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Opening a window on family law

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Opening a window on family law

Editorial Team, Family Law Matters: *David Crinion, Helen Priestley and Terence Agnew*

Welcome again to the summer 2008 edition of *Family Law Matters*

The Family Law Reporting Project continues to open a window on our family law courts and show how business is transacted in such cases. This issue brings further reports of the day-to-day business of all types of family law cases as they occur in the High, Circuit or District Courts.

The family law jurisdiction within all of these courts is a complex process covering a wide range of issues. One of the hallmarks of family law cases is that judges are asked to decide on a multiplicity of issues including divorce, separation, division of assets, domestic violence, custody, access, maintenance, the appointment of guardians and the removal of children from the family.

Our reports show how the courts are dealing with issues including protecting children, encouraging a meaningful participation by both parents in the lives of their children, and allowing parties to separately lead financially viable lives. They also highlight the volume of work being processed in our family law courts. The report of appeals dealt with in Dublin Circuit Court provides a useful insight into the appeal process.

The impact of these cases not only affects the parties directly, but also has a bearing on society in general. The combination of issues such as relationship, emotional, economic, child rearing and health are unique to family law. The impact they have on people influences their bearing and behaviour as they navigate themselves through the family law system. The emotional impact explains, in some cases, the level of conflict that exists between the parties and the adverse effect this has, particularly, on children. It also sometimes explains the lack of finality in many cases.

We continue our series of interviews with those whose work brings them into contact with people involved with family law. In this issue we talk to Polly Phillimore of the Family Mediation Service who gives a valuable insight into the current operation of the Service and the potential it offers for the future.

Our series of statistical reports by Dr Carol Coulter concludes with information from the South Eastern region for the month of October 2006.

We will return in the autumn with further reports, interviews and statistics. In the meantime, welcome again to the summer 2008 issue of *Family Law Matters*.

Terence Agnew

Judge contacts Dublin over length of family law list

Special sittings are needed to clear the backlog of business in a Northern family law court

Court Report

'He's violent and always threatens me … Last month he threatened me with a frying pan'

An extensive family law list of 77 cases prompted Judge Desmond Zaidan to contact Dublin since many matters, including those concerning HSE childcare, were not being heard. The District Court President then assigned two judges for special sittings and Judge Zaidan was eager to ensure maximum use of those dates and anything for hearing, unless urgent, was adjourned into these sittings.

Of 77 cases, five were either struck out on consent or because the defaulting party had paid the maintenance in the District Court summons, 30 were adjourned for hearing or for mention later in the year and 34 were adjourned for the special family law and HSE childcare sittings arranged to clear the list. Judge Zaidan handled the remaining cases in which the parties agreed three of those matters and the remaining five, all of which were unopposed or ex parte, were dealt with.

In one matter, a mother wanted to dispense with the consent of the father of two children, aged 10 and 12 years old, in getting their passports. She had last seen their father three years previously and he had made no contact since. The children's birth certificates were handed into court and the mother had provided identification and so the judge granted the application for a five-year passport.

Another case concerned an unmarried father of a girl aged 12 who lived with him. He had had a relationship for 13 years with a married woman and when his daughter was born her husband had been named father on her birth certificate. His partner had died and the named father, who was not her biological father, had "nothing to do with his daughter". The judge granted the application.

Later, a mother sought a barring order against her son, aged 33, who did not turn up to fight the application. She said: "He's violent and always threatens me…. He hasn't hit me, but he has hit my daughter who lives with me." She added there were so many incidents she could not think of them immediately. "Last month he threatened me with a frying pan. Just after Christmas on my younger son's birthday he ran at my daughter with a chair and hurt her finger so badly it is still bruised two months latter. Then when I tried to call the police he smashed the phone."

On that occasion, she said, the gardaí arrested him. He had always been troubled. She thought he suffered from depression and was addicted to cannabis. He was just out of a brief residential psychiatric treatment and she was still afraid he would try to come back. Her daughter then gave evidence of his violence and the threats to her mother: "After Christmas he came into the kitchen and

threatened to kill my mum, when I told her not to listen to him he attacked me with the chair and fractured two of my fingers."

The judge granted the order for three years and was satisfied the son appeared to have alternative accommodation arranged.

In another case, an unmarried mother wanted a protection order against her partner and the father of her three children aged 26, 20 and 12. As this was an ex parte interim matter, the respondent was not in court. The woman said the couple had broken up two years previously and that he now had a new girlfriend. But he was just "bad tempered" and he scared her. The incident leading to the application had happened recently when he had called to collect the youngest child. "While he was there his girlfriend called the house to ask where he was and he just got into a rage. I don't know why. Maybe he took exception to it. I wasn't there. I was coming back from the shops, but he drove up beside me shouting and roaring abuse and followed me home again."

She told Judge Zaidan that he had started breaking things in the house, the door and a chair in the kitchen. "He just went on a rage and when the kids dragged him away into the hall he smashed up the press and shouted 'I wouldn't care if you called the gardaí or not'," she said. He had come over the following week and repeatedly banged on the door. She did not let him in. The judge said she was in genuine fear and he granted the protection order. Finally, a mother sought a barring order against her son aged 23 who, she said, had a serious drink problem.

The son was not in court because it was an ex parte application. The woman said she had been forced to leave her home at Christmas because of his behaviour. He had kicked in doors and wrecked wardrobes in her home and then he had pushed her and spat at her. He was not living there anymore but she was still afraid. The judge granted a three-year barring order.

Parents urged to talk for child's sake

On a day in March Judge Desmond Zaidan adjourns 15 cases, hears three contested matters along with an ex parte application and two cases are struck out

Court Report

An application for a breach of an access order and to vary access came before Judge Desmond Zaidan in Donegal District Court. The father said he had seen the child only four times since 2003. He denied the mother's accusation that he was violent and had beaten her. There was also a further application to vary maintenance which was adjourned by agreement between the parties to another court sitting.

The pair had married in 1996 and had one child, who was now 10. There had been various difficulties over access when they

split. The father said that one Christmas Eve he had called to leave presents for the child but the mother had shouted abuse at him and told him to leave. He left the presents and waited 40 minutes to see if someone would collect them but no one did. The mother denied this, saying it was not 40 minutes but more like 10 or 12 and that it was the father's way of buying the child.

The father said that on the day of the child's First Communion, he, his sister and his current partner tried but were not permitted to see the child. At a sporting event, he had tried to see his son but again the mother prevented it and was verbally abusive.

The mother said she had another child whom the father had no wish to see because he was not the biological father even though he had had a relationship during the marriage. She further contended that he had difficulties with money as he gambled. Their child did not want to go anywhere with his father who had left home unexpectedly and had never given an explanation for leaving. She denied the father's version of events.

The judge said that a health services report before the court stated that the child was hurt and that such a statement reflected that children were the silent victims in these situations. He said the father needed to regain the child's trust.

The mother said the child wanted nothing to do with his father and she could not say he would agree to meet him again. He had given his mother a letter about this which Judge Zaidan read. He said that in this tragic situation part of the problem was that the mother and father were not communicating. It was sadly common for a young child who felt betrayed to act as their son was doing. The report before the court stated that he wished for his father to return to the family home. As he approached his teenage years, the parents' failure to communicate would have a long and lasting effect on their son. There was no point in mud-slinging, said the judge, as this would have a psychological impact on the child. He was confident that the trust could be rebuilt between father and child although it seemed to have broken down. Children needed both their mother and father, he said.

On the recommendation of a State agency, the mother said, she had tried mediation with the father over his lack of access. But he had never shown up.

The judge asked the mother for her opinion on the best way forward in the circumstances. She said she would do anything to encourage the child but he wanted nothing to do with his father. The child would not say his name and only referred to his father as "him". "He might snap out of that", said the judge, and the sooner the issue was tackled the better to prevent further damage. Judge Zaidan added that he did not want to see the child in his chambers as he, the child, was already traumatised by the situation.

In the end, he ordered supervised access with a member of the mother's family to attend fortnightly on a specified weekday. If there was any allegation that the father was abusive, he might have to make a different proposition. The judge told both father and mother that they would have to act in a civilised way. He told the father to acknowledge the member of the mother's family as the child would observe this and that it was up to the father in this case to win the child's confidence. "Use your commonsense", he said, "and be inclusive towards the mother's family member supervising access arrangements." This was necessary to give the child a sense of family.

The parents then had difficulty in deciding the venue and timing of the access. The judge warned them that if they forced his hand by non-compliance of the court order he would not hesitate to consult a State agency which might result in the child being placed with foster parents.

'Use your commonsense ... and be inclusive towards the mother's family member supervising access arrangements'

Court unaware that man pays maintenance directly

'Then he asked me if I was missing photos and that he had them of all my family and was going to give them to some drug pushers'

Court Report

In April, Judge Desmond Zaidan continued to adjourn hearing matters to the special sitting dates. Of the 44 cases listed, five were either struck out on consent or withdrawn, 28 were adjourned for hearing or for mention later in the summer or to the special sittings. The judge dealt with the remaining cases: the parties agreed two of those matters, and the judge dealt with the remaining nine since a settlement was not reached.

In one case, a man, living in another county was remanded to Letterkenny District Court following a bench warrant issued on foot of a District Court arrears of maintenance application. The weekly payments for two children were to be made through the District Court office and once the payments stopped the District Court automatically issued a summons. This was not complied with so a bench warrant was issued. The father said he had been on disability and he could not pay. The arrears were €2,180 and he was trying to pay them back as he had a good job again. Three months before the hearing he had given €300 to the mother and he had another €700 to pay now. Judge Zaidan said that because he had given it directly to his wife the first time, the courts were unaware of his efforts to pay. But he agreed that only €1,100 was owing. The father wanted his weekly maintenance increased to help pay off the rest of the arrears, but the judge refused saying that varying it for a short time would be confusing. He adjourned the matter for six months, saying he wanted to see the man make "great efforts" to pay off the outstanding sum and told him to keep any receipts showing his payments.

In another case, a mother of three children aged 10, seven and six sought a barring order against her husband, who represented himself. She said her children, only the youngest of whom was her current husband's son, all suffered from ADD and ADHD. She had home help five days a week to help with the children, who were getting treatment and psychiatric care. They had been together for a while, but had only been married the previous March and had separated in September. "He is very violent and verbally abusive especially to my eldest son. He used to make him cry in the morning when we were getting ready telling him he looked like his father, then if he cried put him outside in his boxer shorts 'that will teach you', he'd say," she told the court.

He hated having toys and mess around the house and would make the kids, especially the eldest, tidy up and not let them go to the toilet until it was all done. "He left in September, but came to visit in October and was messing with my eldest, who gets really excited and threw a yoghurt pot lid at him. My husband got angry and chased him, and held him down and he rubbed the lid all over his face saying 'no fucking bastard is going to do that to me'," she said.

Another time he threw a piece of fruit at her and it hit her sister, who was visiting with her mother. He threw it so hard she was

bruised and the Garda Siochana were now investigating it. At Christmas he told her he would come over and if she did not let him in he would kick down the door: "He kept calling me Angie and saying 'you know what happened to her, I'm like Den' and I only realised later that he was talking about *Eastenders* and the fact that Den killed Angie on Christmas Day. Then he asked me if I was missing photos and that he had them of all my family and was going to give them to some drug pushers."

She told the judge that her husband had been under psychiatric care and was taking medication, but had refused to continue taking them.

She thought the medication was for depression. He had attended two anger management courses and had had issues with their neighbours, including one whom he used to follow and whose tyres he slashed.

He had threatened her with a knife that he had in the car all the time and had said he would commit suicide, lying on the floor after taking some medication and then pretend to be in a fit. "It used to scare the children," she said. Since he had left the house, her middle child had stopped wetting the bed. But she was still afraid of him hundreds of miles away.

The respondent husband said her own problems with her family had caused all the issues and that it was her brother and father that the children feared. "I stood out in the road with the kids hanging on to me and hiding behind my legs when her brother and father came over once, they were terrified." He had been assaulted by her family. It was on file with the Garda Siochana that he had even had to leave his delivery job because they had threatened his life. His wife had once alleged sex abuse against a family member but when she was back in contact with her family everything was fine again. "It's like someone always has to be out of it and the others take sides. First she had no relationship with her mum and then her dad. It's always changing."

He said they had met when he worked in the city and she was visiting for treatment with one of her children. When he went to live near her, the relationship and his life disintegrated. All his troubles stemmed from the relationship. He said that both of them had attended the anger management course because she kept accusing him of having an affair.

