stopped her son from seeing his father and a variation of the current order was not needed. She added that his request was motivated by money and not by their son's best interests. The father responded that he wanted to ensure the money was spent on their son.

The judge directed that he would leave the order as it stood, adding: "It seems very reasonable. The mother does not object to the father seeing the child. I do not want to put the mother in a position where the child benefit is taken away from her."

### Mother's absence delays access application

In Dublin District Court, a grandmother, representing herself, sought access to her eight-year-old grandchild. Judge Aingeal Ní Chondúin was concerned that the child's mother, who did not attend, had not been properly served with the court summons.

The grandmother said her son was the child's father and that the mother was unstable. "She's a heroin addict and she doesn't take her methadone." She added that the father had joint custody but had not seen his child as "the mother made a claim that [the grandchild] was abused by her father two years ago, these allegations were totally false... She [the mother] seems

to know every loophole in the law."

The judge said: "I'm very sympathetic. The difficulty is if I were to make an order I want to make it enforceable. There's nothing to show she was served with the summons, the file doesn't contain proof of service."

The grandmother said: "I have evidence, I have the faxes from the social services, the school says she [the grand-daughter] is dirty and smelly... I'm just desperate; we've been messed about by the court for eight years."

The judge noted that the mother was due in court in three weeks and adjourned the grandmother's application until that date.

# Mediation recommended in access dispute

A case where a father wanted to enforce an access order covering his three sons was adjourned so that the wife's solicitor could get more detailed instructions. The man represented himself when the case resumed in a suburban District Court before Judge Murrough Connellan.

He told the court he had not had access since the end of March though he had attended a Holy Communion ceremony. The problem, he said, was the collection point. The matter had been before the court several times and in January an access order had granted overnight access from Saturday 6 pm to Sunday 6 pm.

He said: "The respondent's solicitor told me to collect the boys at 4 pm instead of 6 pm, but when I went to her sister's house it just created conflict and in the end not all the boys would come with me. I haven't seen my youngest son, who has difficulties, since last September."

When the case resumed evidence was heard from both parties. The father explained that an interim access order was made in 2007, granting him one overnight each weekend with the three boys. He said there were still substantial issues between himself and his wife and he had been in therapy for the past few months on his own. He thought counselling might help them to agree matters concerning the children more amicably, so the HSE was sending out an invitation to attend parenting classes.

He said that, despite the order, he had not seen his youngest son, who was six and had Asperger's syndrome, since last September. His second son, who was recently diagnosed with ADHD, epilepsy and autistic traits, sometimes refused to go with him for overnights.

"She keeps accusing me of breaching the order and not turning up to collect them from her sister's house, but in March I got the

gardaí to witness a letter saying that I was there and wanting the kids," he said. "She is the one breaching the order, that's why I issued the summons."

He suggested that maybe access could start again with just one Sunday every month and his father collecting the children.

The mother responded that the boys, especially the youngest, "just screams and screams. He doesn't want to go... When he doesn't turn up the kids are relieved. I try to encourage them but they don't want to." She said she had been keeping a diary and she was at her sister's waiting for him on each occasion and her sister could confirm that. She got no help from the father in having the second child, nine years old, assessed for his needs following the diagnosis. He would not sign the consent form.

The judge said: "Having read the report, I can see that neither of you is a bad parent, but together you have got into a destructive pattern, quarrelling, and this is making it very difficult for your children to grow up. You have a particularly heavy onus to behave because you have children with special needs. You need to work together or you will emotionally damage your children. They pick up on any opposition to access from the parents and react accordingly."

He recommended that they attend mediation and put their own egos aside for the good of the children. "Emphasis is on agreement. Court is too adversarial to run to every time over your children's welfare."

He would not vary any orders and access stood as it was but he expected them to agree on how best to manage it. "I don't know you or your children and you are asking me to make far-reaching decisions about them when you are two intelligent and able parents. Any order I make will be as likely to break down as this one until the two of you can learn to agree and work together."

*'Emphasis is on agreement. Court is too adversarial to run to... over your children's welfare'*

# Father seeks joint guardianship

An unmarried father, representing himself, sought joint guardianship of two boys aged five and 12. He said he had always tried to be a good father and that the relationship with the mother had lasted several years until “she found someone else”.

Judge Gerard Haughton asked him about existing access to the children. “Wednesday and every second weekend overnight,” he replied.

On his work situation, he said: “I’m on disability. I suffer from schizophrenia.” He was taking medication and was well controlled for the past two years. No medical evidence was introduced.

Asked why he wanted to be appointed guardian, he replied: “If anything ever happened to her [the mother] I’d like to have me kids and have a say in their lives. I could sign forms if anything happened, if they had to go to hospital or anything.”

Asked by the mother’s solicitor if he knew the children were having problems, he said he was aware the eldest was “because we split up” and added that a psychiatrist who said the child was fine had assessed the eldest son.

The mother’s solicitor said the father provided no maintenance for his children as he was on long-term disability. The judge said maintenance did not determine guardianship and was “not something that can be held against him... If he’s on disability he’s been medically examined”. He added that social welfare was “subsistence... you can’t criticise for non payment out of subsistence”.

The mother’s solicitor asked the father if he had burnt the youngest child with a cigarette but he claimed this was an accident as he had a cigarette in his mouth when the child “jumped out of my arms and the cigarette caught him”.

The mother objected to him being appointed a guardian as he was a bad influence on the children’s educational and religious development: “He changes his mind... I don’t feel he makes proper decisions... He’s in and out of the children’s life.”

She said her son had been caught selling things he got from his father and that the principal at her younger son’s school had told her that the father “brainwashes” the child. Judge Haughton said it was “grossly unfair” to accuse the father of handling stolen property when this had not been put to him in his evidence and to quote a school principal who was not present to give evidence. The mother had signed an affidavit saying he could care for the children.

Judge Haughton appointed the man joint guardian saying: “All I’ve heard from [the mother] is suggestion and innuendo.”

The mother was upset and leaving the court she said to the judge: “If anything happens to my children I hope you can live with it.” The judge summoned the mother back to court and she apologised, saying she was upset.

Judge Haughton replied: “You may be upset. If you disagree with my decision you appeal it. What you do not do is say I’m responsible for your children. You’re the one who’s responsible. You’re the one who signed the affidavit.”

*‘[Social welfare] is subsistence... you can’t criticise for non payment out of subsistence’*

# Father may visit daughter in relative's house

*'Your father?  
The man who was  
assaulted and a  
conviction got?  
Could we have  
reality please?'*

Judge Bridget Reilly heard an application for guardianship and access from the unmarried father of a 10-month-old girl who had never seen her. The relationship between the couple had lasted about three months and they had split up while the respondent mother was pregnant.

The judge told the father that though it was a very good idea for a father to be guardian, as an unmarried father he had no right under the Constitution. She said the mother was objecting.

The mother told the judge that she was eighteen years old and had given birth last year. She told her counsel: "He came to the house drunk and pushed in the front door. He assaulted my father. He had two friends with him. He assaulted me mam as well. We had to call the Guards. He got four months in prison for assault and criminal damage."

Judge Reilly asked the father about the convictions and if he had any others. He answered that the assault and criminal damage convictions were all arising from the one incident and that he had two others for motoring offences. She asked him what he had to say about an allegation concerning drugs. He replied he was not into drugs at all and that the only reason the mother had said that was to prevent access.

The judge asked whether he was working and he replied that he was a plasterer, not properly qualified, but that was what he had been doing for the past four years.

She asked the mother what access proposals she had. She answered she wanted it to take place at her brother's house with her father present. Judge Reilly said: "Your father? The man who was assaulted and a conviction got? Could we have reality please?"

The father said he would not be comfortable with her father there, but asked: "If I get the access in her brother's house would I be in a room on my own or would he be in the room with me? If he was in another room I wouldn't have a problem."

The judge said she would make an interim access order, giving the father a half an hour's access the first Saturday, increasing to an hour the second Saturday. The only other person to be present was the child's grandfather and he was not to be in the room unless invited. The visit would take place at the child's uncle's house.

She also made a maintenance order directing that the father pay €100 a week directly into the mother's bank account. She wanted all parties back in court in July to see how the arrangement was working.



## In Brief

### Father refused joint custody

The father of a young girl whose mother had married and planned to move abroad with her husband and the child, failed to be granted joint custody at a District Court hearing in Leinster.

The father's solicitor told Judge Flan Brennan that he had been actively involved with the child since her birth. He enjoyed considerable access and she stayed with him most weekends. She had been with him for a three-week holiday in July. He was the child's guardian and his name was on her birth certificate. He was recently told of the mother's plans to leave.

The mother told the judge she was leaving within weeks but she would return to Ireland every three months and the father could have access then. Also he would be welcome to visit his daughter in her new home whenever he wished. She stated that she and her husband were prepared to assist him with his travel and accommodation arrangements.

The father's solicitor responded: "He's going to lose his daughter. [The country she is going to] is not around the corner."

"She's entitled to get on with her life," Judge Brennan said.

"Give us the joint custody," the solicitor said. "His life revolves around her and he wants to be recognised as a joint custodian."

Judge Brennan asked if his application hinged on the mother and his child going abroad. "He doesn't want her to change her plans?"

"He's reconciled to the fact that she has a right to travel," the solicitor replied. He said the father was seeking joint custody "for the purpose of the comfort of knowing he has equal status. He accepts she can go."

Judge Brennan refused the application. "I'm not satisfied it's appropriate to grant him joint custody. I'm satisfied there's no danger or apprehension about the future."

The father told the judge he was going to appeal the decision.

# Child remains with father

A father sought sole custody of his infant son before Judge Aeneas McCarthy in a district court in the south-west.

The court heard that the parties had lived together and had a son. The mother had two other children. The father had temporary custody of the child and was in a new relationship.

He had recently moved into his girlfriend's house with the child. Judge Mary Martin had previously allowed the mother access to the infant and the father was in breach of it.

In reply to his solicitor the father said that after his son's birth the mother had problems in the relationship. Her other children were looking after the infant who had constant colds and nappy rash.

He was worried about him and he enrolled him in a crèche. In early 2006 gardai contacted him as two people passing had found one of the mother's other children out in the street at 1 am. On that occasion the infant was with him and the other child was with his respective father. The child had remained with him and the paternal

grandparents until recently when he moved in with his girlfriend.

A garda gave evidence, saying a call came into the station that a child was found on the street alone at 1 am. The child told them she had climbed out the window and could not get back in.

The garda said the house was empty and the mother came back at 4 am. The gardai knew of previous incidents and had child protection concerns.

A social worker from the HSE said he had carried out a report. His dilemma was whether an emergency care order was needed for all three children but he felt that there was no need with regard to two of the children as they were with their respective fathers who could care for them.

He said they interviewed the children who said the mother often left them alone. He had no child protection concerns about the father in this case but he had concerns about child welfare issues because both parties were making allegations against the other.

The father was alleging that the wife was stalking him and sending abusive texts and the mother was alleging domestic violence. The social worker admitted it was hard to substantiate these allegations.

He had concerns that access to the mother was being withheld in breach of a court order.

The HSE had looked for a psychiatric report as they had concerns regarding the mother's mental health. The social worker said that both parties needed to get over their hatred of one another.

The judge adjourned the application for three weeks and directed a full psychological report of both parties with priority. The child was to remain with the father until then and the father was to move back in with his parents.

The judge did not want the father's girlfriend to become a surrogate mother and the mother was to have access to the child for four hours every day.

*A child was found on the street alone at 1am*

## In Brief

### Father refused supervised access

Judge Flan Brennan refused to allow a father supervised access to his five-year-old son pending the results of investigations into allegations of sexual assault.

The father had brought guardianship, access and maintenance proceedings and an adjournment was sought because, the court was told, there were ongoing Garda and health board inquiries about an alleged sexual assault. The application had previously been adjourned and it would be at least two months before the health board's report became available.

The father and respondent mother had been in a relationship which had continued for two years after the birth of their son and they had remained friendly up to last March when an allegation had been made which the father vehemently denied. He had had daily access to the child up to then and he was paying regular maintenance. The child had a bond with his father.

The father's counsel submitted that the court should grant supervised access pending the adjourned hearing and cited the High Court ruling in the case of *O'D v O'D* which held that even in cases where there was a substantial risk of abuse, the primary matter was the child's welfare and the

court in that case had granted supervised access.

The father, counsel stated, had good interaction with his son and he was

also making a financial input. It could take up to two months before the report was completed and it would be detrimental to the son if he had no contact with his father.

The applicant's mother was in court and he lived with his sister. Either of these people would be available to supervise the access.

The judge adjourned the application to November. "It's distinguishable from *O'D* where there was a marriage and there is also an application for guardianship which is a significant matter," he said.

# Enforcing maintenance payments

Maintenance applications range from people seeking small amounts of money from unemployed fathers, to couples either separated or divorced and having maintenance issues dealt with by the District Court

## Father fails to pay maintenance for 34 weeks

*‘You’ve heard what she’s said and what the registrar has said – you just have to pay’*

Unmarried lay litigants came before Judge Brian Joseph Sheridan in Dublin District Court in a maintenance dispute. The parties had two children. The elder boy lived with the father and the younger with the mother who sought maintenance arrears. She also wanted to vary the existing maintenance order for the younger boy.

The court registrar said the father had not paid 34 weeks of maintenance into the District Court Office as directed the previous October. He should have paid €63.49 weekly and total arrears amounted to €3,301.11. The registrar had received €888.08 so the sum outstanding was €2,412.25.

The judge said the file stated that the order of payment went back to 1999 when the father was ordered to pay £50 per child. Payments were made in 1999, but tailed off in later years.

He added that an attachment of earnings order was made in 2006. This occurs where arrears are paid and future maintenance is deducted from the father’s salary. But the mother said she had received no money from then.

The judge asked her: “How much do you think you’re owed?” “Thousands over the years,” she replied.

He asked her if the father was working. She did not know and said: “I have a son who is 18 in August. I’ve had awful trouble with him so I sent him to live with his father. He has to be earning to be keeping his son where he’s living.”

She added: “I’ve tried to do the right thing. I don’t ask for anything from him. I just want him to take care of his boys. I just want help.”

Judge Sheridan said to the father: “You have heard what she has said and you have heard what the registrar has said and you just have to pay. What are your circumstances?”

The father replied “I started a job three weeks ago. I’m working on a building site. I’ve brought €300 into court. I just have not had the money. I’ve worked a day here and there. I can pay €2,000 in the next two weeks because I’m due money from tax back in 2005. I haven’t totally neglected to pay her money. I paid her cash in 2005, about €100 a week.”

He added that he was keeping and maintaining his eldest son. The judge said: “He’ll be self financing. He’ll cease to be dependent in August.”

The mother believed she needed €150 a week to keep her 10-year-old son off the streets and to give him some form of



religious education along with more involvement in sports. The man told the court he would continue to pay • 63.49 a week.