He denied all her allegations and offered to show the court his phone bill to show that he had not called her and threatened her at Christmas. He was always nice to her eldest son and had even arranged to give his father photos of him. He had told her to let the father see his son when he visited. But now he was getting threatening phone calls from the father because of what she said. He further denied carrying a knife in his car or threatening her with one. He had only seen his son once since he had left and moved back to his original home. When he had got a new job and could not visit one weekend, she had told his son, while he was on the phone, that he wanted to go to the pub and that was why he was not coming up. He had an access application in the jurisdiction where he lived that would come up in a few days.

The judge said he could only deal with the barring order because that was all that was in his jurisdiction today. The marriage seemed doomed from the start, he said, and both had admitted that it was troubled with bad blood between the "in-laws and out-laws and with all the children having psychiatric difficulties – it is a very sad situation". He granted the order for six months, saying that it was better to make it as both parties were already living apart and it might help with the access

issue. "The respondent has accepted that the marriage is over and has started a new life and he has said he wants to come up here only to collect his son, if the judge grants it."

A foreign national mother, with two children one aged five the other nine months, wanted a barring order against her husband, also a foreign national. She had a job but her husband was not working at the moment and he had returned to their homeland but she was not sure for how long. He was very violent and had threatened to kill her and the children before. He had even assaulted their youngest. "She was crying and crying and he couldn't take it so he hit her. I tried to stop him and then he assaulted me." She then left their home and went to the Garda Siochana, who brought her to a shelter and introduced her to social workers, who had helped her find a creche so that she could continue to work. The judge granted a three-year barring order.

In a District Court summons for arrears of maintenance against a father of a girl aged seven the solicitor for the respondent father was present but told court that his client may have been confused about the date and was absent. His client had been paying the interim maintenance since the last order and so he was not ignoring the court. He said he was on a Fás training scheme, which paid him a certain amount. This ended in a month and then he would have severe difficulty paying the amount ordered. He had entered a summons to vary child maintenance.

The wife's solicitor said this was the fifth time the arrears matter had been before the court and her client was getting further into debt even though she was working. Arrears now totalled €1,000. The judge said the matter before him was arrears only and that if the respondent had been there he could have committed him for his failure to pay. He adjourned the matter to the same date as the variation summons, one month hence, and directed that the respondent make a concerted effort to pay the arrears. If the respondent did not turn up next time, Judge Zaidan said he would consider committing him.

The court then heard from parents of two children, aged 10 and seven, on an access and custody matter. Under an interim order, the children were to live with the mother and have access with their father, but the 10-year-old daughter refused to live with or visit her mother. The father's solicitor said this child had very entrenched views and the father had been trying to encourage her to visit her mother but could not force her. The judge was to hear the child on the matter but both parties agreed this should be a last resort. They had agreed, subject to the court, to have a *guardian ad litem* appointed to interview her and commission a report.

The father's solicitor added that the girl's refusal to go to her mother was a de facto contempt of court situation that the father could not change. He suggested that during this period it might be better if the order was reversed. The applicant wife said they did not want that and would undertake not take proceedings to enforce the original order. The judge said it was preferable to maintain the status quo on the basis that the wife would not bring proceedings and the court would not view it as a wilful breach either. He appointed the *guardian ad litem* and adjourned the matter for a month to allow the report to be commissioned. He gave both parties liberty to apply and stated that if the child did not interact with the *guardian ad litem*, then he would talk to her in chambers with his registrar, but without lawyers.

A mother then sought to have a variation of access for her daughter aged eight, who was making her First Communion that weekend. The court heard this was an emergency application because the parties could not come to an arrangement. The applicant mother said her husband had access the first three weekends of the month and that included this weekend, which was her daughter's communion.

She said she had booked a hair appointment for the Sunday at 7.30am, which was available just for the communion girls, and that her daughter wanted to be with her for the day and that it was right for a little girl to be getting ready with her mother on such a special day. She needed her husband to deliver her daughter back on Saturday night at 6pm so that all the plans could

take place. Then on Sunday at 2pm she had booked lunch with all her family which he was welcome to attend. She also wanted her son to come back so she could put him in the outfit she had bought for him.

The father said he had also booked a hair appointment for his daughter on the Saturday and that she had told him she wanted to be with him for the day. He took the children to church every Sunday, whereas his wife did not and he wanted to spend the morning with his daughter to help her get ready and he had even bought an outfit for her brother so he would look smart. She could go to the lunch with her mother but he would not go as there were problems with her family and that there was also a safety order application coming up against him. His wife refused to allow him to re-list the access matter on holiday access which had never been decided.

Judge Zaidan said: "It is a shame that parents can't agree on something as simple and important as a communion day. Where does that leave the welfare of the child if both parents cannot rise above on this occasion?" On this occasion he was prepared to make an exception, because the father had the child for three weekends out of four and ordered that she be returned to her mother on the Saturday night at 7pm. They would meet the father at the church at 10.30am or earlier to allow him to spend time with her before the service at 11am. She would then go to the lunch and be dropped back to her father at 5pm until 8pm so that he could have his own celebrations with the children.

After much discussion, the judge ordered that the son would not return to his mother on the Saturday night, but following the father's suggested concession, he would be dressed in the mother's outfit by the father.

He should then go to lunch with his mother after the service and would return to his father with his sister. The judge then allowed the father to re-enter the holiday access matter in two weeks.

No matter what orders are made, we'll be back in court, says judge

Judge Desmond Zaidan targets 'nonsensical' system in which he says orders are constantly varied and appeals have to be reassessed

Court Report

'With passion he [the father] is here today'

In a Northern District Court, a preliminary point was raised before Judge Desmond Zaidan on the varying and discharge of previous District Court maintenance orders. Additional summonses for arrears were also before the court.

There had been a District Court order in October 2006 in which weekly maintenance was fixed at €500 for five dependent children. This was appealed to the Circuit Court in July 2007 and the amount reduced to €300. At the time, the Circuit Court judge had told the father he had some hard-thinking to do as there were all different kinds of work that he could perform.

In the case before court, the mother's solicitor said the father had not complied with previous orders. Although he had worked for the past 30 years, he ceased working after his wife left, she alleged. The mother's solicitor added that it was an abuse of the court system for the father to apply so quickly for a variation order given that it was heard in July 2007.

The father's solicitor said his client had a history of working with his hands and had earned cash along with his wife on the black market. He was a man of limited education and had difficulty reading and writing. His business had gone and he was medically certified as sick. He had been referred to a psychologist for certain behavioural problems.

The father's solicitor then stated that the Circuit Court judge considered that his client could pay more. He further contended that the father did not have the same capability now as his social welfare income had since changed. He could not earn any other income and did not want to return to the black market. He was looking for formal work and hoped to get back onto a Fás Scheme. He could not do this at present because he was medically certified. His client, he said, was entitled to make this application. He had not recovered from the initial order of having to pay weekly maintenance of €500. "With passion he [the father] is here today," said the father's solicitor.

The judge considered Section 6 (1) of the Family Law (Maintenance of Spouses and Children) Act, 1976 which stated that the court may only discharge an order one year after the making thereof. The father's solicitor said the court was being asked to vary an order, not discharge it. The mother's solicitor agreed, saying the time limits did not apply to varying a maintenance order. She asked that the father prove his illness.

The judge in considering this preliminary point stated that in effect he was being asked to review a Circuit Court order and he was a court of a lesser power. He had previously asked the practitioners involved whether there was any way in which there could be a right of appeal to the High Court.

It was agreed there was not. The mother's solicitor said these maintenance matters were regularly in and out of court with the father paying only when he was at the door of the prison.

The judge said the Oireachtas should sit down and look at these areas in family law. This situation was a vicious cycle, adding more stress to the parties concerned.

On the father's illness, the mother's solicitor said the man's GP had since died and she asked how evidence could be produced as a result.

The father's solicitor responded that a locum worked in the medical clinic the father went to and a report, dated a month ago, was in court. The mother's solicitor said he should proceed with his evidence and the testing of such evidence.

In the end, Judge Zaidan said both parties were correct in that independent evidence was needed on the father's illness which should be tested in court. He adjourned this matter until a medical practitioner could be present.

He added it did not matter what order or orders he made as they would be back in the Circuit Court. There should be some type of finality in this matter. The system was nonsensical in this regard and such situations where there was a constant variation of orders and subsequent appeals had to be reassessed.

The judge made an order on the arrears summons and said the mother could apply and bring any other arrears summons before the District Court immediately. They would be given the first available listing.

Parents told to put children's interests first

Over two days, five matters come before **Judge Raymond Groarke** on the Western Circuit. Of these, one case is adjourned, three are agreed by the parties and the remaining case runs for a full day

A judicial separation case listed before Judge Raymond Groarke on the Western Circuit involved a couple with two dependent children. The parties, who were both represented, had married young after a whirlwind romance. Their issues concerned access to their five- and six-year-old daughters and division of assets.

They owned the family home, two large plots of agricultural land, a site in the applicant wife's name but which was for the benefit of her sister and a plot the husband owned with his brother in a tenancy in common worth €25,000. An auctioneer valued it all at €1.3 million. But it carried debts of €112,000. The husband's mother was helping with debt on the agricultural land by renting it out for 10 months a year at €19,000. The applicant wife had also many personal debts.

Before he heard the case, Judge Groarke had considered a psychologist and mediator's report on access given to him by the wife's barrister. It recommended that the mother

'He told the children I'm on drugs and that I've bad taste in music'

should be given custody Monday to Friday and the father every second Friday night and alternative Saturdays. At present, the children stayed with the mother Monday to Wednesday every week and with the father from Wednesday until Sunday. The husband's barrister said custody was the main "bone of contention".

The wife was unhappy with the access arrangement. "There's a lot of disruption in the kids' lives, even down to where they're sleeping at night," she said. "There's no stability." "The report says they're doing remarkably well" said Judge Groarke.

"They are. They keep asking why they've to go down the road. Even when my five-year-old went to the dentist, [the husband] sent her to school with an antibiotic. I texted him to ask him why she had an antibiotic in her bag," she said.

She added that her husband was sending messages to her through the children. "He told the children I'm on drugs and that I've bad taste in music. Our hostility is causing upset to the children. [The daughter] is starting to lie to her dad. I told her not to. There should not be secrets between us," she stated.

The judge noted that the husband had accused the wife of having bad parenting skills. "That was in respect of a friendship she had. He does not contest that she is a good mother," the husband's barrister said. The wife agreed that her husband was a good father and that she had told the independent mediator that they had simply drifted apart.

The report had recommended that the wife was not to expose her children to a "drug culture". The wife maintained that she was not on drugs and said she was no longer friends with the man who was the subject of the "concerned friendship" referred to in the report. He had been before the court previously for having cocaine for personal use. "There was an incident" the wife said. "One of [the children's] cousins interfered with my five-year-old's private parts." Her husband had known of this and failed to tell her. He had recorded the wife on his phone when explaining the situation to her and had had witnesses. "I do take into consideration that the child was young and probably curious but it happened a number of times. The children are told not to tell me anything," the wife said.

The husband's barrister explained that

the husband wanted a witness there because things were so contentious between them. It had been a very difficult marriage breakdown and communication was "strained". The husband said that he cared for the children 50 per cent of the time and he was happy with that arrangement. He accepted the report "tentatively". He believed a week on/week off arrangement would be the best for the children as it was the most structured. He agreed that communication with his wife had broken down. When he brought his daughter to the dentist, she was given antibiotics in case of an infection. "It was nothing stupid," he stated.

Judge Groarke suggested the couple use email to communicate. "Update the computer if necessary to take the stress out of communication," he said.

The husband had never told his wife how he dealt with the incident concerning the children's cousin. "It's very important to tell her," Judge Groarke said. He told him to think about what was best for the children. "He keeps saying 'I'm losing time with the children; I'm losing time with the children; I'm losing time with the children' … He thinks it's about him – I'm, I'm, I'm… I'm not interested in Mr … or in you madam. I'm interested in the children. You're playing too much lip service without seeing what's best for the children. With due respect, you're codding yourselves."

Referring to the dentist and assault incidents, the judge said that if both parents cared then full disclosure should be made immediately. He knew this was a difficult case and that the couple were incapable of sitting down and discussing what was best for the children. "I hope sooner than later you won't go to court to talk regarding the children …You're deficient and not entitled to have children if you can't cooperate on what's best for them."

He advised them to communicate from that day through email so that it would be "there in black and white". If that didn't work out the couple would have to do a course on parenting skills. They were not entitled to behave the way they were behaving. The children seemed to be doing very well and coping with the upset, the judge said. "If I believe there is more gamesmanship – don't tell mammy, don't tell daddy – it's enough to disqualify you as parents."

The parents were given joint custody. The children were to reside with one parent one week and the other parent the next week. Both children were to stay together. "I'm not setting this in stone" Judge Groarke said. "What suits the children best will change."

The matter resumed on the couple's assets and their inability to agree on division. "Really what you're on about is the family home," Judge Groarke said. "… Quite frankly, unless there's some reason that I haven't heard, toss a coin and decide who wants the house." The wife's grandfather had given her the land and she and her husband had built the family home on it.

She lived about seven miles from the family home and about five miles from her parents' house. The family home was only a half mile from the wife's parents' house. She had moved to rented accommodation three years previously when the marriage failed. She wanted the family home because she had an emotional connection to it. She would give her husband the other land they had accumulated together if she could keep the family home.

Judge Groarke asked: "What will be the situation if you don't get the land?" "I want it," she replied. "It's sentimental value." The wife had not disclosed that she was director in name only of her father's company which dealt with rental properties. "There's no money in it," she said. "It's dad's company and he needed another director." Judge Groarke asked how the shares were divided. She replied: "I never had any dealings with the company." She had used savings to pay for her business. Her income was €350 a week from her business and from what her parents gave her to help her out. She worked in her business three days a week and employed another worker part time.

She had used money in the children's accounts to pay off the revenue. She had been withdrawing from the children's accounts when she needed to.

During cross examination, the husband's

'I'm not interested in Mr … or in you madam. I'm interested in the children. You're playing too much lip service without seeing what's best for the children'

barrister said the wife had bought a brand new jeep in 2005 for €40,000. "How does a brand new jeep fit into your financial difficulty?" he asked. "I use it as a family car. I had an older jeep before that. That's how we managed it. I decided we'd have one good car," she replied.

It was agreed that the husband would use land bought from the applicant wife's father as farm land. "Going forward we intended to farm it," the husband said. "… But the marriage broke up after we signed the documents and the first payment was supposed to be due on it [the land] on March 1st, 2006."

It emerged that the husband had been left land which he had signed over to his mother. He did this because his mother had no income and she could not run the land unless it was in her name. "Why did you transfer the land? There was no necessity for a transfer. Can you please assist me? I want to see the waiver," said Judge Groarke.

The waiver was not in court. "I've never seen such dirty paperwork from both sides," said the judge.

The husband's brother had told him to waive his rights to the land in the best interests of their mother. Judge Groarke asked: "Did your brother tell you if you have land or an interest in it your wife will have an interest?" The husband said he did not.

The husband wanted to stay in the family home for the benefit of the children. Judge Groarke said: "I won't make a hard decision. He's [the husband] been in the house since 2005. The children are used to living with him. A number of matters arise in dispute regarding the property. She's [the wife] a 30 per cent shareholder in her father's company and she receives nothing. I believe her. Nonetheless, she's still a director of a company."

Judge Groarke did not believe the husband's explanation of the will. "Don't pretend you didn't know she'd have a share," he said to the husband. He decided to "set one off against the other" and he directed that the wife transfer the family home to the husband and that they sell the two pieces of land. He gave the wife the site with planning permission and €22,000 for her legal costs.

"The two of them will then have a home of the same value," he said.

Case conference narrows issues in separation case

Of over 101 matters before **Judge James O'Donoghue** some are adjourned at the outset, 64 concern divorce applications and eight judicial separation while others include maintenance, access, safety and pension adjustment orders

On the South Western Circuit, Judge James O'Donoghue heard a wife's application for a judicial separation. A few weeks previously, all legal representatives had attended a case conference, a procedure to move contested cases forward to trial. The process prepares and narrows the issues for trial and/or to receive settlements. In this case, it had settled some matters and the two issues outstanding concerned a lump sum payment to the respondent and a pension adjustment

order.

The parties were married in 1975 and had three children, none dependent, with the youngest aged 19. Both the applicant wife and her respondent husband were now in their early 50s.

The wife's counsel said his client was a civil servant and the family's main financial support. Her husband had never held a regular job and only did casual work. He described how their marriage got into difficulty and how the wife had to have safety and barring orders issued against the husband. The barring order expired in February 2007 and the safety order in February 2008. The husband consented to the orders against him and the court heard that there was a history of violence in their relationship. Both parties attended marriage counselling and although the wife continued to attend the husband stopped. The wife's counsel said his client's husband had been committing adultery for years which was a "gross and obvious issue". She wanted a judicial separation on that basis.

The court heard the wife was the main financial contributor to the home, that she had a substantial State pension from her job from which she derived an annual net income of €49,000. She had also bought the family home on her own and redeemed the mortgage herself. The value of the home was estimated at €400,000-€450,000.

The wife's counsel said her husband had a weekly invalidity pension of €196. "The applicant will also say he works as a […]," her counsel said and held that his client did not want to leave the house. She was willing to offer her husband €100,000 and nil pension adjustment order given that her substantial contributions far exceeded anything he had contributed.

He reminded the court that most conduct cases were a third/two thirds in terms of asset division. The husband's barrister said his client suffered from a heart condition and was in receipt of an invalidity pension. He claimed that he had documentary evidence that the husband paid €60 into a mortgage account at a time when he was earning €130 a week. He believed his client was entitled to half of everything. On the wife's offer of €100,000 he said: "In meeting housing needs, €100,000 just isn't going to do it."

After hearing the husband's counsel, Judge O'Donoghue said: "On the face of it, after hearing the evidence, I would think it is probably a third–two-thirds case in favour of the applicant over all the assets."

He urged both counsel to take instructions from their clients and to negotiate, now that he had given his indication. The parties reappeared after successful negotiations in which the wife agreed to pay €170,000 to her husband for him to relinquish all rights in the family home. She was also to keep her pension. The judge granted the judicial separation.

'I would think it is probably a third / two-thirds case in favour of the applicant over all the assets'

Family home and assets to be divided equally

In a judicial separation case on the South Eastern Circuit, Judge Olive Buttimer directed the sale of a family home with the net proceeds to be divided equally between the parties. This was because one party lived in the provinces and the other in Dublin, she said, and as property was cheaper outside the capital, she would direct such a sale.

The parties married in the mid 1980s and had two children, one of whom was still dependent. The wife had lived with her

parents in the south along with her daughter since the marriage breakdown; the other child had left home. The husband continued to live in the family home in Dublin.

The husband claimed the wife had subjected him to physical abuse during the marriage and also claimed he had had to borrow money from his siblings for the wedding and house deposit which was still owed.

The wife said the husband was a heavy drinker and that before she left, he had begun to drink in the mornings. The arguments were about his alcoholism and his failure to pay bills. He started hiding his cider cans to conceal his problem. She contended that she had asked him to seek help but he would promise to do so and then not follow through. She left the family home in 2003 with the children. The situation had got so bad that the husband had brought a can of beer to one child's Confirmation. She now wanted a home of her own and claimed that she and her husband had paid for the wedding, not his sister.

In cross-examination, the husband's counsel asked the wife if she was exaggerating the drinking. She said no. He asked if it was not the case that she had deserted the family home. She replied that was not so. Her husband knew she was leaving. He had sat and watched while she packed.

The husband said that if the daughter wanted to go to college in Dublin, then she could come and live with him in the family home. Both he and his wife had to borrow money to pay for the wedding as they simply did not have enough money at the time.

The judge interjected and asked to inspect the savings books at the time to ascertain the parties' then finances. She then told the husband: "...You did have enough to pay for the wedding and the deposit."

The wife's counsel asked the husband if he proposed to remain in the house and that his wife should make her own way in life? How would the wife benefit from such a financial arrangement?

The judge said this was a case in which there was only one asset, the family home, and that as such she would grant a judicial separation and direct the sale of the house and the net proceeds to be divided equally. She appreciated that the burden had fallen to the wife in the past but as property prices were cheaper in Tipperary than in Dublin, she would make such an order.

She also said that this case should not have been run on conduct by the legal representatives as one thing was said by one and the other said the reverse.

Husband does not want divorce – or judicial separation

An application for judicial separation proceedings came before Judge Olive Buttimer on the South Eastern Circuit in which the husband said he did not wish to be judicially separated from his wife.

The parties had married in 1998 and had two children, one now in full-time third level education. The other, in his early 20's, had a psychiatric condition and was recently hospitalised. He had received counselling at 13 and was on medication for many years. Academically he had done well and had enrolled in a third level institution for a year but later dropped out. He was now taking a course with many therapeutic benefits but which did not to lead to any formal qualifications. A month previously, he had taken an overdose.

The wife's counsel said his client needed to remain with the son in the family home and that that was her principal concern. The husband's counsel replied that he simply did not know if that was the case and it seemed the other side was making assumptions about the son's condition. He added that no psychiatric evidence had been adduced on this matter and the son had recently gone on a break to Wexford.

The judge stated that she would not ask for a psychiatric report in these circumstances where both parties lived in the same house and should be aware of how their son was coping.

The husband had a share in another property due to a recent inheritance. His right of residence in that house was still unascertainable as the other stakeholders would have to agree to it. That house was in a bad state of repair. The wife had no problem with the family home being sold but not at present as it was not a good idea for her son to be moved. Under cross-examination it was

stated that the son's psychiatrist had stated it was the worst case of depression he had ever seen.

The husband said his son needed both parents and he wanted to continue to support him. He wanted to continue to live in the house and did not want a divorce. It was pointed out that these were only judicial separation proceedings but the husband said he did not want a judicial separation either. His counsel said he had two consultations with his client and that it was never stated that he did not want a judicial separation. He had accepted his marriage was over and had no prospect of reconciliation or mediation.

The husband was asked if he would agree to the family home being sold and he said their son had indicated he did not mind if the house was sold as he could go and live with him. The judge then said that if the husband was to separate he would have access to his son at specified times. The husband said he thought his son was getting better and his condition improving.

The judge decided that the matter should be adjourned so that the husband could ascertain what right of residence he had in the other house. This was necessary as she did not want any of his liquid assets invested in improving the house until consent was obtained on his living there. Judge Buttimer said that on a preliminary point it could not be good for the son to be moved at this stage as moving at any stage was stressful but in these circumstances especially so. She told the husband's counsel to ensure there was no prospect of reconciliation or mediation between the parties.

Family home a small rundown cottage

A couple, who married in 1998 and separated six years later, had two boys aged eight and five. In their judicial separation case before Judge John O'Hagan on the Northern Circuit division of assets was the main issue. They owned the family home, a small, run-down two-bedroom cottage valued at €180,000 and a large, five-bedroom, beach-front "dream home" still under construction. Its worth was uncertain since the court had two conflicting valuations before it.

The applicant wife, who lived in the family home with her two sons, wished to tell the judge why the marriage had broken down. Her barrister explained this. The judge said that his job was simply to aid fair division of the assets. "I am not involved in the blame game." He apologised if she found that hard to understand. She replied that she understood and described how the cottage was small, poorly insulated, damp, cold and "flooded regularly". The judge looked at photographs, some showing cracks in the walls, through which "daylight can be seen". She had power and water in the house and a car in which she brought her children to and from school. She wanted to remain in the family home with her children and to spend about €50,000 on an extension and on repairs.

The couple's other significant asset was an investment property they had been building on land given to the husband by his father in 1999. They had planned to live permanently in this luxury beach-front home – which lay on two and half acres of desirable land – and then rent out the cottage. Obtaining planning permission had been difficult. While the wife was happy for her husband to receive

this property as part of the settlement, she believed she was entitled to "compensation" for the fact that she would never live there.

She did not work outside the home at present but had in the past. She wanted to return to work when her youngest son was in school until 3pm each day. Her income consisted of lone parent allowance, monthly maintenance from her husband of €700 and children's allowance. Occasionally she earned some money from teaching. She had savings of €20,000. Her husband, who was employed, paid mortgages on both properties while living in rented accommodation.

Judge O'Hagan asked both parties whether they were in new relationships, stating: "I don't normally ask this." The husband was not while the wife had recently met someone.

The husband said he had paid the mortgage since the beginning. The judge asked if his wife had ever contributed to the mortgage when she had been working and the husband muttered inaudibly that she had, to which the judge retorted: "She did and at least acknowledge that she did." When examining photographs of the investment property, the judge noted it was "secure and weatherproof". The husband said he wished eventually to live there and was happy to sign the family home over to his wife so that she and his children could continue to live there. He was also happy to repay the €11,000 mortgage still outstanding, or to give his wife that sum if she so wished. While he acknowledged that the cottage was in some disrepair, he stated that this was "not life-threatening" – a threshold which the wife's barrister stated to be "very low" for a house in which his children lived.