Judge Sheridan told him that because the older child would soon be independent the only person he would consider for the application was the 10-year-old. He was at “an age where he eats you out of house and home and needs shoes and clothes every three months”.

The judge asked about the father’s financial affairs and was told that he was living with his girlfriend who was working.

He paid • 900 a month and was earning • 400-• 500 weekly. The father said his only debt was some rent.

On the enforcement of the maintenance arrears order, the judge directed that he was imposing a prison sentence with a stay on it until September.

He explained to the father: “Therefore, I’m giving you until the first of September to pay the sum of • 2,142.25 and if you don’t do that you’ll have to spend 28 days in jail. If you pay up this won’t go any further.”

The judge said he was reviewing the parties’ original agreement made in 1999. He noted that the youngest son was only two years old then. He decided to vary the maintenance, saying: “It is better to get a maintenance payment [that is] realistic of being paid.” He told the father: “I can’t go lower than • 85.” The mother interrupted and said: “• 100 your honour.”

The judge replied: “You’ll get children’s allowance as well. • 85 per week if paid is enforceable and reasonable.

You are getting paid • 450 per week and children’s allowance for two children. I’m going to be cautious of the amount because of the history. It’s disastrous. It’s better to choose a figure that’s enforceable and realistic.”

The mother then said: “Can I speak? He starts off paying great and then everything just stops. I can’t keep coming in here.”

The judge responded: “It’s unfortunate but it’s the only enforcement you have. It’s not unenforceable. If he doesn’t pay over in two months he’ll be faced with the possibility of going to jail and the same applies if he doesn’t pay the • 2,000 he owes you.”

*‘I’m going to be cautious... It’s better to choose a [maintenance] figure that’s enforceable and realistic’*

# Wife wins lump sum and weekly payment

In a spousal maintenance case, a foreign national woman described being deserted and left with only a ticket back to her country of origin and an order to quit the apartment.

The parties were married in the Far East in 2004 and the applicant was from overseas and required an interpreter. The couple had no children together, but the woman had a child in the Far East and said the respondent had deserted her and gave her no maintenance.

She said they had moved to Ireland a year after the wedding and lived in an apartment. She worked as a trainee hairdresser earning €250 a week, but her rent was €900 a month and additional expenses meant she was always spending beyond her means. She told the court she was devastated the day he left.

“He called me and said there was €200 on the table and a ticket to go back to the Far East under the mat in the utility room and he never wanted to see me again. He came back when I was in work a week or so later and took all his stuff.” She said they had both bought tickets to the Far East as a holiday but he cancelled his.

She did not want to go back to the Far East but could not afford to live here, he had even tried to make her leave the apartment. She believed he earned more than his pay slip stated because he was a painter. “I don’t know anything about his loan, and

there is only my family’s house in my home country. He gave me money once or twice because my father was sick. I don’t know why he says there is a house being built for us,” she said.

The respondent husband then told the court that he was now living with his parents and paid them €200 a week. He had a €22,000 loan which was being used to buy land and build a house for them in her country. She also sent all her wages home while they were living together. He said she was extremely jealous and used to attack him in public. As a result he was scared and did not want to tell her he was leaving in person.

“I thought she’d be happy to go back... family is important for her and her parents and her son are there.” He told the court she had changed the locks and he had had to get the landlord to let him in to collect his belongings.

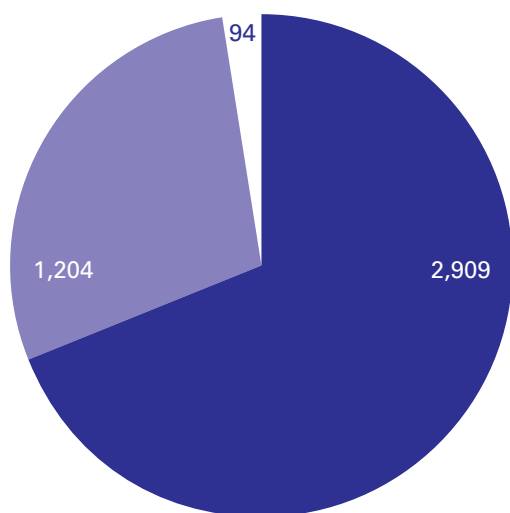
He could not afford to pay maintenance because money was so tight, but he wasn’t looking for any money back from the €22,000. He suggested that rather than pay such a high rent, she rent a room in a house to cut her outgoings. He said she definitely earned money on the side by doing her friends’ hair and from tips.

The judge told the respondent that marriage was a serious enterprise and came with serious responsibilities. “In this case there is additional responsibility because you brought her to a strange country and then cruelly deserted her.... You are of course liable to pay maintenance to her, I am deeply sceptical that you pay €200 to your parents every week and I believe you have the ability to pay.”

He then ordered a €2,000 lump sum payment and a weekly payment of €90 to be paid through the District Court.

*‘You brought her to a strange country and then cruelly deserted her’*

**Figure 3 Maintenance**



**Total: 4,207**

- Granted
- Withdrawn or struck out
- Refused

# Father's wish for midweek access is granted

In a suburban District Court, a mother sought a maintenance rise for two children to • 1,300 from • 1,000. The father had recently reduced the payment to • 750 a month on the basis that the mother had cut her working week from five days to four and was seeking an amended order to formalise this. Both earned similar salaries and had prepared statements of means. They went through them with Judge Murrough Connellan.

The mother said she had cut her working week because one son had behavioural problems and was currently being assessed by a psychologist.

The father responded that their son had not yet been diagnosed and that in his opinion the mother had taken a premature step in working less. He believed she should have waited until their child had been fully assessed and a diagnosis made.

At this point, the mother's solicitor interjected, saying the school had contacted the mother and it was in light of advice received that she had made her decision.

The judge said there was nothing "outrageous" in either statement of means and that the point of maintenance was to keep the "parties in the manner to which they had become accustomed".

He said it was unfortunate that they were spending money on a mortgage and rent and there were two sets of utility bills. He directed the husband to pay • 1,000 maintenance to his wife each month.

Judge Connellan then dealt with access. Under current arrangements the father collected the two children from school on Friday and the mother then collected them from his house at 7.30pm on Saturday.

The mother considered access to be very important and said her boys needed to see their father more and that they had asked if they could. She said current access

arrangements were inconsistent because if their father had plans he would not see them on a Friday. She added that her husband found it difficult to talk to her and had started making plans through their eldest son.

When the judge asked the father if he had communicated to his wife his desire to have midweek access, he said he had not.

After hearing further details on what days suited the parties, the judge made an order for midweek access whereby the father would collect his sons after school on Wednesdays and return them to school on Thursday mornings. The father would also continue to have access on Friday and Saturdays as previously agreed.

*The point of maintenance is to keep the parties in the way they were accustomed*

## Ex-husband secures €300 weekly maintenance

A father sought maintenance for two of his four children from his former wife, who is currently living abroad.

The pair had four children. After the separation, the two sons lived with their father and the daughters lived with their mother in a different county. During this time, the father had paid the mother weekly maintenance of €300. His annual salary was about €90,000.

In the past year, the mother had moved to a different country and the daughters had moved in with their father. He was now seeking €300 per week from the mother to maintain the girls.

The father told the judge that his former wife had agreed to pay the sum and that on three previous occasions – in August, November and April – she had told him she would pay him but he had yet to receive any money.

When questioned further by the judge, he

said she had told him she did not have the money but that when she did, she would begin to pay. The mother had sold her house in Ireland and was using the money to set up a café bar abroad with her partner.

The judge said it was difficult to assess the situation when the mother had failed to appear. The mother had been served with the proceedings but had apparently informed one of her daughters that she would not attend. But he said both parties should contribute to their children's upkeep.

Based on what the father said, the mother had indicated that she would pay maintenance. The judge had a certain reticence as the mother had said she would pay the sum but did not have it and as such was referring to future payments. Without her appearance it was difficult to know but she must have assets if she sold the house. On this basis he ordered weekly maintenance of €300 in favour of the father.

*'Both parties should contribute to their children's upkeep'*

## Prison likely if arrears of €3,000 are not tackled

A father appeared before Judge Derek McVeigh in a midland District Court for non-payment of maintenance. The court clerk explained that the court office had summoned him to explain the €3,000 backlog in maintenance payments.

The father said he had been a self-employed carpenter working on a private house when the owner ran into financial difficulties leaving him out of pocket by €22,000 and owing money to builders' merchants. That was when the maintenance

problem began. After this, he had to go back working for someone else and was now earning considerably less and could not afford to pay the amount the court had ordered.

Judge McVeigh told the father that his presence before the court today was not to reduce maintenance. He could only deal with the non payment of maintenance and backlog. The man said he just could not afford to pay the money after paying his rent and utility bills. He had no idea when his financial situation would improve.

*'You have two months to sort it out or you will serve a prison sentence of one month'*



Judge McVeigh told him: “You will have to get your priorities right and that means putting your children first.” The father replied “I love my children very much. They are the most important thing in the world to me. I have my children every night and most weekends. I need to keep a roof over my head to have a home for them.”

Judge McVeigh said he could not deal with the man’s financial difficulties and that his duty today was to enforce the court order and to try to come to some arrangement to have the money paid. The father said: “Well I just can’t see how I can afford to pay the money, as I said I am not earning as much now and can’t see my situation improving and I still owe money all over the town.”

Judge McVeigh replied: “I have no choice then but to impose a prison sentence for your failure to comply with the court order but I will put a stay on it if you can give me some idea of how long you need to get back on your feet financially.”

“I can’t give you an idea of time, I wish I could but I can’t see any way out of this situation,” the father replied.

The judge said: “Well you have two

months to sort it out or else you will have to serve the prison sentence of one month which I am imposing and what would your children do then if you had to go to prison?” The father replied: “I’m telling you judge I won’t have the money in two months. I just can’t afford it!”

Judge McVeigh advised the man to bring an application before the court to have the maintenance reduced to reflect his change in circumstance but that at present €3,000 had accrued and that money had to be paid. He said: “Even if you do serve the prison sentence in two months’ time you will still have to pay the money when you get out so it’s in everyone’s best interest that you try to find the money in the meantime.”

The man reiterated that he could not get the money, saying: “Can you not see where I am coming from judge? What do you want me to do?”

Judge McVeigh said: “My hands are tied. I can only deal with what is before the court today.” The man left the court saying, “This is ridiculous, this is a joke. Where do they expect me to come up with that kind of money?”

## Mother-of-two seeks payment from abroad

A mother of two children told Judge John Brophy in an eastern District Court that the father of her two sons had not supported her financially for 10 years. She had recently tracked the man, a foreign national, to a country outside the EU where he worked in the catering business. She believed he earned about €30,000 a year and had the equivalent of over €50,000 in a bank account in the country in which he now resided.

The mother, who was applying for a maintenance order for her sons, both in fulltime education, produced annual figures for a wide range of expenditure including

the mortgage and braces for the children’s teeth at €5,000 each.

“What will it cost you per month?” The mother said she was repaying the credit union at the rate of €127 per month. The judge told her the mortgage was not allowable nor could he allow for the cost of school field-trips. “Forget about that. It’s a luxury,” he said, pointing out that he only needed the costs of the outgoings for the children either on a monthly or weekly basis.

“I’m going to give you the maximum allowed by law, €150 a week for each child,” he decided. He asked her how she believed his order could be enforced.

*‘I’m going to give you the maximum allowed by law, €150 a week for each child’*

She said that a central authority in this jurisdiction would pass on the order from the District Court to a central authority where the father lived and the courts there would enforce it.

He directed that the money be paid into her bank account in Ireland. The mother

asked Judge Brophy about arrears of maintenance “after 10 years of no support”. “You mightn’t even get this off him,” he said, referring to the maintenance order he was making. “We’ll see what happens. We’ll send it to the central authority.”

## In Brief

### No maintenance being paid for five children

The mother of five young children, the eldest of whom was 10 years old, received no maintenance from her husband, a District Court in a northern county was told. The husband and wife lived in the same house and he paid for the groceries. The wife was seeking a maintenance order.

The wife’s lawyer alleged that the husband had made tax returns which stated the wife had received €18,000 a year from a company of which she and her husband were co-directors but said that she never got this money. He said she was a token director of this company, and he handed in a Revenue return claiming the payment.

There were also a number of properties involved, he said, and the problem was that the husband had formed another company. A detailed Affidavit of Means would be required from the husband. He said there was a joint bank account but there was no money in it. “Money is being used as a weapon,” he said.

The husband’s solicitor said the company operated from their home and that the wife had taken money out of the account. He said she had also written cheques drawn on a company of which she was not a director. He said the husband denied he failed to adequately maintain his wife and children. She was getting over €850 per month in child allowances and rent from a Northern Ireland property.

He was prepared to pay weekly maintenance of €200 per week but he wanted to be sure it was used for the children as in the past any money given was

spent on herself. She had previously left the family home with the children to live in premises which he provided when she was in another relationship and she had then returned to the family home saying, “I’m staying here now”.

Judge Sean MacBride told the parties: “You are very foolish if you don’t see reality and sort it out. Otherwise you could experience the provisions of the Companies Acts. There are very serious penalties for false accounts. Both of you could be in serious water.” He directed that the husband and wife provide detailed Affidavits of Means before his hearing of the wife’s maintenance application.

“I want no fun and games here. Any illegal activity will result in that person getting no benefit. There are allegations and counter allegations as to how the companies were run but I will only be dealing with properly vouched accounts and people operating under the counter will get short shrift,” he said.

He agreed with the wife’s legal representative that it was not right that she got no money but he said he would make no order relating to her maintenance pending the filing of her Affidavit of Means and a full hearing of her application. He adjourned the application for four weeks and he made an interim maintenance order of €75 per child per week – a total of €375 – with the husband continuing to pay for the groceries. “They would be both well advised to sit down with their lawyers. Their kids will need a lot of support over the next 20 years. You’d be better off trying to sort it out.”

# Separated mother looks for unpaid maintenance

A foreign national mother of two children came to court alone, representing herself. She had separated from her husband and was looking for arrears in maintenance ordered by the court. Her husband did not appear.

The wife told Judge Aingeal Ní Chondúin in broken English: "He doesn't pay me. It's only € 60 which he has to pay for his two children. I spend lots of money on them." The judge said she would issue a bench warrant for his arrest as he had not come to court for breaching a maintenance order.

The mother seemed afraid, saying: "Yeah, but look if you do that he will say I will kill you...I am afraid," she said. The judge advised the wife that if she was afraid she should issue a summons for a protection order or a safety order. "You must decide what you want to do," said the judge.

"But I'm afraid," replied the wife, continuing: "I'm looking for more money, cause € 60 is small money." The judge advised the mother to issue a maintenance summons, saying all that was before the court at the moment was the enforcement of payment of maintenance.

The judge told the woman she could issue a bench warrant for her husband's arrest: "The alternative is to adjourn and he may not come then either." The mother hesitated. "You want me to have him arrested? Yes or no," asked the judge.

"Okay," replied the mother. The judge explained: "He'll be arrested. He'll be brought in and given bail and given a return date to come to court."

Several hours later the wife returned to court. She was seeking an emergency protection order from the court. The wife told the judge that since that morning, "he keeps ringing me. He told me he's going to

*'He keeps ringing me. He told me he's going to kill me'*

kill me." The judge granted an interim protection order until the hearing and advised the wife to "keep a diary of events or texts".

# Protecting spouses and parents

Domestic violence generates almost half of all applications to the District Court, with people seeking protection through barring or safety orders, interim barring orders or protection orders. Apart from spouses, cohabitees and the elderly parents of adult children also apply for protection. What follows is a selection of typical applications

## Unmarried mother gets two-year safety order

**A**n unmarried mother of two children aged five and seven wanted a safety order against the father in Dublin District court. Her solicitor said the mother had sought a similar order before but had not

proceeded with it. Judge Aingeal Ní Chondúin asked the father, who was a foreign national: “Do you intend to get representation? Do you understand that a safety order means you can continue to live in the [home]?” He replied: “I’m not living there.”

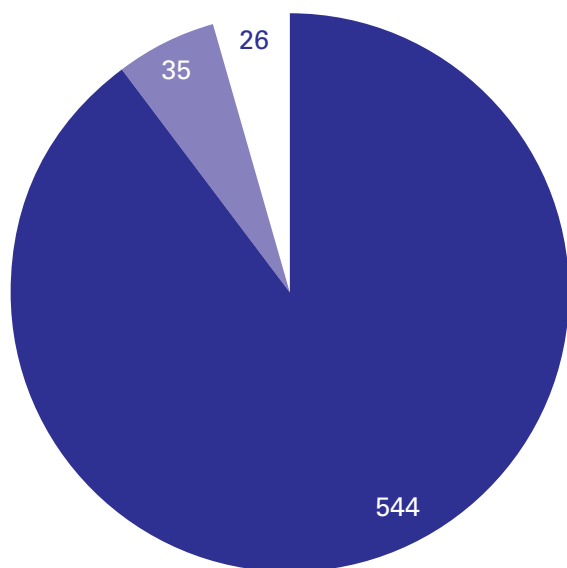
The mother’s solicitor explained that the parents were unmarried and that there were two children. Marks had been found on the eldest child’s neck which the mother believed the father had inflicted and the HSE had briefly taken the children into care.

The judge asked the father: “Will you consent to this order? A breach of it gives rise to criminal proceedings.” The father replied: “What does that mean? I’m living with my brother.” The judge explained that a safety order protected the mother from violence or the threat of violence, saying:

“If you put a foot wrong you’ll be arrested.” The father refused to consent and the mother then gave evidence. She said her eldest daughter told her: “Dad strangled me with drink on him.” She told of having to stay in a refuge for battered women and said her children had been briefly taken into care because of concerns about the father.

They then reconciled and the father used to

**Figure 4 Interim Barring Orders**



**Total: 605**

- Granted
- Withdrawn or struck out
- Refused



visit. "He was back and forward, he was in and out of the flat." On the last time he had visited her "he pushed me and the kids, he said I was crazy". She continued: "I need it [safety order] because he's very violent and highly strung."

The judge asked the father if he had any questions to put to the mother. The father asked: "Why did you say I strangled [the daughter]?... The case was struck out and you know I won't do that... The judge said there's no evidence... I said to the judge I didn't do that... We always have arguments over silly things, it [the flat] was dirty, it's not good for the kids."

"You haven't asked any questions," the judge said before inviting him to give evidence. The father said he called to the mother's home to fix the curtains. "I wasn't drunk. I saw her friend put his arm around her." This was how the argument had started and denied he put the mother or the children in fear. The mother's solicitor asked the father: "You pushed my client. Did you order them into the bedroom?"

The father replied: "I didn't push her. I didn't use any violence."

The judge, having heard the evidence, granted the mother a safety order for two years.

*'If you put a foot wrong you'll be arrested'*

## 'My husband beat me up several times'

**T**he same day a foreign national wife who wanted to have her husband barred from the family home made an *ex parte* application. The court may hear such an application with only one party present but can only grant a barring order in very serious circumstance for a maximum of eight days until the matter comes to hearing.

The wife told Judge Ní Chondúin she lived with her husband and said: "My husband beat me up several times and last night as well." The judge inspected the file. The wife had been granted a protection order in September 2006 and a safety order in January for five years.

The wife asked for a barring order saying: "Now he lives with me. In January I was on my own. I left my husband. One month later he lost his job. He had nowhere to go. I agreed to help him. He got a job and we moved into an apartment."

The judge told the wife that an interim barring order was granted only in very serious circumstances and asked: "Did you get medical attention?"

The wife had not and then removed her scarf showing the judge bruising on her neck. "What happened?" asked the judge.

"He started drinking," the wife replied and began to cry, explaining that they had married two years ago and they lived in a rented flat.

"How long is the violence going on?" asked the judge. "One and a half years," she said. The judge granted the wife an interim barring order for eight days stating that the matter would come again before the court and the husband could attend and defend himself at the next hearing.

# Man warned over behaviour as protection order stays

*‘Violence is not only hitting someone. It is also putting them in fear’*

In a suburban District Court, a foreign national woman sought either a safety or a barring order from Judge Murrough Connellan against her boyfriend, also a foreign national, who was representing himself. She said she was afraid of physical abuse – and had suffered psychological abuse – from the respondent and that a protection order had been granted three months previously.

The judge asked her if anything else had happened since and she replied that it had not and they were still living together but this time she wanted a barring order.

The respondent interrupted, saying: “Is it possible to stay in the house? I can’t afford to move anywhere.” The woman argued that she was in court because the respondent

“put my life in fear and my child’s as well. When he drinks he is violent, shouting at me and my child... called me whore and shit in front of child and it is tearing me apart”.

She continued that when her child was three months old the respondent came home drunk and lined up knives on the counter and scared her. She admitted that since the protection order had been in place he had been quiet. They were not married, but had been living together for three years and he had always been jealous and suspicious, especially when drinking. They were renting a house with the applicant’s brother.

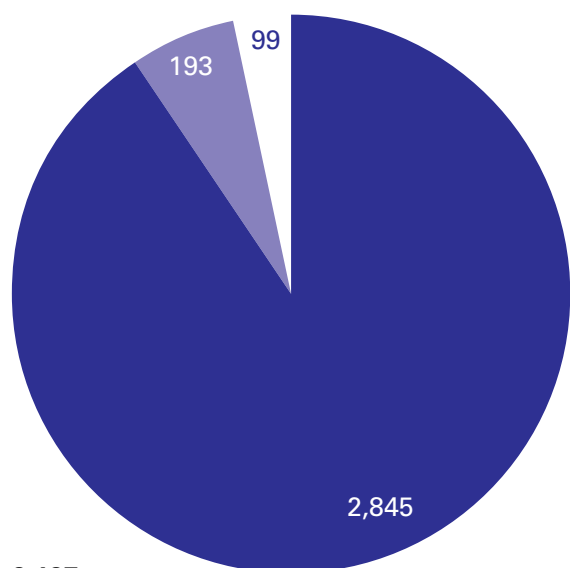
The man insisted he was never violent and was only sometimes jealous and lost his temper. The judge said: “Violence is not only hitting someone. It is also putting them in fear.” He indicated his severe displeasure that the father would use the child as a weapon.

He asked him how often he drank. He answered that he worked one week on and one week off and would never drink when he was on. He said the other week he would only drink once or twice.

The judge decided to adjourn the matter for two months and said that next time the man would have to convince him why a barring order should not be put in place. He advised him that while he refused to accept he was putting the applicant in fear, there would be no future for him. The judge explained that if he wanted to convince him of a change he “could show me you had been to see someone to talk about the violence and drinking”.

He suggested the man contact the probation service but in the meantime the protection order would remain in place and the applicant could call the gardaí if she felt in fear.

**Figure 5 Protection Orders**



**Total: 3,137**

- Granted
- Withdrawn or struck out
- Refused

## In Brief

### Violence alleged between elderly couple

A wife in her late 70s sought a protection order in Dublin District Court against her husband, also in his late 70s. She gave evidence as her husband was not agreeable to the application.

She said she was living with her sister and that the husband had made continuous threats to her that he would “punch her in the breasts” or “floor her” and would often throw things at her including slippers and other domestic items.

The husband denied the claims, saying he had never assaulted her. Judge Gerard Furlong put all the wife’s allegations to

the husband, who suffered from mental illness, and he denied all of them. He handed documents into court.

The judge questioned him on his living arrangements. He said: “I am living in my home that I bought and paid for.”

The judge asked if the house was in joint names and the husband replied:

“Unfortunately yes. She was never assaulted.” The judge looked over his documents and said to the wife:

“I understand that you are in fear and you have good reason to be.” He granted a safety order for a period of three years.

## If she feels safer with the order, issue it, says husband

In a midlands District Court a wife applied for a safety order against her husband, claiming he had threatened her. She told Judge Michael Reilly that they had separated in May and she had moved out of the family home. She was granted a protection order in August “because he said if he can’t have me no one else can... He said he’d run over me or [cut] the brakes on my car”. She said she felt safer since the protection order was in place.

Her husband replied: “As if I’d go near the brakes with my kids in the car.” He agreed, however, to the safety order being granted. “If she feels safer with the order, issue it. I’ve nothing to hide,” he told the judge.

In the same court an unrepresented wife made an emergency *ex parte* application for an interim barring order against her husband. She said to the judge: “I don’t want him out of his own home, just to know he can’t touch me.”

Judge Reilly told her that an interim barring order meant he would have to leave the house until the full hearing next week. He told her that another option would be to apply for a protection order pending the hearing. “He wouldn’t be put out of the house. If he raises a hand or his voice, call the gardaí and he’ll be arrested,” he said.

The wife told the judge that her husband was “bullying and violent. [He] intimidates me and locks me in a room for hours on end”.

The judge said he could not advise her on which course to take and suggested that she go to her local solicitor, seek legal advice and return to court later in the afternoon.

The wife did as Judge Reilly suggested and came back to court with a solicitor. She explained about her husband assaulting her the previous Saturday. She applied for, and was granted, a protection order. The judge then issued a summons for a safety order.

*‘If he can’t have me no one else can’*

# Man breaches safety order and is barred from home

An interpreter's assistance was required in a case heard by Judge Gerard Furlong. The husband and wife had two children, aged five and 10. The wife obtained a safety order which the husband broke some days later by grabbing her and beating her. She contacted gardaí who came and warned the husband that there was an order in place. Once the gardaí had left, he hit her again.

The wife said he was very drunk, was shouting and that the children were terrified. Later he was arrested and remanded in prison. The wife added that she was terrified he would return to the house and she sought an interim order, which was granted.

The matter appeared again some days later but was adjourned so that an interpreter could be present. When the interpreter arrived the wife said a safety order was not sufficient. The husband said he felt guilty for

hitting his wife and had sought treatment for his alcohol problem. The husband handed documents to the judge.

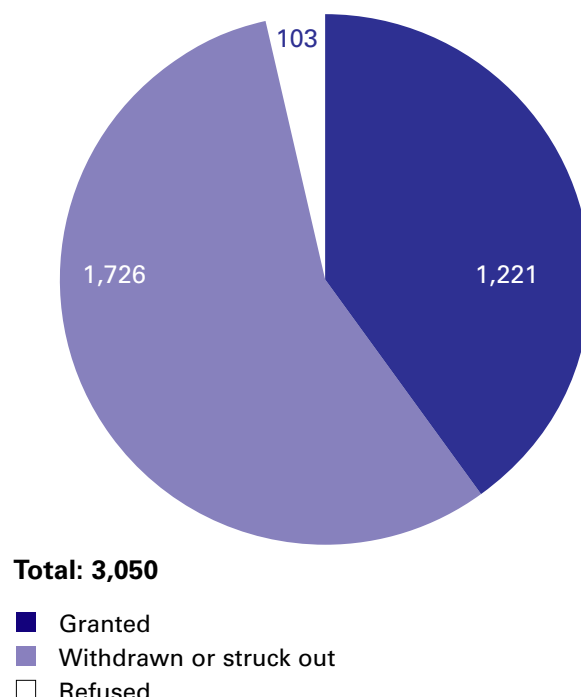
The judge asked: "When did you last have a drink?" The husband replied: "It might have been a week ago, I do not know."

The judge asked: "Why should you go back to the family home?" The husband replied that he loved his wife and children.

After clarifying some matters with the husband including that the gardaí had arrived to the house, Judge Furlong asked: "How long are you going to seek treatment?"

The husband asked for another chance, saying he wanted to stop drinking altogether. The wife did not accept that he would stop drinking. The judge said he would have to make a barring order for one year but reminded the husband that if treatment was successful there was nothing to stop him making an application to remove that order.

**Figure 6 Safety Orders**



*'When did you last have a drink?'*



## In Brief

### Court adjourns barring application

A wife sought a barring order before Judge Murrough Connellan. The matter had been heard previously and was adjourned when the husband undertook to attend an addiction centre for treatment for his alcohol problem and to leave the family home until the course was completed.

The husband's counsel said he had finished in the treatment centre and they were happy with him. But the reality of the situation was that he had nowhere to go. The wife's solicitor questioned this, stating that there was a mobile home at his parents' house and that before entering the centre and without telling his wife, he had cashed in an €8,000 insurance policy that was in both their names. She added that the wife was very concerned about how he would cope back in the real world. There was a history to the case in that he had sought treatment before in 2000 but afterwards had started drinking again.

The husband's counsel said the mobile

home was his brother's and had been sold and that the money was in an account and had been discussed with the wife.

Judge Connellan stated that without wanting to anticipate things, the order stated it would expire when the programme was completed and as the programme was now completed, there appeared to be no bar to him returning to the family home. He asked the parties, however, to go out and consider things and come back before him later in the day.

They did this and agreed that the husband would use the €8,000 for accommodation and that the matter would be put back to September in the hope that by then he would have shown how he coped with aftercare. Also the couple would have made decisions on a judicial separation.

Judge Connellan made an order for the husband to use the €8,000 for rent and that the barring application would proceed on a date in September.

### Father gets protection order

A frail elderly father made an emergency *ex parte* application before Judge Murrough Connellan seeking a protection order against his son and sought a summons to be issued for a safety order.

The judge read the information the man had provided to the court and asked him to confirm it. The information stated that the man's 33-year-old son was living with him and his wife but that he was not dependent financially as he was receiving social welfare. It stated that he had a problem with alcohol and became abusive when drunk.

It described an incident where the son was swearing and shouting at his mother to come up the stairs despite the fact that she could not due to

a problem with her hip. The son then threw a cup of coffee and a can down the stairs at the couple's daughter who was disabled. The information stated that the father became anxious, with pains in his chest requiring him to take three sprays of his medication.

The abuse lasted several hours. The doctor was called and the son was taken to a treatment centre. When he returned after three days he told them that he did not want a lecture and continued as before.