The judge put the family home into the wife's name and directed that her husband pay her a lump sum payment of €25,000 within nine months and that he continue to pay maintenance. While he told the husband it was likely he would put the investment property into his name, he would not do so until the final hearing of the action, at the divorce stage.

This was owing to the huge variance between valuations supplied by the parties to the court that day. He directed that an independent valuation be carried out for that hearing and that each party bear their own costs. Judge O'Hagan told the wife that pressure was on her to rejoin the workforce, "to ease the situation".

The judge asked both parties if they were in new relationships, saying: 'I don't normally ask this'

In Brief

Couple granted an Irish divorce

A couple before Judge Olive Buttimer on the South Eastern Circuit had married in 1975 and separated four years later. They had no children. The husband later began a new relationship and sought a divorce in the UK in 1989 from his wife as this was not possible in Ireland at the time.

While he is an Irish resident, he had tenuous links with the UK at the time but his primary residence was and remains Ireland.

In the early 1990s he purported to re-marry his new partner in Northern Ireland. She had since become ill and so they wished to have their situation regularised in this jurisdiction and wanted an Irish divorce – on the consent of his first wife – and to re-marry his purported wife in this jurisdiction "as soon as possible".

Judge Buttimer said the previous divorce was not valid in this jurisdiction and duly granted him a divorce under Section 5 (1) of the Family Law Act 1995.

Man tries to give maintenance arrears to judge

Maintenance, access, barring orders and an application to dispense with parental consent for a passport – these are some issues before **Judge Thomas Fitzpatrick** on a typical day in a Midlands District Court

Court Report

A foreign national woman, who was legally represented, wanted to dispense with her former husband's consent to the issuing of their daughter's passport. The child was three and she, the mother, wished to take her to the US on holidays. Her husband had returned to his country of origin following their divorce. She wanted a 10-year passport, but Judge Thomas Fitzpatrick allowed it to be issued up until the child's seventh birthday.

Later, an applicant wife told the judge that her husband was consenting to a one-year barring order. The husband, who was absent, was not legally represented but the judge accepted the wife's word and granted the order on consent.

In another case, a separated couple had agreed access and maintenance for their three children. Neither side was legally represented and the terms were not written up. Judge Fitzpatrick asked the couple to be more specific in their access arrangements to avoid future problems. The wife said her husband would have the children overnight

every second weekend, and he would pay weekly maintenance of €150. He would also pay half of any bills outside ordinary bills, for example Christmas, communions and so on. The husband agreed to this and the orders were made.

In another case, a husband who owed €824 in maintenance attempted to give money directly to the judge, who laughed and declined the sum saying it might be considered a bribe. The man, who had no legal representation, said he had had difficulties with a tax bill and a large overdraft. He had €700 with him and hoped to clear the balance within six weeks. The judge adjourned the matter for one month and told him to have the balance cleared by then. The registrar took the €700 for the wife and issued a receipt.

In an access and maintenance case, an unmarried couple had an arrangement for their two children which the father wanted made into a formal court order. He was also applying to vary an existing maintenance order. At present, he took the children from 2pm every Saturday until 6pm every Sunday. Counsel for the applicant mother said her client wanted her former partner's access increased. She said their son was always asking if he could spend more time with his dad. She wanted him to take the children from 10am on Saturdays. The judge asked the man if he was agreeable. He answered that access was working well as it was and he was happy for it to remain as it was. The judge asked: "Why don't you want them earlier on a Saturday? Would it interfere with your social life?"

The man said he played football on Saturday mornings. The mother's counsel told the judge that the children also saw their paternal grandmother during access and she was anxious for them to see more of her. The judge asked the man again if he would take up increased access and he agreed.

On maintenance, he said he was paying €75 a week but he had been unemployed for almost a year and could not afford that. He wanted it reduced to €25.

He had bought a house since the couple had split up and his mortgage repayments were €125 a week.

He was receiving €185 per week in unemployment benefit and his new partner was supporting him. The judge agreed to the reduction.

'Why don't you want [your children] earlier on a Saturday? Would it interfere with your social life?'

In Brief

Mother granted sole custody of daughter

On the South Eastern Circuit, a woman sought sole custody of her nine-year-old daughter. The woman, who lived in Ireland but was a foreign national, had not returned to her original home since 2002 and was anxious to visit her family. She could not travel, however, as her husband would not permit their daughter to travel there with her. She expressed concern that if she were not granted sole custody of her daughter, her husband could take their daughter from her while she was away and force her to stay. Her husband had not seen his daughter since 2003 when she had obtained a safety order against him because of his violent behaviour towards her. Her husband was deported in 2004. Judge Buttimer granted her sole custody and ordered that every effort had to be made to notify the husband of this order and granted him liberty to apply.

HSE matter 'must come back to court for revision'

In a western family law court, of six cases before **Judge Conal Gibbons,** two are adjourned and one is agreed by the parties

'The only difficulty I have is that I don't know his capacity. It's hard to make an order in his absence'

Court Report

A matter before Judge Conal Gibbons concerning a *guardian ad litem* was dealt with by solicitors in the absence of the parties involved. The item was in for review and concerned a child who had been under HSE care for the preceding two years.

A required report was not before the judge so he adjourned the hearing until May 1st. The report was in for review following an order made by Judge John O'Neill on March 1st, 2006.

"You shouldn't run it that way," Judge Gibbons said to the solicitor. "Since I've become peripherally involved I'll make only one order. The care plan is in the court. I believe the date the child becomes 16, if the child is still in care, in view of Section 45 of the Childcare Act, the matter should come back to court for revision and the HSE must provide aftercare. That means the HSE has to exercise discretion. The order never leaves the court. An aftercare plan should be shown to the court for observation."

Judge Gibbons said the purpose of the exercise was to canvass whether it was essential and necessary: "I want the HSE to be notified. I require that this matter be re-entered for mention." In other words, the matter would be mentioned in court again to keep it on the list and, depending on circumstances, would be adjourned again for mention or given a new hearing date.

Judge Gibbons inspected the file on the child who would be 18 years old in 2023. He said the matter should therefore be in for review two years before the child's 18th birthday, when he was 16. The review should be seen with reports and he told the court how important it was that the review should take place from the child's perspective. "We need to adhere to that," he said.

Judge Gibbons adjourned the matter until 2021. "People find that extraordinary but there's reason behind it and it's consistent with *McDonald v Eastern Health Board.* It's more a shield than a sword so I'm going to direct that the aftercare provision occur whenever the court sits after the child's 16th birthday…," he said. The matter was adjourned until May 1st. The HSE's solicitor said the report was hugely comprehensive and included psychiatric reports.

In a maintenance application the judge heard that in existing order for a couple's two daughters the applicant mother got €32 a week for each child but only one was dependent. The father was not in court. The mother's solicitor argued that the sum was insufficient for a teenage girl. There had been no application to renew the maintenance since its inception in 2000.

The mother was not working. She had to stop as she was having seizures and now received a weekly disability allowance of €263. Judge Gibbons asked why the father had not shown but no one could give him an explanation. The father, who worked as a driver, had had different solicitors act for him in the past. He had been given ample notice that the application was being heard.

The mother said she and the father lived only a few houses apart. He lived with his partner with whom he had three children all under the age of seven. He had no relationship with either of his two daughters. "He stopped communicating with them. He won't give them money. At Christmas he said they were too old for presents," she said.

He usually saw them on a Sunday but the eldest stopped going as he brought her to his mother's house where he also brought his three younger children. Her daughter ended up babysitting them all, she said. He had stopped paying maintenance in September 2007. She gave her daughters money for their phones, money for fast food and money for hair and clothes. "Young girls require fashion. You have to help them out," Judge Gibbons said.

When deciding maintenance, he said: "The only difficulty I have is that I don't know his capacity. It's hard to make an order in his absence." The mother's solicitor said: "He had no problem making a payment of €60 until September."

The judge granted the mother €55 a week and considered that the father had incurred serious debt from property he had bought. He ordered that the payment should be made through the costs. He also awarded the costs of the case to the mother.

In another item, the father of a 16-year-old boy had brought the mother back to court to have the maintenance order varied. The father refused to pay any more maintenance as his son was of age. "It's 18," Judge Gibbons replied. "You've to keep paying until he's 18." The father was paying €32 a week for the son who was not in school. "It's a pity he's not in school," Judge Gibbons commented "If he doesn't get some form of education now he'll be in serious trouble." The father replied: "Yeah, I want him to learn stuff. It's the best for him."

The mother said the son was doing a Fás scheme learning to read and write. Before this, he had been working with his father in a haulage company. The judge said: "If he trained properly he could get into the haulage." The father agreed to resume his payments, saying: "I'll give him cash if he doesn't stay in bed all day."

The last case of the day in Ballinasloe District Court before Judge Gibbons concerned a barring order and was done by consent.

The applicant wife was not in court so the Garda had to call to her house to fetch her. A solicitor represented her and apologised for her absence.

The husband consented to the barring order. The abuse in question was entirely verbal. Judge Gibbons said: "If you've drink on you your inhibitions are lower and you lose the rag." He added: "With a safety order if you do something and [your wife] makes a complaint the guards can arrest you and swoop you down under Section 17 (1) of the Domestic Violence Act. It's a double-edged sword. You'll be guilty of a criminal offence and breach a court order. There's one thing courts don't like and that's a breach of a court order."

"Over the last 10 years 160 people have killed each other in a marriage" Judge Gibbons said. "I'm happy and I understand," the husband said. "I hope it works out for you both and you don't have to see me," the judge told the couple.

The solicitor said the husband had been trying to improve his behaviour. "I'll put the drink behind me now," the husband said. "Well done. Good luck to you both," the judge said.

Abducted child returns

The reasoning behind **Mr Justice Garrett Sheehan**'s decision in a case taken under the terms of the Hague Convention is explained

The child had strong attachments here and it would be a wrench for her to move. psychologist said

Under the Hague Convention, a father applied for the return of his daughter, now aged 10, who had been brought to Ireland from Latvia by her mother. The divorced parents had equal custody rights under Latvian law while they were married. Since the abduction, the father had obtained an order for full custody which he proposed to suspend once the girl was returned pending a full hearing in Latvia. The child and her mother came to Ireland in November 2004, returned home briefly before coming back here in December 2005 where they have been living ever since.

In August 2006 the father submitted a formal request to the Garda Siochana's Central Authority for his daughter's return. This triggered Article 12 of the convention. The mother simply ignored the request. On December 13th, 2006 Ms Justice Mary Finlay-Geoghegan ordered the child's return to Latvia but this and several other subsequent orders were not complied with. Finally, in October 2007 the mother purged her contempt in court and disclosed her daughter's whereabouts.

It was contended on the girl's behalf that Brussels Regulation IIR Article 11(2) – which allows for the child to be heard – had not been observed. Ms Justice Finlay-Geoghegan accepted there was non compliance but said that on any rehearing the respondent could not raise any new defence and that events after December 2006 could not be relied on.

A psychologist, Edward Hogan, had interviewed the child and told court the girl was bright, comfortable, uninhibited and expressed her views well in English. She was animated and enthusiastic when talking about school. She was worried that her friends in Latvia might have forgotten her. She indicated strongly that she did not want to go back to Latvia and recalled aggressive arguments between her parents. She had strong associations between Latvia and her father. Mr Hogan said her answers were coherent and spontaneous, suggesting that she had not been coached in any way. The arguing in Latvia seemed to be the dominant negative reason for not wanting to return. The quality of life in Ireland was the main positive reason for wanting to stay. He added that she was not sad that she did not see her father and this concerned Mr Hogan. This could be addressed, he thought, by supervised access if the father came to Ireland.

In cross examination Mr Hogan said he was not aware that there was no question of the child returning to the full custody of her father. This would be suspended pending a full hearing in Latvia. He conceded that the risk of her witnessing more arguing between her parents would not arise since they were divorced.

The child had strong attachments here and it would be a wrench for her to move, he said. He agreed that the concept of summary return (within weeks) as stated in the Hague Convention was inappropriate in this case.

The mother's respondent argued that the Hague Convention premised on summary return to the habitual residence of the child since that was the best place to decide the child's welfare. Council Regulation Brussels IIR changed this. Under Article 11(6) if the judge refused to make the order for return,

to Latvia, 'not her father'

a copy of the order had to be given to the Latvian courts. On the application of either party within three months, those courts could look at the order and order access and custody which would be enforceable under the Hague Convention.