The father confirmed this information and added that his son had been like this before and he was immediately afraid that he or his wife would come to harm. Judge Connellan granted a protection order and issued a summons for a safety order.

# Dealing with other issues

In general, most District Court applications deal with maintenance, children or domestic violence but occasionally other issues, such as permission for children to have a passport issued or a name changed, can arise as these cases show

## Mother wants passport to go to Saudi Arabia

An Irish woman separated from her Saudi husband wanted permission to get passports for her two children. She had been trying to get a divorce but had not yet succeeded. She told Judge Gerard Furlong that she married the children's father in 1984 in an Islamic centre in Ireland. She added: "I'm back here five years. He still has two of my children over there. They're aged 21 and 16."

Two other children lived with her in Ireland and had not seen their sisters in five years. The father did not pay maintenance and had cut off all usage of the personal computer in his house in Saudi Arabia so that the mother could no longer contact her children or see them via a web camera.

She told Judge Furlong that the father had sent her tickets to go to Saudi Arabia to see her children. The elder of her children here was the only one who had a passport but this had now expired. She said the father had refused to sign the passport forms. "He said that if I want to see the girls I've to come to Saudi with the other children. He sent me tickets," she said.

Judge Furlong said: "You're happy to accept these tickets but they can't travel

without passports." The woman affirmed this. He said: "You have an address for him. I'll dispense with his signature. I'll dispense with his consent. I'm granting this application without hesitation."

He continued: "The order that we're giving you will take the place of his signature. You still need all the other documents, for example photos and the like to fill in the rest of the forms. Where he had to sign is now taken care of by us."

The mother expressed her worries about the situation: "One more thing, I'm going to Saudi Arabia with my children, there is a chance he'll keep us there".

"Get advice," said Judge Furlong. "This area is very complicated. I would not be confident to advise you. We've a jurisdiction limited to this country. Have a word with the Department of Foreign Affairs before you leave. They might give you contact numbers for over there."

He asked the mother if the children had been born here. She replied that they were not.

"Well, that may be a problem," Judge Furlong said. "Talk to the Department of Foreign Affairs."

*'I'll dispense with his signature... his consent. I'm granting this... without hesitation'*

# Couple agree to change child's surname

An unmarried couple came before a court in a commuter town seeking an order to give their son his mother's surname. They told Judge Murrough Connellan they had an 11-year-old son together and an order had previously been made giving the child his father's surname. They were now applying for a new order changing the surname to the mother's as they had had problems applying for his passport.

The boy had been born in June 1996 and while the mother was married at the time she had lived separately and apart from her husband for many years. Three weeks after the child was born the parties came to court and the father got guardianship. The father said that the child's birth certificate just had the mother's surname on it but that the earlier court order had given the child his (the father's) surname.

But when they applied for a passport, they were told that the application could not be approved until they had confirmation that the child referred to on the birth certificate and the child referred to in the order for guardianship was one and the same child.

Judge Connellan asked whether information on the father could not be given to the Registrar of Births, Deaths and Marriages. He said: "I can give you an order, but I don't want to tie things up for the future."

The father told the court they were both quite happy with the mother's name, knowing that he was the legal father. The judge had concerns that the matter had to be dealt with correctly.

He asked the mother, as her husband had left years ago, if she had any order regarding the end of the marriage. She said she did not and she had not seen him for 20 years. Judge Connellan said he would not be happy making an order without looking into it

further. The matter had been in court in 1996, information had been given and the court had operated on that basis then.

The fact that there was no father on the birth certificate was not, it seemed to him, enough to change an order of 10 years ago where evidence was given.

The mother said: "When I went to get the birth certificate I wanted [father's surname] on it but that wasn't allowed as I was still married. I thought I could change it later. He's been [mother's name] for years, his schoolfriends call him that."

Judge Connellan said he did not wish to make an order that would cause trouble for their son so he would like to adjourn the matter to check it. Asked when did the couple planned to travel they said they had no plans but had thought he should have the passport for school trips. The judge commended the parties: "You've done something no one does – you've thought ahead!"

He adjourned the matter saying he would try to come up with an answer for them. The parents left the courtroom smiling and laughing. Judge Connellan commented on how nice that was, showing that it could sometimes happen.

*'You've done something no one does – you've thought ahead!'*

# Preparing family law cases for hearing – case-conferencing in action

**Carol Coulter** attends several meetings held by Limerick County Registrar Pat Meghen to improve family law proceedings and observes how the cases fare later in court

*‘A lay litigant who said he could not afford a solicitor and who was just over the income limit for legal aid’*

In *Family Law Matters* Volume 1 Limerick County Registrar Pat Meghen outlined a pilot project where he conducted case conferences to prepare family law cases for hearing. These meetings sought to narrow the issues in dispute and, if necessary, make orders on the time for filing documents, interim orders and orders for matters such as discovery. The county registrar is also responsible for listing cases in the Circuit Court and will give priority to cases which have gone through this process and where contentious issues have been isolated.

The registrar convened case talks for six family law cases during the Trinity law term and *Family Law Matters* attended with the agreement of the parties or their representatives. All cases were then listed for the end of July. Of the six, two cases were later settled without going to court, one was settled after a part hearing, and one was still ongoing after orders were made in the county registrar’s court. The court decided two.

The first case dealt with in the registrar’s office involved a lay litigant who said he could not afford a solicitor and who was just

over the income limit for legal aid. His wife, from whom he had been separated for a number of years and who was living with a woman, was applying for a divorce. They had two teenage dependent children, one living with each parent.

The man said the younger boy wanted to live with him but his working hours prevented this at the moment. He visited him every second weekend. The older boy, who lived with him, did not see his mother.

The wife’s solicitor said she wanted joint custody of the children, maintaining the existing living arrangements and with access to the non-residential child for both parents. He pointed out to the man that an older child, who had been on a methadone maintenance programme, had died while in his care.

The solicitor said there was no reality to anyone seeking maintenance. He said there had been two barring orders against the man but he normally tried to avoid barring orders and would take instructions.

“What about the family home?” asked the county registrar.

The man said he had remortgaged it and paid the wife £15,000 of the agreed £20,000



to take her name off it, but she had never done so. Her solicitor said she wanted a lump sum. "She hasn't a hope of a lump sum," said the man. Her solicitor said she had later paid him to restore her name to the house and did not get the balance of the £28,000 agreed.

Mr Meghen asked if there was a pension and the man said his company had gone

into liquidation and he had not heard back about a pension. Normally a pension was distinct from the company assets and this should be clarified, Mr Meghen said.

He then asked about the value of the house. The solicitor said it had been valued in 2006 at • 200,000 • 220,000 and the man agreed with that, adding that he had a mortgage of • 89,000.

### Not a 50/50 situation

When the case opened later before Judge James O'Donohoe, counsel for the wife said she wanted a €50,000 lump sum – half the equity in the house – less the £15,000 she had received. She wanted the house sold when the older boy, who was 16 and living with his father, was 18.

The man responded: “She left seven years ago because she was gay. I worked every day of my life. She never worked. I gave her £15,000 to take her name off the house and she never did it. I paid the mortgage. She never contributed.”

The wife told the court that she left the family home because the husband was abusive and violent. They had had five children and two were still dependent. The couple had gone to mediation and concluded that the three older children would live with their father and the two younger ones with her. She agreed to take her name off the house but then her husband got sick and was hospitalised and could not work for a year. She moved back into the family home, gave up her job and cared for the five children so the agreement broke down.

The judge did not think this was a 50/50 situation, rather a two-thirds/one third division. A third of the net equity would be about €42,000, and she had already received the equivalent of about €20,000, leaving €22,000. The man said he had no way of raising this sum.

The case adjourned for discussions which did not lead to a settlement. When the case resumed Judge O'Donohoe awarded a lump sum of €30,000 to the wife. He also made orders for joint custody and access for both parents and granted a decree of divorce.

### ‘Bullying and hectoring’

Another case first discussed with the county registrar concerned a couple who had been separated for 18 years and who wanted a divorce. The only issue was the house, which was in the husband's name.

“She is intransigent,” the wife's solicitor

told the county registrar and the husband's solicitor. “She raised the family in the house. He was barred and didn't contribute.”

Asked about affidavits of means, the husband's solicitor said his client was 66, on a pension and living in rented accommodation. “Our case will be that he left the family home because of bullying and hectoring and got the thin end of the stick up to now,” he said. He said his client wanted 50 per cent of the house. “He won't get that,” said the wife's solicitor.

Mr Meghen said the case could take one-and-a-half to two hours and he listed it for the end of July.

When Judge O'Donohoe heard it, the wife's counsel said she was claiming more than half the house based on his conduct and her contribution to the family.

The husband's counsel said he had been barred and had stayed away from the family home. He had bought it at the outset for £1,300. He had built an extension and it was worth about €230,000. He now wanted to buy out his wife's share. He had savings amounting to €60,000, which he was offering for her interest, and he wanted to move back into the house.

The wife's counsel said the couple had both worked in England and she had saved her salary which went towards buying the house. She had been living in it since 1971.

She gave evidence that the couple had married in 1967 and had four children, all now adult. She said her husband was very controlling and jealous and did not agree with the children being educated.

“Even if your husband is a mass murderer he's entitled to something,” said Judge O'Donohoe.

“I did up the house. I spent €60,000 on it,” said the wife, adding that she had borrowed this from the credit union. She also funded the children's education, three of whom had third level qualifications.

Asked if there was any way she could buy out her husband's interest in the house, she said she had savings of €44,000 and her daughter, who was a professional woman, could help her.

*‘Even if your husband is a mass murderer he's entitled to something’*

Her husband told the court that his wife had been violent to one of the children and drove her from home. He was in contact with this daughter. He said he had always intended to move back into the house.

He agreed that his wife had had to seek maintenance orders against him and that he had had those reduced so that he paid £70 a week in maintenance for the children. He accepted he had not contributed to their third-level fees.

"I propose giving you a third of the net equity in the house, that is €57,000. I'm going to allow you hold on to your pension and your €60,000. You should be able to get somewhere to live out of that," said Judge O'Donohoe, granting a decree of divorce and orders extinguishing succession rights and nominal pension adjustment orders.

### **'A totally settle-able case'**

In another case the husband's solicitor told the county registrar that he had difficulties getting instructions from his client. He was a professional man who had bought another business and now had a drink problem. His wife wanted a judicial separation and a protection order had been made against him.

The wife's solicitor said they had six children, five of whom were dependent. She was rearing them and wanted the issues resolved.

The husband's solicitor said he had filed an affidavit of means. The county registrar wanted the man's business premises valued and said he could issue an order to allow an inspection within three weeks if that was acceptable. The husband's solicitor agreed and agreed that the family home be valued as well. The valuations would be handed into court and no further evidence would be necessary on them.

The wife's solicitor accepted that the man was paying €1,300 a month in maintenance for the dependent children. His wife worked. "This is a totally settle-able case. I could see this not taking time," he said. Joint custody of the children was already agreed with them living with the mother and access agreed.

"We'll need details of SSIA's, pension, an up-to-date figure for redemption of the mortgage on the business premises, accounts for three years. It seems to me that if she gets the house, the business premises could be sold, he continues paying maintenance for the children, and it could be settled," said the county registrar.

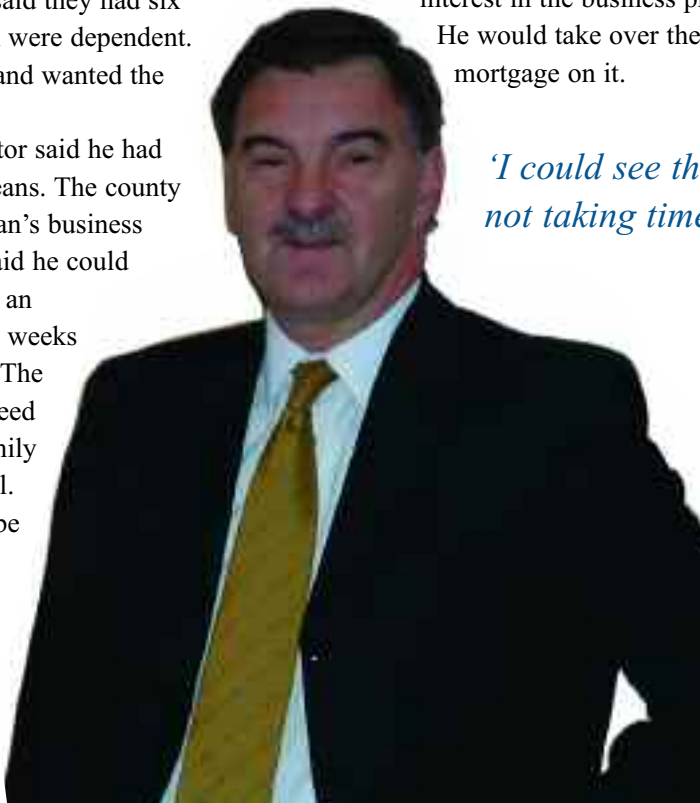
"In theory it is very straightforward," said the man's solicitor. "It's a question of getting him to engage. When he is sober he is a really nice man."

"Absolutely," said the wife's solicitor.

The court was told the case had settled when it came up subsequently for hearing in July. The couple had agreed on a judicial separation with joint custody of the dependent children, who would live with their mother. The father would have liberal access, and would continue to pay €1,500 a month, €300 for each child while they were dependent. The family home would be assigned to the wife who would give up any interest in the business premises.

He would take over the mortgage on it.

*'I could see this not taking time'*



Pat Meghen,  
Limerick County  
Registrar

## Dividing up the family home

In another case a couple could not agree on division of the family home which was worth €557,000. The parties had agreed it should be sold. The wife's solicitor told the county registrar she wanted more than 50 per cent because of the husband's conduct. She was seeking 52.5 per cent, along with half his pension which was worth €50,000. She was also unhappy with the maintenance for the dependent child set at €150 a week in the Circuit Court and which, she complained, was not being paid.

At the meeting with the county registrar the husband's solicitor said his client wanted a reduction in maintenance. The wife's solicitor said the husband was self-employed and there was a huge cash element in the business. If necessary the wife could give evidence on this to the court.

Mr Meghen said accounts should be produced for the past three years. The wife's solicitor said his client had only been working for the past few months and she could not afford a mortgage. She would be looking for 55 per cent of the house and would then relinquish her claim on the pension. Mr Meghen said he could make a property adjustment order and an order for the sale of the house if it would help.

After consulting his client, the wife's solicitor said his client agreed on an order to sell the house, with a reserve of €557,000 on it, and she would accept 52.5 per cent of the net proceeds of the sale. She would not look for a share of his pension but would accept a lump sum of €15,000 instead. There would be an issue of stamp duty payable on any house she would buy.

The husband's solicitor consulted his client and said he would agree to everything but not the €15,000, and the case was listed for hearing.

Mr Meghen reminded the parties that the property sale had been agreed, the husband would have to produce three years' accounts and the wife a statement of her earnings for the last year, along with the valuation of the pensions. Joint custody was settled.

The parties agreed to explore the tax treatment of the house sale.

When the case came up for hearing both sides told Judge O'Donohoe that the case had come very close to settlement and they outlined what had been agreed. The wife's barrister said that because of relations between the parties and difficulties with the maintenance, she wanted it capitalised into a lump sum along with money to compensate for her giving up any claim on the pension. The dependent child was expected to go to college and would be dependent for another five years.

The case was adjourned for discussions, and when it resumed it was agreed that the wife would receive 52.5 per cent of the house value along with €35,000 in lieu of future maintenance and any claim on the pension.

## Bitter dispute over land

Another case discussed with the county registrar concerned a bitter dispute about land. The couple had parted seven years earlier and a judicial separation was in place. The husband now wanted a divorce. The wife claimed that maintenance was inadequate and also that her husband was interfering with the sale of land granted to her following the separation and wanted further provision. There was also a dispute about access to the children.

The husband's solicitor said that in the dispute over what was being spent on the children he was willing to increase maintenance. He was farmer and ran a small business. His wife also had a business.

"Can you get a valuation on his house and farmland?" asked Mr Meghen. "Also on hers and hand them in. If there is a difficulty come back to me. Also get figures for land both sides sold, along with up-to-date affidavits of means. Custody is not an issue. Access is. We may need to meet again."

The husband's solicitor said the case would take a day if it dealt with allegations that the land sale was interfered with. "If the land has

*'Custody is  
not an issue.  
Access is.'*



been sold that's academic now," said Mr Meghan. "Then we're down to half a day," the solicitor said.

When the case came up for hearing the parties sought more time for discussion which continued during most of the day. Finally, the court was told that an agreement had been reached which Judge O'Donohoe made a rule of court.

The agreement provided for the husband to pay the wife € 300 maintenance a week for each of the two dependent children, index-linked and assigned two life assurance policies taken out for the children's education. He also agreed to assign another insurance policy to the wife.

The husband also agreed to buy a house for each of the children along with furnishings. The rents on these houses were to go to the wife for spending on the children until they were 18, when they would receive them.

He also agreed to pay the wife a € 20,000 lump sum.

#### **Four houses, an apartment, a farm and a shop**

The final case discussed with the county registrar concerned a divorce application which followed a judicial separation concluded in 1990. There was one dependent child who, it was hoped, would go to college.

The wife's solicitor said she had been given four taxi plates following the judicial separation but with deregulation they proved much less valuable than expected. The husband had considerable assets.

The husband's solicitor said most of his client's family assets were at the discretion of his parents.

Mr Meghan said he could list the case for July. The Leaving Cert results came out in August and would decide the child's future so her maintenance could be left until after that. He asked if spousal maintenance was an issue. The husband's solicitor said his client

maintained that proper provision had already been made.

Mr Meghan pointed out that the husband had a house and apartment, three other houses, a farm and a shop. "Can we get an agreed valuation?" he asked.

The wife's solicitor said the local authority had compulsorily purchased land from the husband's family to the value of € 10 million. His father has recently died.

The husband's solicitor said the man was not a beneficiary of his father's will.

The wife's solicitor said she had asked very legitimate questions

about the husband's financial affairs, and was told it was not necessary for her to get the documents. Mr Meghan said he would issue mutual orders for discovery, including the grant of probate on the father's estate. He said he would write to the solicitors for

*‘An undertone  
here of assets not  
being disclosed’*

the estate saying he was considering third party discovery in the context of proper provision in a divorce application.

There would also have to be averments concerning the land compulsorily purchased.

“I feel there is an undertone here of assets not being disclosed and no judge will make orders without all information,” he said.

“My client will be very surprised if he is not a beneficiary of his father’s will. He was the apple of his father’s eye and they did a lot of business together,” the wife’s solicitor said.

The husband’s solicitor said his client had serious concerns about where the money from the taxi plates went.

### **An estate of €10 million**

The case came before the county registrar’s court at the end of July when the wife’s solicitor said four affidavits of means had been filed by the respondent, with more assets revealed each time. A copy of the probate report showed the husband’s father had an estate of €10 million. There were siblings and the husband’s mother was quite elderly so he should expect to inherit at least €2-€3 million.

A solicitor representing the husband’s

mother said she did not want to be involved in the case as the inheritance concerned was hers.

The county registrar said this case concerned proper provision in the context of a divorce application. It would be necessary to discover what assets the father had before he died, what assets the mother held wholly or jointly with either her husband or the respondent before her husband’s death, so that when the court sat it would have all the information relating to the assets.

He said there would be a family law call-over in September when a motion could be brought relating to any other matter.

At the family law call-over in September, the parties had agreed on a valuer for the properties and sought a ruling on who would pay for the valuations. The case was listed for November with a further case progression meeting likely in the meantime to ensure all discovery matters were dealt with.

All other contested cases described as ready for hearing have been put in for meetings with the county registrar, 32 in all, which would be dealt with in September. Family law is listed for hearing for October 30th to November 15th and it is anticipated that all case-conferenced cases will be heard then, according to Mr Meghan.

# Children's welfare the focus in division of family assets

A judicial separation case in a Midland Circuit Court takes three days spread over several weeks and ends in half the family property going to the wife, an additional sum for the benefit of four children and the husband bearing costs. **Carol Coulter** reports

A case before Judge Miriam Reynolds concerned a family with five dependent children ranging in age from five to 17, three of whom had special needs. The couple had met in 1986 and moved into a house in the husband's name in a scenic area outside the local town. He had two investment properties in the town, one inherited, the other bought. Both were mortgaged.

During the marriage the wife had inherited land which was sold for about • 340,000. As part of separate court proceedings, he had sold his share in the business he worked in for • 450,000. The couple were disputing what had happened to the money involved in renovating the family home and building up the husband's business.

In 2003, following an incident between the oldest child, a boy, and the mother, she left the family home with the younger children and was now living in rented accommodation. The oldest boy lived with his father and did not see his mother. The second oldest, a girl, did not see her father. The three younger children saw him for about half the week. The older children had become embroiled in the difficulties between their parents.

The wife gave evidence of marrying the respondent when she was 22 and he was 34. She worked for several years but gave up her

job to care for the children when the third was about a year old. She said there were disputes about money and property and that her husband wanted her to sell the land she inherited so he could buy into a business. She claimed that when she was pregnant and in hospital he coerced her into signing papers to sell the land.

From about 2002 there was violence in the house, she said, with the oldest son behaving in an aggressive way towards her and not being corrected by his father. She denied she had deserted the family home, claiming she had no alternative but to leave given her son's violence.

She said her outgoings were now almost • 1,000 a week and she needed a lump sum to provide a home for herself and the four children living with her.

Her husband's barrister cross-examined her at length and he asked her where the • 160,000 she claimed she had spent in renovating the family home had gone. She had inherited almost • 400,000 – where was it now?

"It went to [the husband]. It went to look after the children and take them on holidays," she said.

She acknowledged she had had difficulties

*'There were difficulties in my marriage. There were three people in my marriage at that time'*

with the eldest son. A social worker became involved with the family. "There were difficulties in my marriage. There were three people in my marriage at that time." When it was put to her that the social worker would say she had excluded this son from the family, that she picked up her daughter from school and left him on the side of the road, she answered that the daughter finished school at 3 pm while he finished at 4 pm. She had another collection to do at 5 pm and had asked him to wait.

Asked if she had perpetrated violence on her husband in the light of photographs presented to the court, she said there had been a row between the son and the daughter. Her husband intervened and pulled the daughter's hair. She went to her defence.

She denied she had provoked the incident which led to her leaving the house when the son threw a torch at her hitting her face. The barrister said: "You provoked him. You said to his father, 'What's it doing here? Get it out of here'."

"No," she replied.

Asked why she had sought a barring order against her husband when he had never raised a hand to her she said: "He used [the son] to attack me. He did raise a hand to me."

She denied she was out most nights drinking with her friends. She agreed she had been involved in a car accident where she suffered neck and back injuries for which she received an insurance award of • 71,000. Asked where this money was, she said she had spent • 28,000 on a bond and the rest on rent and other expenditure in her present home.

"The compensation, the inheritance, all add up to about • 500,000. It was either squandered or hidden," the barrister said. "It went into looking after the children and into the houses," the wife replied.

The barrister said the total amount she invested in her husband's houses and business was • 120,000 but she insisted it was more.

The social worker told the

court that she had become involved in the family because of concerns for the oldest boy. His school work was not going well and he told the social worker he was going to commit suicide.

"I felt there was a lot of tension in the house. The child was never spoken to when he came in. I knew it was not a normal house. This child never got any love or care. He loved sport on TV and if he sat in front of the TV some other child took his glasses off so that he could not see it. He talked to me all the time. He said when I left he went to his room every evening because he could not watch TV. His mobile phone was hidden. It was his lifeline to the outside."

She said that the wife had claimed she (the social worker) made a report to her supervisor of her concerns for the child at the father's request but this was not true. She did it out of concern for the child. She considered his threat of suicide to be very real.

The husband gave evidence that he had wanted the marriage to work and had gone for counselling. "The truth is I didn't want the marriage broken. I threw money at problems. She wouldn't talk to me. She didn't talk to me for 10 months. I couldn't take the silent treatment. I was told to like it or lump it. I wanted her to go for counselling. We went to mediation. I was told she would not engage."

He said his wife had assaulted him, and he had taken pictures of his face as he was told he would not be believed otherwise.

Asked why one of the investment properties had been willed to the eldest son, he said this had been his family home and his father had asked him to leave it to his eldest son. Asked what provision he had made for his other children, he said he left everything to them apart from this property.

Asked if it was reasonable for his wife to have to leave the family home, he said (of the son): "She referred to the child as 'it' all the time. I had to get him out of there that evening. When I got back the house was empty."



He denied he had pressurised her into selling the land she had inherited and said there had been five separate sales of parts of it over a period.

Asked about access to his children, he said: "I'm 52. When I'm 65 I want them to come to me with their children. I need them and they need me. I have nobody in my life except my children. The only sunshine in my house is on Sunday when they run in my back door. I want to preserve the memory bank of my children with both parents. There are no reports from the HSE saying I'm an unfit parent. The only good thing out of this is I have my children and they're with me half the week."

The wife's barrister said that according to the schedules, the total valuation of the property was between • 1.9 million (the wife's valuation) and • 1.5 million (the husband's), with • 400,000 in liabilities. The median amount, after allowing for the liabilities, was • 1.3 million. Why would he not meet his wife in the middle, and give her • 650,000?

"No," said the husband. "Her conduct has been deplorable. I would have to part with • 650,000. I would be bankrupt. There is no way I can borrow that kind of money."

Asked what he thought would be reasonable to give his wife, he said: "• 350,000. She left the house after 10 months' silence, after being arrested in nightclubs, a car crash. What I had to endure from this woman ..."

"We have heard the recriminations. Now is the time to move on," said the judge.

"I want to have something to hand on," the husband said.

Judge Reynolds said she would like to receive written submissions and a report from the HSE. She ordered a Section 20 report on the children. "It is important to separate the emotional issues from the welfare of the children. I am very concerned about [the oldest child]

and his future welfare, especially his psychological welfare."

She adjourned the case to receive the submissions and reports, and then reserved her judgment.

In her judgment she said: "The function of the court is to ensure proper provision is made for the parties; to ensure the assets of the marriage are divided so both parties are provided for..."

"Both parties acquired inheritances during the course of the marriage, in particular Mrs.... When she came to the marriage she had no assets to speak of. Mr... had what became the family home which was in his own name to begin with..."

"He is a risk taker by nature which led to some problems but the parties now have acquired substantial assets.

However I also believe that Mrs...'s inheritance contributed largely to the growth in the family finances.

"A dispute arose as to where the finances for the completion of the family home came from. The applicant had received monies and lands from her mother's estate. The applicant says the respondent dealt with all financial affairs. The applicant denies that she agreed to the sale of certain assets. However the respondent says that she agreed.

"I am satisfied that the respondent, using his skills, did all financial dealings and negotiations..."

"The respondent lives with their eldest son. The applicant has the rest of the children. The eldest son is the intended beneficiary of the investment property but no such provision has been made for any of the other children or the applicant..."

"The applicant wishes for a fresh start with four children but not in the family home. The respondent wishes to retain all properties and to have a lump sum payment paid to the applicant. The joint assets of the family amount to • 1,325,000.

The applicant would receive a lump

*'She referred to the child as "it" all the time'*



*'The applicant wishes for a fresh start'*

sum payment of 50 per cent of • 1,325,000... to buy and furnish a new house for herself and the children. Maintenance is currently at • 80 per week. There is a Hibernian bond investment of • 28,000.

"The applicant is to be awarded a lump sum of • 662,500. The respondent is to retain all properties. He may do with them as he wishes to raise the lump sum... • 100,000 is to be paid by the respondent to the applicant for and on behalf of the four children. The lump sum is burden free... The sum of • 80 per week for four children is too low. In my opinion a proper figure would be in the

region of • 30 per week per child totalling • 120 per week.

"I order a decree of judicial separation. I order • 120 per week to be paid in respect of maintenance. I give the applicant custody of the four dependent children in her care. I direct a lump sum payment of • 662,500 to be paid. I transfer the beneficial interest in the family home to the respondent.

"I direct costs as against the respondent because it will take all of the lump sum to make a fresh start and also there are four dependent children to be taken into consideration."

## Father retains supervised access

**I**n a South-East Circuit Court Judge Olive Buttimer ordered supervised access to a five-year-old child for his father following an appeal against a District Court access order by the child's mother. The couple was not married.

The mother's barrister said the father's behaviour was erratic and violent. At the last supervised access visit he had threatened to kill the mother's father who was supervising the visit. The child did not want to see his father whose behaviour upset him.

"I'm not listening to this bullshit any more. I'm here for the welfare of my child," said the father.

His barrister said there had been an acrimonious separation with numerous allegations against her client. A Section 20 report (by the HSE) had been ordered, and it did not recommend the withdrawal of access. Numerous court orders had been made to facilitate access. The father was not making an application for unsupervised access.

Such access was taking place in the child's home on Saturdays between 11 am and 3 pm. People were available to act as supervisors.

The mother's barrister agreed there was acrimony, but added: "This is in a situation where Mr... has assaulted my client, my client's father, my client's brother-in-law. She is very worried about the child's welfare and what Mr... might do."

"Access is the right of the child," Judge Buttimer said.

"What if the child does not want access?" asked the mother. "My child is afraid of that man."

"I can't accept this any more," the father said. "Supervised access came in because my son was abducted to [another part of the country] and I had to get him back. This woman is controlling the access and she's not supposed to do so. I don't want people investigating my background any further.

"I would like the HSE to check the

suitability of supervised access."

"I would like to know why unsupervised access was not recommended," said the judge.