In addition, Brussels IIR included a mandatory obligation for the court to consider the child's views. The child in this case was in a separate situation here. If the respondent was precluded from raising defences by virtue of the previous order of the High Court, then who would raise defences on the child's behalf? Her right to have her view heard was distinct from any defence put forward by the respondent parent. If the child objected to the return, then there was a clear discretion to refuse to return her. The purpose of the convention must be regarded. The object was to return the child summarily to the place of habitual residence so that her custody and welfare could be dealt with. Little weight could be attached to the convention's policy if its main objective could not be fulfilled. The child had been in Ireland since November 2004 apart from four months. Although it might suit the mother for the child to remain here that was not the issue. The child had spent a lot of time here and her objections to returning to Latvia had to be examined. The father's request was

If the court directed a return it was allowing the appropriate forum to deal with her welfare, in other words the Latvian courts

made only after eight months. And if the child was not returned there would be a hearing in Latvia where custody would be examined. It was in the child's interests that she should benefit from the family surroundings and friendships here.

The father contended that the Hague Convention had to be considered. Its objectives – to protect children from wrongful removal or retention – could not be secondary to the child's views. Proceedings had been brought within the required 12-month timeframe. Under the Hague Convention defences opened a door of discretion. The mother was precluded from raising any defences. Even if the proceedings were brought outside the year there would only be a discretion not to return the child. The defences were confined to the respondent.

The mother issued a motion on September 20th, 2007 seeking an interview with the child and to appoint a *guardian ad litem* to represent the child's interests. This motion was abandoned. The mother could not now re-launch this defence and appoint a new legal team for the child. The court had to guard against placing too much burden on the child. Children were not psychologically equipped to choose between two parents.

It was argued that the mother had ignored all proceedings here until she was hauled before the courts. She would not engage with the courts in Latvia if the child was not returned. How would this benefit the child? If the court directed a return it was allowing the appropriate forum to deal with her welfare, in other words the Latvian courts.

Under Article 11(2) of Brussels IIR the court had to be satisfied that the child actually objected to the return. Jurisprudence showed that this must reflect something inimical to the welfare of the child. There was nothing untoward in the allegations against her father. Her parents were divorced so there would be no more arguments. If the court believed there was something overwhelming that undermined the child's welfare this may be taken into account. The child would be returned to the jurisdiction of Latvia, not her father.

There was difficulty in finding the mother's address to serve her. The Garda Siochana's Missing Person's Bureau and Central Authority had to become involved. This accounted for some delay.

Couple dissatisfied over breaches in terms of agreement

Of 15 matters listed before **Judge John O'Hagan** on the Northern Circuit, five are adjourned at the outset, seven are heard and three are not reached

Judge John O'Hagan heard an application by a separated wife to have her proceedings re-entered. The couple had obtained a judicial separation in July 2005 granted on terms agreed and signed by both. At the time, the applicant wife was not working outside the home and the husband ran his own business, employing four people. They had three children, the eldest aged 15. At separation, the husband had transferred his interest in the family home to his wife for €30,000. The house, valued at €280,000, had an outstanding mortgage of €11,500 at the time. The wife borrowed money from her parents to pay off the mortgage and the lump sum to her husband.

Both parties were dissatisfied over breaches of the consent terms in the separation agreement. The wife said her husband had agreed to pay weekly maintenance of €400, €100 for each child and €100 for her. It was to be aligned to the Consumer Price Index. She complained it had never increased and that the husband had missed two payments recently.

The husband complained that his wife had agreed to transfer a joint account to his sole name. Not only had she neglected to do so, but she had continued to make withdrawals from the account.

The couple had also agreed on the children's back-to-school needs the wife would give the husband a booklist and uniform requirements and that he would supply these. The wife was unhappy with this and said her husband had bought the wrong books and the wrong size clothing. She said it would be more practical for her to buy everything and give him receipts. She had, in fact, done this the last time and he said she was in breach of the agreement by doing so.

On the wife's complaint, the husband said one payment was a mistake by his bank and he had given his wife a postal order to make up for it. He also said he wanted maintenance reduced by €100 as his wife was now working and he could no longer afford the level of payment. He had bought a four-bedroom house to be able to provide suitable accommodation for when his children visited. Then interest rates had begun to rise and his monthly repayments were now €1,690. By contrast, his wife had no mortgage. She was employed on a CE scheme which gave her €194 a week. She had €515 per month in child benefit and she got €400 a week from her husband.

The wife's counsel told the husband there was a court order on the maintenance. He said: "You bought a four-bedroom detached house. It's a fine house, isn't it? Because you decided to live at that standard, you can't afford to pay what you agreed."

The husband said it was a normal house, that he had left a fine house and that he had been told he could have the children overnight if he had suitable accommodation. The judge said he had seen lack of suitable

accommodation used time and time again as a weapon against husbands seeking overnight access visits with their children.

The wife's counsel asked how much the house was worth, and when he was told €250,000, he said: "That's a barefaced lie. It's nearer to €450,00." The husband said he bought it for €285,000 and people were telling him that house prices were dropping all the time. Counsel said: "Well, I'd buy it off you today for that price."

Counsel asked him about his business: "We'll see if we can get the truth out of you in relation to that." He disputed the husband's earnings as shown on his P60, asking him who was responsible for filling it out. He also queried whether the husband ever received cash payments for jobs. When told no, he expressed his disbelief. The judge asked counsel if he was going behind the P60 and when counsel said yes, the judge asked if he had made a complaint to the Revenue. Counsel replied: "Not yet."

'I don't want to be seen just as the bank. The children have asked me why I never buy anything, why their Mum has to buy everything'

The husband's counsel said three years business accounts had been supplied at the time of the judicial separation. Money in these accounts were not the husband's to be dipped into if and when he liked.

He then asked the wife about recent improvements to the house and the purchase of a new car. The wife replied that she had had new windows installed, the house had been painted and the drive-in had been tarred. The new car had cost €12,500 and was "for the safety of the children". Counsel said: "You're not as strapped for cash as you say."

The wife's counsel told the judge that his client had prepared a spreadsheet setting out all the costs associated with the children. He said: 'I think you'll be impressed with this, judge." The list outlined feeding and clothing costs for the children and a comprehensive list of activities they were involved in, including piano, guitar, drums, speech and drama, boxing, basketball, kickboxing, Gaelic football, soccer, grinds and cubs. It totalled €703.06 a week. The wife said she could not manage: "I have to rob Peter to pay Paul."

There would be further expenses this year, for cub jamborees and orthodontic work. When asked about Christmas presents for the children, she said her husband contributed €500 to this.

The husband's counsel asked him why it was so important to him that the original term regarding back-to-school items was adhered to, he said: "It's nice to take the kids out and be part of their lives. I never knew the activities they were involved in. I don't want to be seen just as the bank. The children have asked me why I never buy anything, why their Mum has to buy everything."

On the joint account the wife's counsel said there was no problem transferring it to the husband. It had been an oversight.

The husband's counsel also told the court that her client wanted to change the arrangement on a joint life policy her client had taken out as part of the separation agreement. It was index-linked and cost €209 a month. He wanted to change the policy so that it was only his life that was insured. When told that this meant he would get nothing if his wife died before him, he said he accepted that.

The judge said it was important for them to be able to move on, but that if one person got a valuable asset in a divorce or separation, it was important to use it. He said: "You can't just sit back and expect one person to provide all the money, particularly if you blame that person." It was open to both parties to downsize if necessary, there was a limit to everybody's means, he added.

He amended the original order so that

the wife could take the children shopping for school uniforms and give the husband receipts. But the husband was to take the children out shopping for their books and stationery. He said the husband was to look into a new life policy protecting his life only. He directed that the maintenance was to be paid at the present level, but with a hold on the CPI and the husband was to make good the month's arrears.

This arrangement would continue until the next return date, at which point he wished to see valuations on the parties' respective homes, and he also wished to see the husband's company accounts. Rises in the life policy had absorbed the lack of CPI paid on the maintenance and that the wife had been kept fully protected.

He adjourned the matter to the next law term, making no order on costs.

Father's access to children removed temporarily

A wife sought a protection/safety order – pending the full hearing of the proceedings – before Judge James O'Donoghue on the South Western Circuit. She also wanted to prevent the husband having access to the children in the interim.

The couple, the wife a European national, the husband Irish, had been married for a few years and had two children together, both dependent. The wife said that the HSE and the Garda Siochana were involved in circumstances where one of the young daughters had alleged sexual abuse by the husband. A daughter from a previous marriage might also be bringing a similar allegation.

The wife first went to the District Court which refused jurisdiction in the matter. At present, her children were on the Continent with her family on a pre-planned holiday. The husband's counsel denied that this was the case and said her taking the children out of the country took him completely by surprise. She had not yet returned the children to this jurisdiction. The judge, on hearing that the children were still abroad, held that the wife was "not entitled to do that".

Her counsel urged the court to consider the HSE report before deciding the matter and the judge agreed to suspend the husband's access pending the report's availability. He ordered that the children be returned to this jurisdiction but their whereabouts and the mother's were not to be disclosed to the husband. "I'll adjourn the matter for one week. Your client might want some time."

Two days later, the wife's solicitor rushed into court seeking an enhanced protection order for the wife's native country. He said the husband had boarded a flight there directly after the court appearance earlier in the week and had told a relative that he was going to get the daughter who had made the allegations. A relative of the husband contacted his wife and told her this.

The judge ordered that the husband should have no access to the children until the court had seen HSE reports and pending the outcome of criminal matters against the husband on allegations of sexual abuse. "He might say it appears a coincidence. I'd say more than that – he is intimidating her," the judge said. "I have to protect this lady and these children. I am making this order – just notify that man. If he breaks that order there will be serious repercussions."

The matter was adjourned to the following week by which time the wife would have brought her children home and the husband would also have returned.

'I have to protect this lady and these children. I am making this order'

Chronic alcoholic 'dissipating assets of marriage'

On the South Western circuit, Judge James O'Donoghue heard a wife apply to have her husband barred from the family home pending the hearing of her application to stop him from dissipating the assets of the marriage.

The couple were married in 1995 and had three children, all of whom were dependent. The wife alleged that her husband was a chronic alcoholic and had been dissipating the assets of the marriage. Her counsel sought an order excluding him from the family home pending the hearing.

The husband's counsel said his client acknowledged that he had issues and he would give an undertaking to his wife and to the court to be out of the family home by the following Friday, but he pleaded with the court not to make an order in those terms. The wife's counsel reiterated that the applicant was also seeking an order restraining the dissipation of assets any further pending the hearing. "When is it likely to be heard?" asked the judge. "The defence and counterclaim have been filed, judge, so whenever the next available date is," responded the husband's counsel.

"Judge, the affidavit of means was just filed this morning and the applicant has not yet had a chance to go through it," said the wife's counsel. "The respondent has withdrawn €16,000 since last Tuesday's court appearance," he said.

The matter was adjourned to the following week so the wife could examine the affidavit of means.

Solicitor gives evidence for boy torn between parents

A solicitor appeared before Judge Anthony Kennedy on the Midland Circuit to convey his concerns about a local boy who had come to his office upset about his relationship with his separated parents. The solicitor had instructed counsel in the matter and his sister – also a qualified solicitor – had been assigned the case as he believed he was too involved to deal with the matter professionally.

The barrister explained that the boy's parents had separated amicably and all matters were dealt with by consent. The boy had always lived with his mother and two older sisters. The children were now aged 18, 16 and the boy, 14.

The solicitor said that the boy had come to him very distressed about his home life. He told him that he felt torn between his parents and he now wanted to go and live with his dad fulltime as his mother's partner had moved into the family home. The boy said he was so upset that his school work was suffering and he found it hard to sleep at night.

The solicitor said he had contacted the family therapist who told him that the boy had said he wished to maintain a positive relationship with both parents but that he felt torn between them. The solicitor contacted the boy's father who admitted that the child appeared very strained.

The solicitor said the boy's mother had found out about his meetings and telephone calls with her son and that she had threatened the boy with a foster home if he did not drop the matter with the solicitor. But the boy did not want to do so and continued to meet the solicitor but asked him to pretend "he had fired him". The boy confided that he felt it would be safer if he lived with his father but that he did not want his father to know that he continued to have contact with the solicitor.

The solicitor told the boy that his welfare was an important matter for the court to be made aware of and he asked the boy if he wanted him to bring the matter to the court's attention. The boy agreed.

Judge Kennedy asked the solicitor "What about his sisters who are now 16 and 18? … does he not have any comfort or solace on that front?" The solicitor replied "They identify with their mother."

Judge Kennedy ordered that the solicitor's sister be appointed the boy's guardian ad litem. He ordered that letters be sent to the solicitors acting for both the boy's mother and father and that the family therapist be in court on the next occasion as opposed to carrying out any sessions with the family in the meantime, to avoid causing friction.