"I protected [my son] in the past because he was left with drug dealers who abused him," the father said. "She assaulted my sister. I'm attending a parenting course. I want to be there for my son to help him along in his childhood. I've co-operated fully with the HSE. I've done everything, including being degraded by having to sit in her house and ask her father if I can take my son for an ice-cream."

"Will he have to take a knife to my heart before you take me seriously?" the mother asked the judge. "This is all one-sided. She [the judge] has her mind made up before you go in."

After an adjournment the judge ordered supervised access to continue with a nominated supervisor and reminded the father that he was not meant to take the child out when on supervised access.

*'Access is the right of the child'*

## Wife wins right of residency before divorce action

A right of residency in the family home pending a divorce application was granted to the wife in a judicial separation case on the South-Eastern Circuit. Judge Olive Buttimer refused to grant the husband's application for a 50 per cent share in the house and adjourned this issue until March 2008.

The couple had been married for 39 years and separated in 2004 when the wife discovered the husband was having an affair. He was aged 60 and she was 62 and there were eight children of the marriage, all independent. The husband was self-employed, the wife suffered from health problems and was no longer working though

she had worked throughout the marriage. The family home, the main issue in dispute, was worth about €250,000 and there were about €50,000 owed in debts.

The wife alleged that there had been serious violence in the marriage, and her husband had threatened to murder her. Following the separation, she found catalogues for headstones in the house when her husband had been there.

She described the circumstances of the separation, saying that when she was ill in hospital her son told her he had come home from work and that his father was back drinking and there was a lady involved. Later she found the bed had been slept in,

*'I have no intention of putting Mrs... out of her home, none'*

she found condom wrappers and two tablets she now knew to be Viagra. "He wasn't using them for me anyway," she said.

She said her husband worked in the black economy, earning up to €5,000 a month and did not accept his claim that he earned only €100 a week.

The husband's barrister said her client denied all the claims of violence and made claims of violence against the wife. The wife said her daughter was prepared to come in and give evidence about the violence, but Judge Buttimer said: "I don't want to draw in the child of the marriage."

The husband said he had stopped working recently following surgery. He said he had no security of tenure in his girlfriend's house where he was now living. He had attempted to talk to his wife about their marital problems but she had refused. Then when she found out about the affair the marriage ended. "It had been dying for a long time."

Asked about the Viagra and the condom wrapper he said: "I got the Viagra from the doctor for a friend. The condom wrappers

were from a tenant. It's completely ridiculous. Why would I need a condom with a woman of 53?"

He said he wanted half the net value of the house in order to buy a barge. His wife could use the other half to find somewhere else to live.

"Perhaps it would be best to give Mrs... the right to reside until further down the road and perhaps some of the children may want to do something," suggested the judge.

"We oppose that suggestion," said the husband's barrister.

"I have no intention of putting Mrs... out of her home, none," said Judge Buttimer.

The wife's barrister said that it was her intention to seek a divorce when this became possible after four years' separation in March 2008.

"I grant a decree of judicial separation and the exclusive right of residence to Mrs.... There is to be no sale of the family home until further orders of the court. It might be useful to add I don't see it as a 50/50 split. Mr and Mrs... have vastly different living circumstances," the judge said.

## Woman who left family home 20 years before gets €25,000

A woman who left the family home with another man 20 years ago was granted €25,000 by Judge Olive Buttimer in a South-Eastern Circuit Court for her interest in the family home which was still in joint names.

The couple met in 1967 and had five children. In 1987 the wife left, obtained a divorce in another jurisdiction and married the other man who was 22 at the time. She was then aged 40 and her husband was 58. The wife told the court that she had left her husband on other occasions before the

marriage eventually broke up, but was always told by her family to return. She had always planned to leave when the youngest child was 16 and believed the only way to do so was to go away.

She said she thought she was entitled to half the family home after rearing five children. She agreed she had left 20 years ago with another man and had led a totally independent life since. Asked why she wanted to realise an interest in the family home now, she said: "I always said I would not take the roof from over my kids' heads."

"The situation is your husband will have lived there for 20 years and minded the children," his barrister said. "He is now 78 years old. Do you accept that having worked all his life he's now not in a position to raise a mortgage? Do you think it's fair to push for an interest in the family home?"

"I do, yes," replied the wife. "He has his family around him and I don't. He's in a relationship and has a child of 11 or 12. The children don't speak to me."

The husband told the court he had raised the children, the youngest of whom was 16, after his wife left. "After she left that morning she never came near the place again. She never sent a birthday card to the children or anything else. I felt devastated, shame and disgrace after she left. I made improvements to the house after she left, new windows, a fireplace, internal doors, a new fitted kitchen, all that. It cost • 10,900 in all.

"I retired in 1993, I'm 78 now and on a pension. I accept I do have a child in another relationship. I do help out but I don't pay maintenance."

"By working both inside and outside the home your wife contributed to the house," her barrister said.

"I accept that, up to a point," the husband replied.

"Whether working or not, your wife raised five children and therefore contributed to the house," Judge Buttimer said. "No one wants to put you out of the house. To get the house into your sole name would you not accept there is a price to be paid? In acknowledgement of raising the five children? Would you like a chance to discuss it with your counsel outside?"

His barrister said that the adult children were outside and wanted to express their views, but the judge said: "I don't think it would be helpful."

The case was adjourned but no agreement was reached. The judge awarded the wife • 25,000 for her interest in the family home, to be paid within six months, and ordered it to be transferred into the husband's sole name. She also recognised the English divorce.

*'Whether working or not, your wife raised five children and therefore contributed to the house'*

## In Brief

### Agreement on son's inheritance 'must be in writing'

Judge Donagh McDonagh refused to rule a consent divorce in Dublin Circuit Court because he did not consider the terms made proper provision for the wife. Having heard the couple, both lay litigants, he agreed he was prepared to rule it if they reduced their understanding to writing.

The issue was the manner in which the family home, worth €500,000, was being divided. The couple had agreed that the wife would get €120,000 for her interest in it and that their only child, a son, would inherit the house eventually. In the meantime the husband would have it.

"We have managed to come this far and be amicable with each other," the wife said. "I feel that the settlement was fair and just."

"There is nothing to stop Mr... selling the property in two or five years' time and

moving to Spain, leaving [the son] high and dry," Judge McDonagh said. "I think it would be better if it were reduced to writing. Your son's name should be on the title deeds."

"We did look at that but it would cost about €22,000," the wife said.

"If it was between the two of you I would not consider €120,000 to be proper provision out of a house worth €500,000," the judge said. "That is before you bring your son into it. When that is taken into account it may well be proper provision. The agreement between you about your son's interest should be reduced to writing. You should see a solicitor about that.

"I'll refuse the application but leave the case stand and you can come back to me during the day, when you've seen a solicitor."

## 'The child is entitled to see his mother'

*'She gives evidence. You have the right to cross-examine'*

**A**n unmarried mother was granted supervised access to her young son by the Dublin Circuit Court when she appealed a District Court order that had granted sole custody to her former partner, with no reference to access. Both parents came to the court unrepresented.

"The way this works is as follows," Judge Donagh McDonagh told the father. "She gives evidence. You have the right to cross-examine. You will have the right to give your evidence and she will have the right to cross-examine you."

"We split up about six weeks after our

son was born because he was hitting me," the mother said. "I went back to me mam's. I had post-natal depression which was not diagnosed. The nurse thought it would be better if the baby was with [my partner] while I was depressed. He went for sole custody. I didn't turn up in the District Court, I was afraid of him.

"The social worker said I should have the baby on Fridays. About two weeks ago [my partner] asked me to take him and I had him for three days then I gave him back. I have not seen him since."

"What are you looking for now?" asked the judge.



"I'd like joint custody," the mother replied. "It's not fair on [the baby] to see me and then not see me."

Asked about her living arrangements, she said she was living with her aunt and grandfather, aged 42 and 76 respectively. They loved the child, she said.

Given the opportunity to cross-examine, the father asked: "Why was I given custody?"

"I didn't turn up," the mother replied.

"I've spoken to your mother and father. They're worried about where you are. Your mother says you're broke all the time. The social workers had a care order. If she has any access to the child it'll be taken off her straight away," he told the judge. "She's not fitting. I'm in a stable relationship. I'm going to get engaged. I'm well able to take care of the child."

Giving his own evidence he said that the relationship was rocky during the pregnancy, then when the baby was born his former partner did not want anything to do with him.

"She wanted to be out all the time. I had to collect the child numerous times from her ma's. She came to me at work and left him with me sopping wet. She was meant to be in Fás. I'm living with my parents and brothers. Me and [the baby] have our own room. When I got him I had to take him for his injections and check-ups. She did nothing."

"Do you not think the child should see his mother?" the judge asked.

"She was seeing him. Then last Thursday night she was bouncing cheques all over the place. I don't want him exposed to that."

"Why did our relationship break up?" asked the mother

"You wouldn't stay in," he replied.

"Did the guards not stop you hitting me?" she asked.

"No," he replied.

"I think [the child] is entitled to see his mother and she is entitled to see him," Judge McDonagh said. "Is there any mutual friend or relation that could help?"

"He goes to his [maternal] grandmother on Fridays from 10 am to 6 pm and once a month he stays overnight. I have no problem with his granny. That should be enough. [The mother] is out drinking every night. Now he's able to remember what's going on and I don't want him exposed to that."

"As an interim measure I'm going to allow access," the judge said. "I think you should both be legally represented. Go to the Legal Aid Board. In the interim there is going to be supervised access. Friday access at [the child's] grandmother's is to continue."

"She went to court for her own access," the mother said.

*'It's not fair on [the baby] to see me and then not see me'*

"I'm going to give you access every Saturday from 11 am until 7 pm at your grandfather's house. Nowhere else."

"The grandfather and aunt have no control over that young one," the father said.

"Either your grandfather or your aunt are to be there at all times," the judge continued.

"In the meantime custody remains with Mr... along with primary care and control. I strongly recommend you both get legal advice and come back with full evidence including reports from social workers."

## In Brief

### Father's access order to continue unchanged

Judge Donagh McDonagh refused to vary a District Court order that a father's access to his children should be exercised in the house being occupied by the mother, pending proceedings to decide on how the house would be divided.

The two were not married and had two children, aged eight and six. They had bought a house together and partition proceedings were now being brought concerning the house. The children lived in the house with the mother who, under the court order, moved out from Sunday to Tuesday so that the father could spend time with them.

The mother's barrister said her client found the arrangement entirely unworkable and the conditions attached to it were not being observed. These included the children being in bed at a set time and dinner between 5 pm and 6 pm. They were eating take-aways, or being taken out. Access was meant to be with their father alone and there were frequent visitors to the house including a woman, she said. The house was meant to be kept clean and tidy but dishes were left in the sink and the laundry was not done. Gas and electricity bills were being run up. She said her client would have no problem with access in the father's mother's house, where he was living.

The father's barrister said that this order had been made by Judge Furlong in the District Court on consent two years ago. When the case came back to him earlier this year he refused to vary the order.

"[My client] looks after the children extremely well. Ms... won't leave the situation alone. She is driving up to the house and flashing the lights at 7.30 pm. She wants him away from the house so that she can get on with her life. We have

no problem with Ms... having her boyfriend in. We know there's a man living in our house."

She added that access in her client's mother's house would not suit as it was not close to the children's school.

"I think both parties are cuckoos with property issues left unresolved for two years," the judge said. "Nothing has been done since February on the house. The Defence and Counter-claim are to be served by this day week. In the meantime we have a situation which seems not to be working.

"There is no alternative place for Mr... to have access at the moment. Ms... enjoys the house as her principal residence. How many bedrooms are there?"

The barrister said there were three, one of which was kept locked. There were bunk beds in one room which the children shared when their father was in the house and he slept in the third bedroom.

"If a schedule can be written out concerning the children getting up, homework, dinner and bedtime, and it's patently obvious he must leave the house spick and span, it's a restriction on Mr... to say he can't bring anyone in. I don't think it's too much of a restriction to say he is not to bring anyone in without prior notice and agreement. There is to be no smoking in the house whatsoever, given that one of the children has asthma, their welfare must be paramount.

"The other party must not visit the area around the house while they are out of it. This is to be the regime until the partition proceedings. These proceedings should be expedited."

# Settlement rates vary on South-Western Circuit

**Carol Coulter** continues her analysis of family law files in the Circuit Courts for the month of October 2006, this time focusing on the South-Western Circuit of Limerick, Kerry and Clare

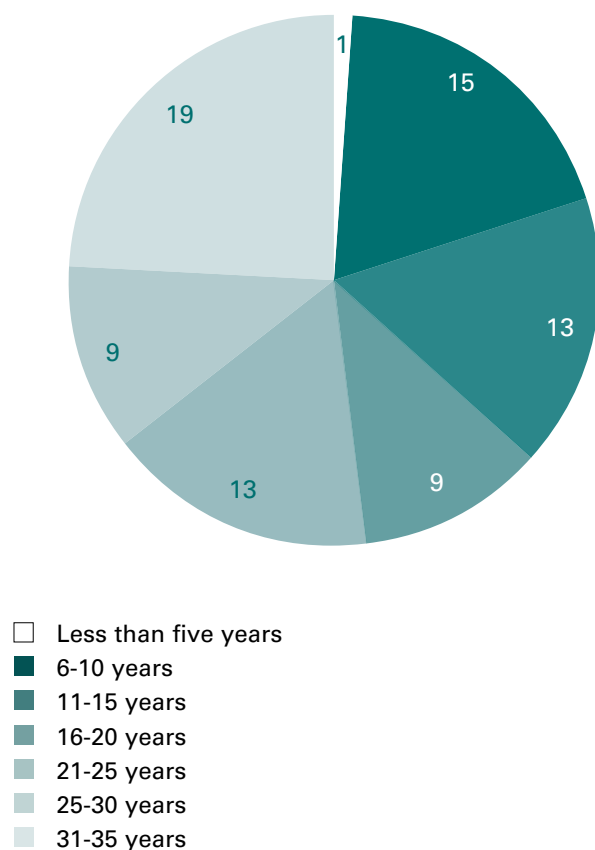
**T**he State's third largest centre for family law after Dublin and Cork is Limerick, which processed 5 per cent of all judicial separations and divorces in 2006. Counties Limerick, Kerry and Clare make up the South-Western Circuit which handles a considerable volume of family law. I am taking the three counties together to analyse case outcomes in October 2006.

Due to pressure of business, Limerick began the Michaelmas term early in 2006 with a week of family law at the end of September. I took this as the equivalent of October hearings in other circuits. In October there was also a week of family law in Tralee, but none in Ennis. Tralee and Limerick, therefore, heard all the South-Western Circuit's family law that month.

To retain consistency across all the circuits I am amalgamating the figures so that a total is shown for the whole circuit. Significant differences can be seen between the two counties in several areas, however, probably due to the more urban nature of family law in Limerick.