The matter was adjourned to the next sittings when the boy would attend to voice his concerns.

On the adjourned date, the boy was present with his legal representation, his mother, his father and the family therapist.

Judge Kennedy heard from the father's barrister how he had recently rented new accommodation and now had ample space for the boy to come and live with him. His new home was 20 miles from the boy's school but he could drive his son to and from school.

Judge Kennedy was told that the original court order gave only limited access to the boy's father. The court also heard that the boy had been diagnosed with ADHD and that his mother believed his father had always denied that there was anything wrong with the child and as a result the boy thought his father was ashamed of him. His mother's barrister said she felt his father manipulated him as he was an especially vulnerable child. The court also heard that the mother believed the children's father was very damning of her in front of them. Her barrister added that the boy's two sisters lived with her very happily and that she would like to keep the children together

'I have taken the very unusual step of having the boy here and … I should see [him] in my chambers [with] his guardian ad litem'

as a family unit but that she just wanted the boy to be happy.

Judge Kennedy began by saying: "I have taken the very unusual step of having the boy here and I think that I should see the boy in my chambers accompanied by his *guardian ad litem*."

When Judge Kennedy resumed the hearing, he said he was happy to give the boy's father primary residence and custody. He said: "I want to take things very slowly, the boy should be facilitated to see his mother as he wants to and I am giving each side liberty to apply to this court in June if necessary. As the child is so young the situation needs to be monitored closely."

The father thanked the court and expressed his satisfaction with the new arrangements through his barrister. The mother's barrister told the court that she only wanted the boy's happiness and hoped his father would respect his medical needs. She also hoped there would be no further bad mouthing between the parties.

Time spent unsupervised with father 'good for children'

An application before Judge Olive Buttimer on the Southern Circuit centred on whether a father should be permitted to drive his children unsupervised to play therapy on a weekly four-hour round trip. The two youngest children, aged seven and eight, had to attend play therapy as one of several recommendations from a Section 47 report.

The father had not had unsupervised access to his children in a year. The report advised that supervision should remain in place until

the therapy had begun and he was frustrated with this. There had been difficulties with the children attending play therapy and their mother was not satisfied that the father should drive them to and from the play therapy.

In her report, the designated play therapist wrote: "I hope that the parent's transport issues will not overshadow the therapeutic needs of the children." She told the court that while she empathised with the mother's worries she believed the time spent unsupervised in the car with their father would benefit the children as part of their therapy. When the judge asked the mother could drive the children to meet their father at the session the therapist said it would be better if the father drove them sometimes. They would learn to trust him again during this period and it would give her a more natural scope for observation than had the children arrived with their father and supervised by another adult. In any case, the mother told the judge she was not prepared to drive the children every Saturday as the two older children needed her. She wanted the husband to drive them every second Saturday, but in a supervised capacity.

The judge directed that the parties leave court and speak to the play therapist and arrange suitable times and dates for the play therapy sessions with their mother to drive them to the first session and their father to drive them every second week thereafter. Judge Buttimer told the barristers for both parties that she did not wish to see that case again until the play therapy was in train and that the case was not to follow her around the circuit unless there was a danger posed to the children.

The parties then agreed arrangements that were to remain in place for eight weeks of therapy.

In Brief

Supervised access order 'must go back to the Circuit Court'

In a contentious access matter heard in the District Court on the Eastern Circuit, Judge Gerard Haughton told the applicant father that he had no jurisdiction to vary an order of the Circuit Court. The couple had obtained a decree of judicial separation in the Circuit Court, and one order granted had stipulated that the father's access to the children was to be supervised. The court was told that the health board had been involved. An appeal to the High Court had resulted in the order being affirmed.

The father contended that the health board was no longer involved, and they had not that they hadn't applied for the order to be extended. He asked was asking the judge to allow increased access on an unsupervised basis. The mother, who was visibly upset, said the health board was still involved.

On reading the original Ccircuit Ccourt order, the judge indicated that he could not couldn't get involved. He told the father "The Circuit [Court] order is very specific. There's an order made in relation to access. Usually, when there's a Circuit Court order in relation to matters such as access or maintenance, it states that future applications in relation to such matters may be made in the District Court.

This order doesn't say that. If I made an order, it would be made without jurisdiction. You have to go back to the Circuit Court and seek an order. You could ask them to remit the matter to the District Court."

Woman traumatised by details of adoption

'[I] perceived my family had rejected me, that I was not good enough'

On the same day that Judge Donagh McDonagh refused an application for nullity on the Cork Circuit, another application was successful. The couple had married eight years previously. The applicant wife was now 33 years old. She had been adopted and had known this for most of her life. About two years before her marriage she went in search of her birth parents and found both.

She was very disturbed to find that her parents had married and that she had blood brothers and sisters who had grown up as a family. Eventually she met her mother and became very emotional. After the meeting the mother sent her an angry letter. When she got it, the woman felt she could not cope and ended contact with her birth parents.

She said that just before the marriage she had told herself she "got the information" and "that was all she needed". When counsel asked her describe her emotional state before the marriage she said: "[I] perceived my family had rejected me, that I was not good enough." She attended a counsellor whom she found good but who had "opened the box too quickly". The counsellor told her that adoption was an issue for her but she said it was not. She discontinued the counselling.

The woman later re-contacted her birth parents. One weekend, five years after the initial meeting, all her biological family, including her brothers and sisters, came to visit her. When they left she said: "Everything came crashing down." She described it as the first time she was able to look in the mirror, that she had gained self respect. She felt "relief, joy and confusion," and questioned where to go. She felt "everything was gone" and she was "at a stage she should have been at at 16". Shortly after this encounter, she decided to separate from her then husband.

The judge asked her why was it important to have nullity. She replied that it was important, "religiously and spiritually". Counsel asked her if she was incapable of entering the marriage at the time. She replied: "I was shut down that day and months before… my mind shut down and my heart shut down. I was void of everything except of everybody's expectation of me. I was numb, heartbroken. I thought [my mum] had deemed me not good enough again for the second time in my life."

A consultant psychologist gave evidence for the woman and Judge McDonagh asked, if she had come to him before the marriage would he have said she was not in a position to give consent. He replied: "I would have asked her to defer the wedding date." The judge asked had she not deferred the date would he have said she did not have capacity. He replied: "I would've said 'you're bringing trouble on yourself'."

The judge found it a harrowing story but said the woman was not suffering from mental incapacity to the extent that she could not appreciate the nature of the marriage contract.

There was no evidence of her lack of capacity to enter and sustain a marriage or of immaturity of mind or a personality disorder. But he found that at the material time there was so much happening that she was emotionally incapable of entering into a marriage and so he found the marriage null and void.

Man given 12 months to buy family home

On the South Eastern Circuit, Judge Olive Buttimer ordered that a husband be given 12 months to raise €80,000 to buy out his wife's interest in the family home. The husband, who had represented himself in the judicial separation proceedings, was advised to deal with his borrowing and debt as it might affect his home should judgments be obtained and enforced against the house.

The wife's counsel said there had been a previous court order on inspection facilities of the family home in order to value it. The husband had merely torn-up the order and this had caused difficulties in getting all the necessary information for the case. The husband replied that he had she not understood the order and that he was upset at the time.

In addition, the husband had not filed an affidavit of means but the court and the wife's counsel said they would proceed without one and try to ascertain the husband's assets and liabilities.

The couple had two children, one a teenager still attending secondary school and whose main residence was with the husband. The husband represented himself, saying he could not afford legal representation as he had several bills and loans.

The wife said she chose to leave the marriage as it was in difficulty. She left to save her brain and said they had spoken only of facts and figures in their final year together. She had a good relationship with her children and they would drop in and out of her new home. The husband had many outstanding loans and had to pay substantial outstanding revenue debts in the past.

He responded that he would try to buy his wife's share of the home as he had not gone hungry yet and that he would get the money from somewhere. The wife's counsel indicated that he had not been servicing his debts and that the financial institutions could seek judgment and attach it onto the family home. "It might be better to sell the family home at this stage", she said.

The husband said he was in shock, that he had never expected to be on his own. He loved that home and had no interest in leaving it. The judge interjected, saying that given his borrowing he might not be able to sustain a reasonable offer to buy his wife's shares. He replied that he could sell a boat he owned. The judge was afraid for the wife's share and entitlement and he replied that he could juggle things around. His expenses were not great and he would look after his family.

In the end, the judge estimated the wife's share in the family home at €80,000 after deducting any joint debts sustained in the marriage and gave the husband 12 months in which to pay.

She said the husband should deal with his debts as his home might be sold if the debts were not serviced.

Expert information needed to make ruling

'Any judge who has to deal with this should have expert evidence'

In a matter before Judge Donagh McDonagh on the Cork Circuit, a mother sought to increase access to her children from daytime to overnight access in the house she lived in with her new partner. The father opposed the application.

The married couple, who had a son aged five and a daughter aged nine, had applied for a divorce and the main issue was access. They had separated five years before and initially the children lived with their mother, who then began a new relationship and had another child.

About three years ago, the mother had left her first two children with their father – with whom they had lived ever since. She was having financial difficulties and their father could better provide for them. Although she had continued to see the children she had no overnight access. She now wanted this once a month in a new house she shared with her new partner. The mother said she wanted the children to "come into the family home … to know there's a loving home". She wanted them "to be involved in a family unit".

She said her new partner had been in treatment for alcoholism for three years had been off alcohol for the past two and a half years. Her counsel asked her if her new home was a "happy place for children?" She replied that it was.

The judge said: "[There] "should be some report from some appropriate body in relation to the children visiting with [the new partner] and staying overnight." The mother gave information very openly and honestly but "any judge who has to deal with this should have expert evidence".

He directed that a report should be before the court from some responsible third party and that the legal teams should agree who that party should be. Judge McDonagh would not deal with the application until more information was included so that the court could deal with the application "in a comprehensive matter." The matter was adjourned with the status quo on access to remain.

Husband 'had no authority to put house in his and his partner's name'

An application for a ruling on the validity of a foreign divorce came before Judge James O'Donoghue on the South Western Circuit. Counsel for the applicant husband outlined how the facts of the case were not greatly at issue and that the matters had previously been opened before the courts. The husband appeared and the couple's daughter was appointed guardian ad litem in respect of her mother, who entered a hospital in 1990 and who was designated non compos mentis by a medical report.

The couple were married in 1957, had one daughter and were separated in 1997. The wife had instituted High Court Proceedings which were not pursued. She obtained a foreign divorce in a Latin American country in 1972. Three years after the divorce, the husband went through a marriage ceremony in America in 1975 and he and his second "wife" have lived together since that time. At issue was the fact that the husband was not validly divorced from his first wife as the foreign divorce was not recognised in Ireland.

The respondent wife had also married again in 1972, also in the US and was not validly divorced from the applicant husband.

The husband had bought the family home after separating from his first wife and it became the matrimonial home of his second marriage. It was transferred into his and his partner's names as joint tenants but this was not a valid transfer under the Family Home (Protection) Act, 1976. His counsel told the court how his client had entered into a contract to sell this house for about €245,000 and planned to retire on the proceeds.

The husband's application was to dispense with the wife's consent to the sale of the property pursuant to S 4(4) of the Family Home (Protection) Act, 1976. Divorce proceedings were also before the court.

Explaining the background to the family home, his counsel described how "when it came to sell the house they had long gone their separate ways. She has never exerted her claim on the home." He added that his client' wife "is in the best place she can be". She received a weekly income and had savings of €70,000 according to her original affidavit of means. In terms of the legal requirement to make proper provision, the husband's counsel said his wife "has no need for any further provision".

The judge interjected: "Your client had no authority to put the house in his and his partner's name."

At this, the husband's counsel urged the court to look at the party's history, that there had been a clean break. He outlined that his client was anxious to dispose of the property and suggested that the contract for the sale could be proved and "we can proceed to litigate later on".

The wife's counsel disputed this. Her daughter, representing her in court, said she saw her role "to make legal submissions on behalf of someone who cannot". The daughter said she was present at the time of the judicial separation and described it as a violent relationship against the daughter and wife.

"Are you on good terms with your father?" the judge asked. "No, not because of this matter, no," she responded. Her counsel said she had no objections to selling the house if the funds could be put in a solicitor's fund in the meantime. The judge remarked how the parties were still married 50 years later.

"I assume the respondent will be entitled to some of the fund?" he asked the husband's

'I assume the respondent will be entitled to some of the fund?'

counsel. With that the judge directed that the balance of monies after fees and other outlays was to be held pending the trial of the matter under a resolution not to dispense with the funds. "The solicitor is the guardian of these funds," he said.