The most glaring difference was in settlement rates, with significantly more contested cases in Tralee than in Limerick. Nine out of 32 cases were fought to the end culminating in a judicial decision in Tralee, a settlement figure of only about 73 per cent.

In contrast, only two of the 47 cases heard in Limerick were fully contested, a settlement rate of 96 per cent. Uniting the two centres, 11 of the 79 cases were fully contested,

**Figure 1** Length of marriage ending in divorce

a settlement rate of about 86 per cent, slightly below the average for Dublin for the same month, and in contrast for Cork in that period, when all were settled.

One reason for the lower settlement rate in Tralee was due to a higher proportion of the cases being judicial separations. This is the first point at which a marriage breakdown becomes regulated by law. Often by the time a divorce is sought a judicial separation will have been granted or a separation agreement will be in place, resolving most issues.

A contributory and probably linked factor to the more contentious nature of cases in Tralee is that a higher proportion included decisions involving dependent children. There were 17 such cases in Tralee, out of a total of 32, that is over half of all the cases, but only 13 in Limerick out of a total of 47, just over a quarter.

It is also possible that in that particular month a number of contentious cases, previously adjourned, were heard.

## Longer marriages ending in Limerick

This may be accounted for by the fact that in Limerick 19 cases involved marriages more than 25 years old while in Tralee only nine cases involved couples married more than 25 years. The children of couples in the older age-range are unlikely to be still dependent so their future and welfare will not be an issue in a judicial separation or a divorce.

There was also a difference between the two centres over the family home and other assets. In Limerick the family home was not an issue in 16 cases. In four cases this was because each party already had a house, usually because a divorce followed a judicial separation which laid the basis for each party establishing an independent life. In 12 cases, however, the family home was not an issue because one or both of the parties lived in rented accommodation or with relatives. In Tralee both parties already had houses in six cases and neither had one in seven.

In the two weeks of family law in the South-Western Circuit a total of 79 cases were disposed of, which compares with 50 cases in Cork in two weeks in the same month. Eight were judicial separations in Tralee, and two in Limerick. There were 24 divorces in Tralee and 43 in Limerick. Limerick also heard one recognition of an English divorce and one declaration of parentage, both on consent. There were no District Court appeals, guardianship applications or nullities.

As has been seen in Dublin and Cork, there was a wide spread of age-group among those seeking judicial separation and divorce. While dates of birth are not on the files, the dates of the marriages are, showing the length of the marriage and providing a rough indication of the ages of the parties.

Five of the 32 applications in Tralee and 11 of the 48 in Limerick came from couples married less than 10 years; 11 in each centre came from couples married between 11 and 20 years; 10 in Tralee and 12 in Limerick were from couples married 21 to 30 years, while six marriages in Tralee and 13 in Limerick ended formally after more than 30 years. It was clear from the orders than in

some cases, but not in most, this happened after many years of separation. In a significant number of divorce cases a judicial separation or a separation agreement was already in place and the divorce merely finalised the end of the marriage.

### Children emerge as focal point

Children emerged as a contentious issue with five of the nine cases that went to a full hearing in Tralee involving children. There were 17 child-related cases in Tralee in all and 15 in Limerick.

There was some difference in outcome between the cases in Tralee and those in Limerick which may have resulted from differences in the social base from which the parties were drawn. Joint custody, with either no primary residence specified or primary residence with the mother, was by far the most likely outcome in Tralee (10 out of the 17 cases). Sole custody to the mother was the outcome in five out of the 17 cases in Tralee, with the children living with the father in one case, and some children with each parent in another. In Limerick in six out of the 15 cases the mother was granted sole custody, with joint custody granted in nine cases, six of them specifying that the primary residence was with the mother.

In two of the sole custody cases it was specified that the father was not to have custody in any circumstances, including the death of the mother, and in one of these he was to have no access to the child, a teenager.

Access was generally “as agreed”, though this did not necessarily mean it had been agreed in advance. In some cases involving access the father did not appear in court and while access was to be agreed, disputes about it were to go to the District Court. Access was shared jointly in two of the Tralee and one of the Limerick cases.

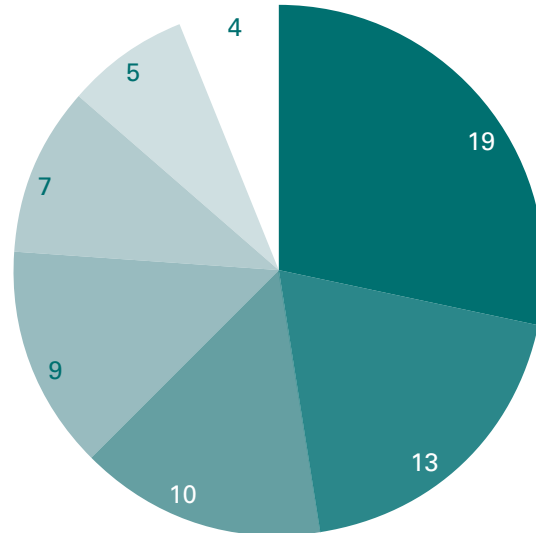
Maintenance of the children arose less than may have been expected with no maintenance orders made in ten of the Tralee cases or four of the Limerick cases. Where maintenance was agreed or ordered, the amounts ranged from €30-€50 per week per child (nine

cases) to €50-€100 (four cases). It was referred to the District Court in three cases and in two a lump sum was paid in lieu. Maintenance of spouses was relatively rare (only agreed or granted in five of the 79 cases).

### Family home: dividing the assets

In most divorces and judicial separations the main asset is the family home. Various solutions emerge in its disposition, probably (though this is not clear from the paper files) linked to whether or not there are dependent children. These solutions can include one party buying out the other’s interest, the family home being transferred to one or other party without payment, but usually with this party taking over the payment of the mortgage, or the sale of the family home and the distribution of the proceeds. In some

**Figure 2 Family Home**



**Total where FH referred to: 67**

- No order made
- Transferred FH and mortgage to wife
- Each owned a house
- Transferred to wife on payment of sum
- Sold and divided
- Transferred to husband on payment of sum
- House remained in joint names



divorce cases the family home has already been disposed of in judicial separation proceedings and the parties now each have their own homes.

There is also a group of people who do not own a family home, where the couple has normally lived together in local authority or private rented accommodation. Occasionally a couple may have lived with relatives, usually in-laws. Sometimes another family member may have contributed to the acquisition of the family home and their interest is recognised when it comes to be disposed of.

In a few cases substantial assets have to be distributed of which the family home is only one. In such cases it is common for one party to get the family home without compensating the other party for his or her interest while the other party gets other family assets, for

example land, a public house, rental properties or other investments.

In seven of the Tralee cases and six of the Limerick cases the family home was transferred to the wife without her paying for her husband's interest, but usually with her taking on the mortgage. In four of the Tralee cases and five of the Limerick ones the house was transferred to the wife by her buying out her husband's interest; in one Tralee case and four Limerick cases the opposite occurred.

The house was sold and the proceeds divided (usually, but not always, 50/50) in two of the Tralee and five of the Limerick cases. In six Tralee cases each party had his or her own house, while this was the case in only four of the Limerick cases. In contrast, there was no family home at issue in 12 of the Limerick cases because neither party owned a house, while this was the case in only seven of the Tralee cases. The house was left in joint names in one case in Tralee and three in Limerick, with one party having the right to reside in it for a specified period of time and the parties' respective shares allocated.

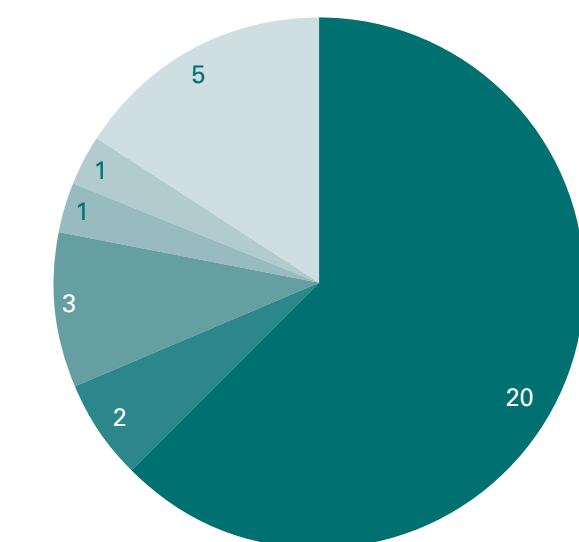
Other financial assets were divided in three Tralee and six Limerick cases. Pensions did not emerge as a major issue in either centre, with no significant allocation of a pension in Tralee and only one in Limerick. Nominal pension adjustment orders were made in a handful of cases.

### Contested cases

It was not entirely clear from the files why some cases went to a full hearing and a judicial decision. Of the 11 where that happened, four were judicial separation and seven divorce applications. The family home and children appeared to be the most contentious issues. In one case where the only orders made concerned the family home the husband was allocated €60,000 of its value by the Circuit Court. He appealed to the High Court where he was given €65,000.

In another contested case the court ordered the transfer of the family home to the wife's sole name without any payment. It also made an order extinguishing the husband's

**Figure 3 Children: Access**



**Total: 32**

- Agreed
- According to schedule
- Shared equally
- Referred to District Court
- No access allowed
- Not mentioned

succession rights, but not the wife's. An order that the children live with the mother was not contested.

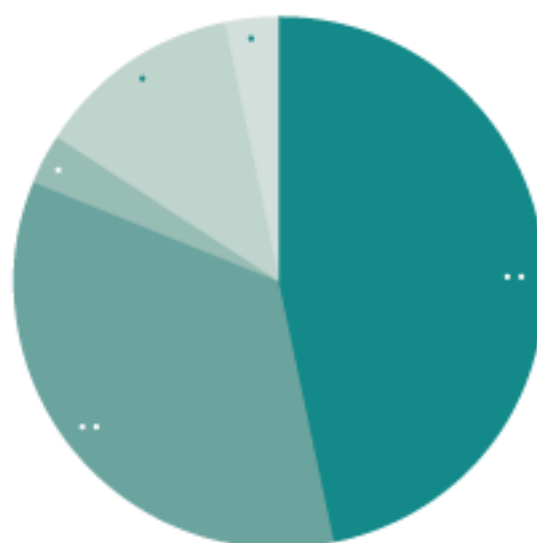
A further case also saw the court extinguish the succession rights of the husband, but not the wife. No other orders were made. The background to these cases was not given, but there may have been a history of abandonment with no maintenance paid for a number of years, and the maintenance of the wife's succession rights may have been an attempt to compensate for this.

The only order (other than the usual orders granting a decree and extinguishing succession rights) in another case was for the sale of the family home, with the husband's interest set at 15 per cent. In a further case there was a readjustment of the interest in the family home, where an earlier judicial separation had granted 60 per cent to the wife and 40 per cent to the husband. When it came to a divorce the husband sought to buy out his wife's interest, the value of which was now set at £ 93,000.

Existing arrangements concerning the two children, where one lived with each parent, continued.

In a divorce case where the family home was owned by a local authority, the court

**Figure 4 Children: Custody**



**Total: 32**

- Joint, primary residence mother
- Custody mother only
- Joint, primary residence father
- Joint, no primary residence
- Some children with each parent

declared that the husband, who had been the subject of barring and protection orders over a 20-year period, had no interest in it. No other

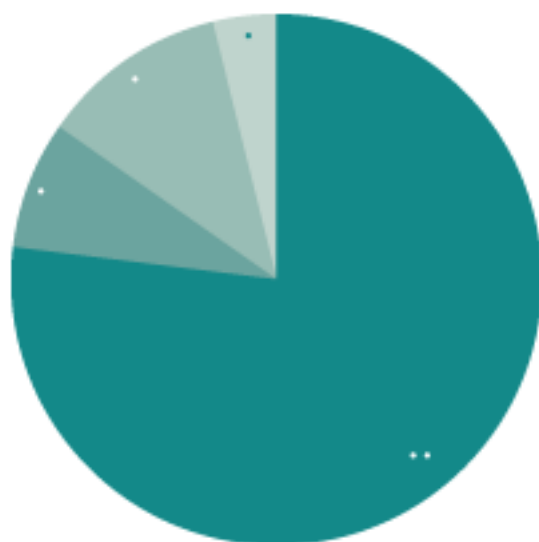
orders were made. In a judicial separation case involving an Irish woman and a non-Irish national man, where the marriage had been short and there were no children, succession rights were extinguished and the court made an order that no mutual eligibility existed under the Family Home Protection Act.

Three further contested cases concerned children. In one the eight-year-old child had been visited by its father only once since the marriage broke up six years earlier. The court granted sole custody to the mother, with access to be agreed. There was no family home and no financial orders.

In another case an order for joint custody was made during a divorce application, setting aside a 2001 District Court order granting sole custody to the mother. During another divorce application, where the mother claimed the husband had deserted the family 13 years earlier and had no relationship with the children, sole custody was granted to her.

The picture that emerges from the total number of cases decided in the South-Western Circuit, however, is that the great majority of judicial separations and divorces are finalised here, as in Cork and Dublin, by an agreement between the parties though this is sometimes after a number of court appearances and even after the hearing of some evidence.

**Figure 5 Pensions and other assets**



**Total number of cases: 79**

- No orders on pensions or other assets
- Nominal Pension Adjusting orders
- Other assets disposed of
- Not relevant to case

# Woman's post-divorce bid for another lump sum fails

A former wife's claim of poor legal advice and changed circumstances fails to persuade the judge that she is entitled to a 'second bite'

A woman failed in her bid in a South-Western Circuit Court to be paid an additional lump sum following a divorce based on consent between the parties that was granted and the consent made a rule of court in 2002. This in turn followed a separation agreement in 1988.

## The facts

The wife returned to court earlier this year seeking an additional lump sum from Judge Terry O'Sullivan, claiming she had received inappropriate legal advice during the divorce and that the circumstances had changed.

"Proper provision was made," said the husband's counsel. "She consented.

"Now there is an application for a lump sum order. The change in circumstances in fact is very strongly in my favour. Mrs... 's circumstances have improved since the divorce. A direction was given by the court to go into my client's accounts. There is no explanation given as to why this was not dealt with at the divorce stage."

The case was then referred to the county registrar for an examination of bank lodgements and invoices. He found the lodgements during the period in question did not reflect the entire proceeds received by the husband's business.

"He was only asked to look at the source of lodgements in two accounts. He went outside that," said the husband's counsel. Judge O'Sullivan said he took the lodgements evidence as a given.

The husband's counsel said the county registrar had also sought documentary evidence from the wife on payments for counselling for the children of the marriage. "We got receipts only this morning, unsigned, which indicate that the two children attended this person on dates when the son was in America. It troubles me. The person who gave the receipts engages in something called Ki-esh. It is not psychological counselling as I understand it. Did it take place at all? Is it serious counselling? Mr... has married in the meantime which may affect the orders that might be made."

He agreed with the judge when he said: "Your argument is that Judge Moran's decision in 2002 essentially bolts the door on anything else."

The husband gave evidence that the couple had separated in 1988. The house was sold and the proceeds divided equally and they each received £13,500. He received social welfare and then worked in England for a year or so.

The children lived in a town in the south-east with their mother who "took up with another fellow". The children got on well with him and addressed him as "dad", and he did not see much of them after that. He paid no maintenance between 1988 and 1996. He started a relationship with the woman who was now his wife.

The wife later applied for maintenance from him. In 1996 maintenance was fixed in the District Court at £20 per week per child which was varied in 1999 to £40 each. When the older child was no longer dependent it went

*‘What are judges to do? Become inquisitors like French judges? To what extent does the court go behind the consent?’*

up to £50 for the other child. He was offering to increase this to • 100 for his daughter now that she was in college. He had had more contact with the children from the mid-1990s onwards.

His former wife had lived with this other man for several years and had had a child. Then the relationship broke up. He was married to someone else at the time of his death.

In 2002 he (the husband) had an industrial accident which cost him much of the use of his right hand and arm. He had married his present wife a year ago and they had a daughter of 12. He said their total assets, including their home, were worth • 310,000.

Asked if his circumstances had changed since 2002, he said they were worse as a result of the accident.

Asked by his former wife’s counsel if the business had a cash element, he said there used to be when some people did not have cheque books but this was not the case now.

He acknowledged he had been audited by the Revenue Commissioners in 1995 or 1996.

“We had to pay £1,100 over a period. Our paperwork wasn’t right. It wasn’t a very comprehensive set of accounts.”

Asked how much his 2000 Mercedes had cost he said, to laughter in the court, that he did not know.

### The ruling

Judge O’Sullivan asked the wife’s barrister for guidance on the law concerning lump sum orders after a divorce. “I must focus on your consent and blocking order. You knew there was money coming into the business. Should I ignore what I might feel is proper provision because of the consent?”

“There is no impediment in the Act to doing so,” her counsel replied.

“Should a court, when it’s making family law orders, punish a person for making a poor decision?” asked the judge.

“Mrs... was told, and a very strong plea was made, that she committed fraud and she was told she was liable to go to jail because of claims she had made to obtain an English divorce. We have a witness to that. I think an explanation is due as to why we didn’t make an application in 2002 and we have one.”

“This is a very unusual case and these are very important questions,” said the judge. “In fairness to Judge Moran, it would have come to him as a consent. What are judges to do? Become inquisitors like French judges? To what extent does the court go behind the consent? Do they send out their own accountants? You can’t say because he decided it in a certain



way it precludes a fresh application.”

The husband’s barrister said: “He has had a few good years. He never breached any order of the Court. Everything that went before has been dealt with. The essence of this case seems to be that because of what happened between 1988 and 1996 he should be penalised now.

“Mrs... has been most ruthless in pursuit of my client. We have been dragged through the figures on a wild goose chase that proved nothing. It has been highly oppressive of my client. Where is the money going to come from? His only asset is the family home, co-owned with his wife. He has another child. Mrs... is the sole owner of her home. She works part-time, earning €30,000 a year. In the light of today’s circumstances she is better off than my client. He can only raise money by mortgaging his home and disadvantaging his child.”

The man’s second wife, who was also the book-keeper for his business, gave evidence of its affairs. It had one employee on a three-day week, and turned over a profit of €40,000.

A friend of the former wife said that, during her divorce proceedings, he had been a witness to a conversation with her then solicitor who told her that, because she had obtained an English divorce in 1992 without fulfilling the residency requirements, she could face a criminal prosecution. This had devastated her.

The husband’s counsel said that in the High Court recently Mr Justice Henry Abbott had laid down a “catastrophe” as the benchmark for changing an order made in granting a divorce. There was no catastrophic change in her circumstances.

Ruling against the wife’s application, Judge O’Sullivan recalled that a divorce had been consented to in 2002. Under the terms of the 1988 separation agreement the family home had been sold. Mr... agreed to pay maintenance but had not adhered to this. “Unfortunately there was a lack of support for the children until 1996 from when he paid under court order.

There was not much emotional or other support for Mrs... at this time. This is

something I would ordinarily take into account in making proper provision.

“She had her own life. The reason she sought a divorce in 1992 was to try to regularise her own position. If I were approaching this matter *de novo* I would be open to making financial adjustment orders in favour of Mrs... .

“It has been suggested that she received unfortunate legal advice from her then advisers, that she would face criminal sanction. Having heard the evidence I’m not satisfied with it. It must have been given in October 2001 or when the defence and counter-claim was filed, which made no claim for financial relief. I’m satisfied that at the time of the hearing there was no unfair duress. So if she wished to make a claim for financial relief she should have done so and she did not.

“If I were to interfere now I would have to do so on the basis of something that happened since. If anything circumstances are somewhat better for her and somewhat worse for her husband.

“He has an injury. He has obligations now that he did not have in 2002. There is nothing catastrophic, as Mr Justice Abbott put it.”

“My client’s circumstances have changed for the worse,” her counsel said. “She had to take out a mortgage to repay her sister €100,000 she borrowed to support herself and the children.

“Her sister was not pressing her for it, but has now fallen on hard times.”

“We were told in 2005 she owed €20,000 to her sister,” the husband’s counsel said.

“You all know what my decision is,” Judge O’Sullivan said. “If you want to make a fresh application I can make a ruling that this does not bar an application arising from the mortgage [on the wife’s home]. I’m not happy that you substitute one debt for another. She didn’t owe the sister €20,000. I would need to be very strongly convinced that the mortgage was required.”

Following a brief adjournment, he said a fresh application could be brought but he warned:

“It will have to be a *de novo* application. Whoever wins this motion will get their costs from the other side.”

*‘Whoever wins this motion will get their costs from the other side’*

# Man fails to halt former partner taking case over assets

When two people have lived together for 27 years and are lawfully married but not to each other what constitutional standing does their relationship have when things fall apart? The High Court considers an unusual but pivotal case

A man separated from his partner of 27 years failed in a High Court bid before Mr Justice Henry Abbott to halt an action by the woman on the basis that the couple had been engaged. She was seeking a portion of his assets while he was claiming there could not have been an engagement.

## The facts

The man argued that as they were both lawfully married to other people during the time they lived together, they were prohibited by Irish law and the Constitution from being engaged to each other, so her action was frivolous and vexatious and should be dismissed.

The woman's barrister said the engagement was lawful as they had lived together for many years and had three children. Both their names appeared on the deeds to property and shares. When the relationship broke down the woman was anxious to regularise all outstanding issues between herself and Mr.... This included, she argued, her legal right to some of the assets of the relationship. Thus she was applying to the High Court to determine her interest in these properties.

All her client had to do, she said, was establish a cause of action.

She added: "Breach of promise has been

done away with by the 1981 Act and my client's action was to sort out the consequences of a long-standing relationship."

Furthermore she argued that her client would be prejudiced if the judge did not allow her claim as she would be deprived from certain presumptions afforded under the 1981 Act and Section 44 of the Family Law (Divorce) Act 1995 such as that of the doctrine of advancement.

The man, who represented himself, said the main difference between Ireland and England was that Ireland had a Constitution within which special emphasis was placed upon the family. Therefore, he argued, Mr Justice Abbott could not rely upon the position of the English courts on the rights of engaged couples as they did not have to constrict their views to a Constitution.

He emphatically denied that an engagement had ever occurred. "The Family Law (Divorce) Act gives rights to those people who are legitimately engaged. I never divorced my wife. I never gave Ms... a ring. I was never engaged to Ms...", he stated.

In the UK, he argued, the courts had decided again and again on grounds of public policy that married men were not entitled to become engaged to unmarried women and that Ms...'s claim against him should be dismissed on similar grounds.

He referred to Mr Justice Peter Kelly's judgment in *Ennis v Butterly* where it was

*'I never divorced my wife. I never gave Ms... a ring. I was never engaged to Ms...'*

held that “agreements, the consideration for which is co-habitation, are incapable of being enforced”.

### The ruling

Mr Justice Abbott was disturbed that if he allowed the woman’s claim he might fetter the man’s wife from making a proper claim over marital assets. Mr... agreed that this was indeed a most troublesome situation and that it was further reason for the judge to strike out the claim against him. Should the judge allow the claim, he added, it would be tantamount to condoning bigamy as a married person could not become engaged to another person while still married.

He concluded that the court owed a duty to examine all evidence when assessing whether a party had a cause of action or not but in this case an agreement to marry between people already married was unenforceable under Irish law.

Mr Justice Abbott, in reserving his judgment, stated: “In nearly every action there are nearly always unsustainable allegations. The court has to determine where the substantially sustainable allegations are. There is a further issue in this case as to whether the court should proceed without due

notice to Mr...’s present legal wife as her legal rights are the ones antecedent and superior to all positive law.”

He added that the more “pragmatic and utilitarian” considerations of Article 41.2.1 and 2 should moderate the highly principled statement found in Article 41.1 of the Constitution. He was therefore willing to find that the principles established by Mr Justice Kelly in *Ennis v Butterly* might not prevent Ms... from establishing a case against Mr....

Ms... was looking to regularise her property arrangements with Mr... and the court would have to take into account the children’s interests.

The judge also relied on the Supreme Court decision in *Supermacs Ireland Limited and Patrick McDonagh (Plaintiffs) and Katesan (Naas) Limited and Patrick Sweeney (Defendants)* to refute Mr...’s argument that the woman’s claim was frivolous and vexatious and should be struck out.

He found: “[Mr...] does not clear the difficult burden of proof to establish a right to have a dismissal for abuse of process in the light of the common procreative history of [the couple] and the activities associated therewith.”

Mr Justice Abbott will decide the merits of the claim at a future date.

# More disputes could go to mediation

Up to 1,500 couples used the Family Mediation Service in 2006 to resolve their disputes which compares with more than 27,000 who went to the District and Circuit Court. **Karen Erwin**, president of the Mediators Institute of Ireland, outlines measures that could increase use of the service in family law



**M**ediation is a process in which an impartial and independent third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to a dispute to assist them to reach a mutually acceptable solution. The parties to any dispute or conflict may agree to use mediation although it has traditionally been associated with families experiencing separation or divorce.

## Benefits of mediation

In family cases parties choose mediation rather than litigation as it can be less daunting to them and they retain control of the process and outcome. With the assistance of the neutral mediator, the parties can arrive at agreements that have been individually tailored by themselves to their own and their family's needs – this gives a flexibility that is not available through litigation. The process is also quicker and more cost effective than proceeding through the courts.

The balanced interests of all family members can be achieved by using mediation. In arriving at agreement the parties can plan how to move forward after separation, which enables family members to start the process of

developing their relationships in the restructured family unit. Mediation enables both parents and, where appropriate, the children, to have an input into and to agree how the children can continue to have a meaningful life and relationship with both parents. Parents can come to agreements where their living arrangements facilitate that relationship.

Mediation's real benefit is that it encourages the parties to work together for the common good of themselves and their families.

This enables the parties to take control of their futures and their future relationship and can help them to move on more quickly than if they had been to court. It can be by far a less fraught experience for all parties than the route through the litigation process.

## Awareness of mediation

There is an apparent lack of awareness on the part of parties and their advisers of the availability of mediation, how it works and the benefits it can bring over litigation. One of the best ways to get this information across is through solicitors, who are usually the first port of call for couples wishing to separate.

Although solicitors are obliged by statute to

*'The balanced interests of all family members can be achieved by using mediation'*

suggest mediation to separating couples, many are unfamiliar with the process or of the benefits that it can bring – they may even view it as competition.

What they may not realise is that they could and should continue to advise their clients on their rights both before and during the mediation. Mediators strongly recommend that the parties take advice from their lawyers before commencing the mediation and on the legalities of the mediated agreement before it is signed.

There needs to be a public awareness campaign of the availability of mediation, what it is, how it works and why it is a better option than litigation.

One of the fundamentals of mediation is that it is a voluntary process and it is from

this that it derives much of its strength. Some commentators favour mandatory mediation but to most mediation experts this is not appropriate and could be counter productive.

One option to increase the use of mediation, however, would be to have a mandatory information session.

This can take various forms including a model where the mediator, who would act in the event of the parties wishing to proceed, would conduct the information session.

### **Confidence in the mediator**

It is very important that mediators are appropriately qualified and trained to a high standard; that there is continuing professional



development; and that their professional practice is properly regulated.

The Mediators Institute of Ireland (the MII) recognises the importance of the need for the public and other professionals to have full confidence in the standards of its mediators and has just finished a complete review of all of its requirements for the training and assessment of mediators together with rules for ongoing practice requirements including adherence to the Code of Ethics. It has also introduced revised complaints, disciplinary and appeal procedures.

The MII believes its accredited mediators are up to international standards and that there can be confidence in them.

Family mediators are available both publicly, through the Family Mediation Service (FMS), or privately. There is no charge for the publicly funded mediator but there may be waiting lists depending on the location. Private mediators can be found easily on the MII website ([www.themii.ie](http://www.themii.ie)) where the parties or their advisers can access professional information about the mediator to inform their choice.

Due to competition law there is no information on fees available but it will usually be based on an hourly rate.

In the FMS, the practice is to conduct the mediation over a number of one-hour sessions with the parties. In a private mediation this will depend on the mediator, the issues and the parties.

More public sector funding should be made available to employ more mediators.

## Confidentiality

Confidentiality is a core principle of mediation and to feel confidence in the process, the parties must be satisfied that mediators will keep the information confidential even if the mediation is not successful and the case will appear in court.

The entitlement to confidentiality in all mediations should be enshrined in law. It is important to note though that an exception to confidentiality may arise if risk to a child is disclosed during the process.

## Enforcement

The enforceability of mediated agreements is often of concern to solicitors and their clients.

At present an agreement arrived at in mediation may be binding on the parties depending on what they agree.

Some parties want a separation agreement to ground an application for divorce.

Some may just want their parenting plans written up for their own use.

Given that the courts have the discretion to amend any agreement in family proceedings, there should be a provision that an agreement arrived at in family mediation is binding on the parties if they so choose. To satisfy the court the parties would either have to have been advised by their solicitors on their rights or declare that they had such an opportunity but declined.

A statutory provision recognising the enforceability of mediation agreements could speed up the enforcement process rather than the parties having to rely on a breach of contract action, which is the case at present.

## Conclusion

Mediation is the preferred process for the resolution of family disputes given its non-adversarial approach, its concentration on the future and well-being of all in the family, and the retention of control of the dispute within the parties.

To increase the use of mediation the following measures are necessary:

- mediators should be trained to a high standard and be regulated by a professional body like the MII;
- there should be an awareness campaign about mediation for both the public and solicitors;
- mediation should remain a voluntary process and that, together with the confidentiality protection provisions, should be enshrined in law;
- agreements arrived at in family mediation should be recognised by the courts and directly enforceable.

*'Parties choose mediation as it can be less daunting to them and they retain control of the process and outcome'*



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