The joint tenancy was set aside pending the hearing which was adjourned to a later date.

Gardai arrest man and bring him to court

'That's it. I am not hearing this matter any longer. You go away and consider your position very carefully'

In a Midland Circuit Court a woman appeared before Judge Anthony Kennedy seeking an attachment and committal order for her estranged husband. She said he had failed to pay maintenance, to facilitate the sale of the family home and to return passports as previously directed by the court.

Judge Kennedy was told that the man was suffering from a mental illness and had been committed at the beginning of the marriage break-up but now lived in the family home. He was being un co-operative and kept removing "For Sale" signs placed in the garden and refusing to answer the door when auctioneers called with prospective buyers. He did not appear but his elderly parents, who had travelled to court that morning to give evidence, said their son was mentally ill and had recently lost his job. He would not listen to anyone in the family, they said, when it came to obeying the court order on maintenance and the house sale. They were trying to convince him to seek medical help but he refused to do so.

Judge Kennedy said that given the man's behaviour the court had no option but to order attachment and committal but that he would put a stay on the order until the court was scheduled to sit the following February to give their son a chance to abide by the court order.

He was sympathetic to the couple's situation and said mental illness was a very difficult thing for any family to deal with but the court had to consider all parties involved and as long as their son continued to ignore the court order, his wife and son were suffering.

When the court sat the following February the man failed to appear and his wife renewed her application for attachment and committal. Judge Kennedy granted the application and ordered that he be brought before the court in March.

At this point, the man was brought before Judge Miriam Reynolds. The Garda Siochana had arrested him and brought him to the midlands court that morning.

Judge Reynolds was told of this and that the man had lost his job and had no social welfare. The court was told that he had sub-let a premises and had a rental income.

The man told the court that he knew of the judicial separation proceedings and of the court order on maintenance and the house sale. He had not discharged the maintenance because he was upset at not having seen his son for over two years. When asked about why he was not using the access arrangements put in place he said he knew nothing of those arrangements.

Judge Reynolds asked him why he had no legal representation. He answered that he was trying to organise some. The judge asked him why he was preventing the sale of the family home. He said he was not, that the house was just not selling as it had been on the market for two to three years before they had bought it.

The judge asked if he was willing to co-operate now with the court and the gardaí and he said he was, that he would give them his address and they could contact him anytime. "I will undertake to stay at that address, I will give my number to the lads [gardaí] and they can call me anytime," he said.

He added: "I do want access to my son but not in the restricted way set out in the order, I am his father and I believe that I am a good father." He then asked Judge Reynolds: "Would it be better if I got a solicitor up here?" The judge said: "Perhaps." He then asked her to recommend one which she refused. He then asked openly in court if anyone else could recommend one.

Judge Reynolds replied sharply: "No! I recommend to you that unless you take this matter seriously you will be going away with those men in blue shirts over there. I need concrete evidence that you will pay money over to your wife."

The man replied "Well, what would you suggest?" Judge Reynolds answered: "That's it. I am not hearing this matter any longer. You go away and consider your position very carefully and come back at 2pm with some answers!"

At 2pm it was agreed that the man would hand over the name and address of his solicitor to his wife's solicitor and that he would pay over that day the deposit he had received for the rental of the post office along with a weekly sum of €170 once he was receiving social welfare. His wife required that the attachment order remain in place given the history of the case.

Full-page divorce advert costs woman €6,000

A unopposed divorce application before Judge Donagh McDonagh on the Cork Circuit concerned an Irish woman who had married an African man over six years previously. The couple had separated a year later and had had contact only once since. The woman had no idea where her husband was. He had a one-year permit to be in Ireland but this was not renewed. They had no children.

To ensure he was notified of the application she placed an advertisement in two newspapers in his country of origin. Unfortunately, one publication had made the advert into a full-page spread, costing €6,000. Counsel handed into court a letter from an immigration officer which suggested the man was not in Ireland.

The judge was satisfied the application had been advertised and granted the woman a decree of divorce. He blocked the ex-husband from benefiting from the estate of his ex-wife, but did not make a blocking order preventing the ex-wife from benefiting from his estate. No maintenance was sought but the judge said proper provision had to be made and she was entitled to some maintenance given that she was out of pocket by €6,000.

He ordered she be paid €150 net per week and also granted a declaration that the ex-husband had no beneficial interest in the property the ex-wife was now living in and an order for costs.

'Proper provision is a matter for the court'

In an application for judicial separation on the Cork Circuit, the parties had agreed settlement terms but Judge Donagh McDonagh asked if provision was proper.

He and his wife had married about six years previously and separated after two years. They had one child who was now almost three years old. The family home had been sold and the proceeds divided equally. The husband paid €90 weekly maintenance, €50 to his wife and €40 for his child. Custody was shared. Counsel asked the husband if he believed the agreement reached provided proper provision for his wife. Judge McDonagh interjected: "That's a matter for the court."

The judge asked what the man worked at and how much he earned a week. The husband said he earned €480 a week. The judge then wanted to know how much each received through division of the family home. They each received €37,000 after expenses. Judge McDonagh asked where both parties now lived. The wife lived in rented accommodation and the husband had just bought a house with a friend. When the judge heard how much his mortgage was he said the man did not have a lot of his pay left as a result. The wife worked in Tesco but the husband did not know her earnings. He said he gave her more money than the €90 and that the child was with him three nights a week.

The judge granted a judicial separation in the terms agreed.

Judge ensures child reconnects with father gradually

Among the 42 matters before **Judge Terry O'Sullivan**, 12 are adjourned, seven struck out and 10 are settled and/or ready to rule. Of the 13 cases remaining, the time each takes varies between one hour and two days

Court Report

In an access matter, the respondent mother did not appear. The father's counsel told Judge Terry O'Sullivan that this was the second time she had failed to show. She was trying to delay matters by not co-operating, said counsel. The judge asked if she had been served with notice and he was shown an affidavit of service. He then heard the application and asked what access the father wanted.

Counsel said her client had been one of the two-year-old child's main care givers until the marriage had failed. Then the mother had cut off all access and communication and he had not seen his child for a year. The judge said such a young child would fret on being separated from her mother as her father was now a stranger to her. He asked if anyone who knew them both could assist with the access. There wasn't anyone since the mother had ceased communication between her and the father's family. The judge ordered access to take place at the child's paternal grandmother's house three times a week to begin with. He would allow the child's mother to be present initially until the child got used to her dad again. He said the father's application ought not to be held up any longer but he thought there might be trouble when the father tried to exercise his rights under the order. He gave him liberty to apply to him for enforcement at whatever court he should be sitting in.

In another case, there was a motion to compel a husband to comply with the terms of a judicial separation ruled a year ago. Judge O'Sullivan heard that the husband, who was not present or represented, had failed to transfer his SSIA savings funds to his wife. He had not paid for an NCT test or outstanding bin charges or half the back-to-school expenses for the children. The wife's counsel said the two eldest sons worked for their father and they were supposed to pay their mother €50 a week for board and food. Their father told them not to pay and the wife had not received a penny. The balance of the maintenance was set at €340 a week.

The judge asked: "So are you asking for an increase to €440 a week to make up the shortfall?" Counsel said yes and in addition they wanted the SSIA of €7,000 transferred immediately. The judge said: "Can't you bring an application for committal?"

When counsel said they were reluctant to do that, the judge said it was part of the order that the husband transfer the SSIA: "I think

'The parties have to realise, it's not just about 'I want'. I have to make provision into the future. I need to hear evidence about the value of the asset'

committal would concentrate his mind. I'm making an order increasing the maintenance to €440 forthwith, and an order directing him to transfer the monies. In addition, I'm directing him to pay €950 to cover the back–to-school expenses and outstanding bin charges. I'm giving liberty to apply, in case of any problems, and I'm giving you an order for your costs. I'm directing that they be paid forthwith. I imagine that will grab his attention."

In another matter, a couple sought a divorce after a 40-year marriage. They were in their 60s and their family home consisted of a house and land with development and tourism potential. The wife did not want the house sold and was adamant that the land could be split up. She wished to remain on the land. The husband countered that the land was valuable only as a whole entity and that any division would devalue it. The couple had bought the property jointly many years before. The wife's counsel said her client, who had no income, thought she could make a small income from the land. Both had different views on its valuation. The husband had valuations in court and had retained an auctioneer to give evidence. The judge asked why the wife had no valuations of her own. Counsel said the husband had been to all the local valuers and consequently it was impossible for her client to get an impartial valuation.

The judge said: "The parties have to realise, it's not just about 'I want'. I have to make provision into the future. I need to hear evidence about the value of the asset." The valuer said it was a difficult property to value. He had been retained in February 2007, but that today, some 12 months later, he had to reduce his estimate by three quarters of a million euro and valued it at €2.5 million. He believed the property ought to be sold as one lot if it was to achieve the best possible price.

The wife said she and her husband had run a business from the holding. It had been a joint venture and she had been shocked when her husband had sold the business some years previously without consulting her. The judge asked her if she had signed the documentation required, and she said yes. She had also received half the sale money. She did not agree with the valuation as they had been offered a €1 million for the land six or seven years ago. She could support herself and generate an income from the land. She said her husband did not want to work but she had no wish to retire.

In his judgment, Judge O'Sullivan said the valuer had been impressive and it was a straightforward case. He added: "I understand Mrs … connection with the house and the land. I have to take into account what's fair and just and what makes proper provision. There was no particular case made out that one party should be dealt with differently to the other. Both parties contributed to the success of the asset. Is it fair that Mrs … should retain the family home and the lands and Mr … should be left to take his chances? The fairest thing to do is to sell the entire lot and divide the monies. Mrs … evidence regarding her business plans and the income she would hope to generate is too nebulous. She is in her mid-60s. The best way to ensure relative equality is to sell the whole lot. I'm not convinced Mrs … couldn't get a small holding locally and have some money left over."

He granted the divorce and said the family home was to be sold and the proceeds split equally after all costs and loans were discharged. A reserve of €2.5 million was to be put on the property. The wife's counsel asked for a stay on the order, pending her client's decision on whether to appeal. The husband's counsel said she was opposing the stay.

She said it was a "one issue" case. The judge said "I thought it wasn't realistic the way the case was run. The arguments were emotional ones, not good legal ones." The wife's counsel consulted her client and said they would not ask for a stay on the basis that they could come back to court if the house did not sell for €2.5 million.

‘Welfare of precious child’ is main concern

In a matter before Judge James McNulty in a District Court in the southern region, a couple applied for access to their granddaughter aged eight. They had seen a lot of the child when her father had lived with them but he was no longer involved with the mother. Their contact with the girl had continued by informal agreement until about a year ago when the child’s mother had ended it.

Her father had had another child since with another woman and this boy had been admitted to hospital in unexplained circumstances. Neither the child’s father or grandparents had told the mother about this and it worried her. She had found out only when contacted by gardai who were looking into the matter. She then stopped access. The mother was also concerned that the father, who had no formal access arrangement, could be present when the grandparents had her child. She said she had concerns about “dishonesty”. She believed that, in the past, when the grandparents picked up the child they would drop her at her father’s house or elsewhere without telling her.

The grandmother said the child was her first grandchild and had been part of the family for many years. The grandfather said she was “special … we are very fond of her” and she had lots of cousins who she should be allowed to see. The mother’s counsel said that this application did not as yet include access for cousins.

This was “an unfortunate case where both parties are right”, said Judge McNulty. He understood the grandparents’ desire to see the child and they had a right to see her. But the grandparents were accountable to the mother over the non disclosure of the hospitalisation incident. This should have been promptly disclosed and was not. He added: “Such non-disclosure borders on dishonesty and the mother of the child had every good reason to feel left down.” An apology was due, he said.

The mother’s concerns were perfectly legitimate and well founded but, “that said, this child should see her grandparents and her grandparents should see her”. He found it was in the “best interest of [the girl] to see her paternal grandparents with whom she shared a loving relationship in her early life”. There was “much more to be gained than lost by making this order”.

Access was granted subject to suitable assurances. The child’s father was excluded from the grandparent’s access. The judge emphasised that what he was concerned with above all else was, “the welfare of this precious child”.

The parties agreed an access order which started out at a neutral venue to rebuild the relationship and worked up to access at the grandparent’s home.

‘[There is] much more to be gained than lost by making this [access] order’

'Court disregards murder conviction – it's none of our concern'

'Sometimes the past informs the future. It is impossible to ignore what happened that day'

In an unusual case before Judge James McNulty in Bandon District Court a father who had just begun serving a lengthy prison sentence for killing his child's mother was seeking access to the child. The child was in the care of the Health Service Executive which considered the father should have no access and wanted a care order until the child reached 18 years.

The HSE handed in three reports: one from a psychologist and psychotherapist who worked as a bereavement counsellor for Barnardos; another from the guardian ad litem; and the last from a social worker.

The HSE believed that a meeting with the father might oblige the child to remember the events of the night when his mother was killed. The child, who was 18 months at the time, had been there when the killing occurred. He was found unattended – his mother was dead and his father was unconscious – and with blood on him 22 hours after the incident. The report cited the bereavement counsellor who found the child showed signs of trauma such as "headbutting". Access would have to be continually assessed, according to the HSE.

A social worker said it was in the child's best interest to have no contact with his father in the short term. Counsel for the father asked: "How will you establish when the child can see his father again?" The social worker replied that a person from Barnardos would work with him and that person would "have the best gauge of what he needs". It was put to the social worker that a doctor would give evidence for the father that trauma to the child could equally result from being separated from his parents. The social worker said trauma to the child would include witnessing his mother's death and that separation from his father would be a lesser trauma.

The *guardian ad litem* concurred that contact was not in the child's best interest at the moment. The father said he wanted access "because I'm his father, I want to see my child. I can't describe the attachment we have." A retired consultant psychiatrist gave evidence on the father's behalf. He agreed that at present face-to-face contact was not advisable and suggested there be some contact such as information going from child to father.

Counsel for the HSE said there had to be a presumption that a child should have contact with a parent only where it would be in the child's best interests. The HSE's counsel said: "Sometimes the past informs the future. It is impossible to ignore what happened that day."

The judge refused the father's request for access, saying it was unlikely the court would grant such an application in the short term. It was the sad truth that the man would serve a long prison sentence for his crime and that "the decision of this court has nothing to do with his crime …The court disregards the murder conviction because he has been given a punishment by another court for that crime and that matter is concluded and is none of this court's concern."

He granted the application for a care order until the child reached 18 years but he attached conditions that the court would review its operation in a year. The father was to get a twice yearly report on his child from the HSE which was to include photos. The father could write to his son as often as he wished but the child should not see such letters for a while.

The HSE will report to the court in two years on whether and when the father could resume communication with his son.

Father seeks as much time with son as court will allow

In a matter before Judge Eamon O'Brien in the District Court, the father of an eight-year-old boy wanted access to his son restored. Previously, access had consisted of three hours every Sunday from 12pm to 3pm. The arrangement had collapsed as the father had had personal problems. But he said these had been resolved and he was in a position to resume access with his son whom he had not seen for 14 months.

The father told court he had been unreliable before and that he had "sometimes had [his son], sometimes not". He had "trouble in his personal life" and had been drinking heavily at that time, sometimes day and night. He attributed such personal turmoil to witnessing a friend dying at work. He had since been attending Alcoholics Anonymous and having counselling and he had been "dry" for 14 months, "thank God". He was anxious to restore a relationship with his son and was seeking increased access, as much as the court could offer him but with a preference for overnight access. He told the judge he was working two days a week as a builder and had moved to a house with a garden.

Counsel for the boy's mother highlighted how the father had two previous convictions for drink driving and said he had been warned by the judge at the last hearing that if he was caught drink driving once more he would go to jail for it. Counsel believed the father had merely dealt with his drink problem to avoid a jail sentence rather than to rebuild his relationship with his son. The father strongly disagreed and was upset by the accusation. He said his son had never been invloved in any of the drink driving incidents.

The mother said she was now living at home with her parents and her two children and had been in a relationship for the previous three years. She described how it had been a "nightmare" and "hell" when the father had previously had access to their son, over a period of four years. Her son would return home "distracted and upset" and would have "tantrums". She explained how her son was allergic to both cigarette smoke and horse hair and that his father had exposed him to both, making him unwell. While she was "glad" he had given up drink, she did not believe that he would be able to stay off it and so he ought to be psychiatrically assessed to see if he was fit to have access to his son.

Judge O'Brien restored the original access, namely 12pm to 3pm every Sunday. The father undertook to look after his son, not to drink or smoke in his presence and to keep him away from horses.

Keeping son away from father's home not in his best interests

The court 'shall regard the welfare of the child as the first and paramount consideration'

A father successfully appealed a District Court ruling preventing him from taking his five-year-old son to his partner's home in Northern Ireland during access visits. The District Court had also made a variation order increasing maintenance from €76 to €120 a week with €100 for school expenses and €100 for Christmas; but Judge John O'Hagan was told that the court could affirm that part of the District Court order.

Judge O'Hagan ruled that the father could bring his son to stay overnight with his partner and her three children on each alternative period of weekend access from 7pm on Friday to 6pm on Sunday. The father has weekend access every second weekend and Judge O'Hagan allowed the father's appeal because "I can't see it's in the welfare of [the child] to keep him away from the house".

The judge made his ruling having heard conflicting evidence from the parents of the child about alleged insults and abusive text messages sent to the mother by the father's partner. The parents had met in 1997 and their relationship ended in May 2002, three weeks after the birth of their son. The mother said she discovered the father was in a relationship with another woman in Scotland. He was now living in Northern Ireland with his partner and her three sons aged six, seven and nine years, and she was worried about how visits to the partner's house were affecting her son. Sometimes he came home with cuts and bruises and he had told her he was promised a T-shirt by the partner if he called his mother "a big fat mamma". She said he had also been told "it won't be long before you are with your real mammy". She had been pushed by the partner while walking on the street of her home town while she (the mother) was pushing a buggy and that she had reported this to the Garda Síochána along with abusive text messages she had received. She was happy with access times and would facilitate any access but did not want her son to be taken to the partner's home.

The child's father denied the allegations and said his partner was afraid to come into the town without her mother or someone else. He had not breached the court order but said that he had brought his son to the house once when his partner's sister had been involved in a car crash but they had not stayed overnight there. During weekend access, he and the son stayed overnight with his parents in the Republic. "It's not fair on my parents who are of pension age," he said. He denied that the mother's name was even mentioned during access and said his partner looked after his son just as well as her own. On the cuts and bruises he stated: "It happens. He plays football." His son was never left alone with his partner's three sons.

His barrister told the court that the allegations of taunts by the man's partner were totally untrue. "It's [the mother] who is doing the bullying. [The partner] has to bring her mother with her once a week to the bank. [The mother] always seems to be there."

Judge O'Hagan said: "I hear from [the father] that [his partner] is here if I want to hear her but I think it would antagonise the parties even further if I were to do so."

He referred to Section 3 of the Guardianship of Infants Act, 1964 which states that the court "shall regard the welfare of the child as the first and paramount

consideration". "That's what I intend to do", he said. "I don't believe it makes sense that [the child] be excluded indefinitely. I can't see it's in the welfare of the child to keep him away from the house." The judge then made his order permitting the father to take the child out of the jurisdiction and that he be allowed to stay with the father in his partner's house every alternative weekend of the access weekends.

He adjourned the matter to the next term. "I won't interfere unless I have substantiated complaints of insults. I will look at it again", he said.

In Brief

Father fears child will become alienated from him

Counsel for a separated husband seeking access told Judge John O'Hagan on the Northern Circuit that the mother was not in court. Counsel said her client was distressed and concerned about the length of time it was taking to get an order. He feared his daughter, who was three, would become alienated from him if access was not sorted. She said they had made every effort but the wife was not co-operating. She reminded the judge that the wife had previously made certain allegations about the husband in court. She refused to allow access at the husband's accommodation, which was his father's home. The husband's parents were separated. The husband's counsel wondered about a Section 47 report. Under this, the court can order a report in writing on any question affecting the welfare of a party to the proceedings and a person nominated by a relevant health board prepares it. The judge asked who would pay for the report and was told this was a problem. The judge said: "I think there's a Barnardos Centre here in the town. I suggest you approach them. Ask them to volunteer themselves to facilitate access. It's a wonderful environment and I know they have facilitated access in other cases."

Later in the day, the husband's counsel returned to court saying that Barnardos could not help in cases where the child was under 10. She repeated her client's concerns and again told the judge how distressed he was. The judge replied: "I'm taking the bull by the horns then. I'm directing that the girl be brought to her grandmother's house, that is her Dad's mother's house." Counsel said it would be preferable if access were ordered in his father's house since he lived there now. The judge replied: "No, I want it to be a neutral venue. I'm directing that the child's mother bring the girl, or arrange for her to be brought, to the child's paternal grandmother's house on December 23rd, from10am to 12 noon. The father is to have access at that time and the child's grandmother is to remain present during the access". The father thanked the judge.

Man makes appeal 'to use the system'

Of the 14 District Court appeals listed for hearing on the Dublin Circuit, two are withdrawn, two are adjourned and one is adjourned to review access arrangements already in place, four of the remaining cases are transferred to another court and **Judge Raymond Fullam** hears the final five

Court Report

'If the child is mine, I do have responsibility but am stretched beyond my means and I can't afford that amount at the moment'

A woman with a long-term illness wanted her former husband's appeal struck out because he had not even bothered to turn up. The District Court order in question had been to commit him to seven days in prison for failing to pay maintenance. The woman's solicitor explained a pattern of breach of maintenance. Her client should have received €75 a week for herself and a further €150 a week for each of her two daughters following their divorce in early 2006. When the committal was ordered the husband already owed arrears of €6,525 and nothing had been paid in the two-and-a-half months since. It was clear, the solicitor told Judge Raymond Fullam, that the man was merely delaying and avoiding payment by lodging an appeal since he had not even turned up: "He is using the system and putting my client to extremes by not doing his duty." The court affirmed the District Court order but put a stay on it for three weeks to allow him to pay.

In another case, a father representing himself sought to appeal a District Court order to pay interim maintenance of €75 a week for a seven-month-old girl with the proviso that a paternity test be taken. He said the child's paternity had not been confirmed and while "not denying we had intercourse I didn't want half brothers or sisters for my two kids". The mother was never his girlfriend and since this had come out he had lost his girlfriend, his two children, his car and many friends and he regretted his mistake. He was "totally stretched" because he was paying the mortgage alone since his girlfriend had moved out, had got himself into trouble with his credit card and had his car repossessed for failure to repay the loan. He owed a small amount to a loan shark when he had had to borrow to buy a "banger of a car". His house was probably in negative equity because he only bought it a year and a half previously and had taken out a 100 per cent mortgage so even if he sold it he would still be in dire financial straits.

Under cross examination, he confirmed to the mother's solicitor that he had a decent enough salary but he also had a takeaway delivery job one night a week to make up the shortfall and that was why he needed the car. Since he had bought the house he had not gone out or gone drinking and his social life was watching TV which was why he had the most extensive Sky package available.

He said: "If the child is mine, I do have responsibility but am stretched beyond my means and I can't afford that amount at the moment." He said a paternity test should have happened before Christmas but he could not pay for it because he had wanted to buy

his kids Christmas presents.

The mother said that all she really wanted was for him to pay half the crèche fees which were now €998 a month. She had a good job but was struggling and had had to take out a top-up loan of €30,000 when her daughter was born. She was absolutely certain he was the father but was happy for a paternity test to take place.

Judge Fullam accepted the man's finances were in a mess but that this was mostly due to his own fault. He then made an order that the father pay €100 a week and put a stay on the execution of that order pending a paternity test. He adjourned the matter for three weeks, telling the father he expected the test to be completed within that time.

Meanwhile, an unmarried father representing himself appealed a District Court maintenance order. He said that it directed weekly payments of €150 for his two-year-old daughter but that when it was made he was renting accommodation. He was in the process of buying a property and now with the extra mortgage payments he wanted to reduce the amount to €120 or €130 a week. The judge heard evidence of his salary and his outgoings and then asked the mother, also representing herself, to give her evidence. She said she could not manage on less money. "I am staying in our house that we bought in joint names paying the whole mortgage myself. I only have his maintenance and money from two days work a week and I am paying all the bills out of that. I can't do it on any less and there isn't any more days for me to work at my job."

His statement of means "didn't add up, he isn't paying all that and his mortgage is less than he says because he texted the amount to me. I still have the message". Judge Fullam found the District Court order fair and confirmed the order for €150 a week.

An unmarried father appealed an access and maintenance order but he and the mother, representing themselves, disagreed over which orders were being appealed. Weekly access had been granted previously to the father in the Circuit Court for an hour every Saturday and the matter had been adjourned to see how this was going. The father insisted that they were in court again to increase access if it was going well, but the mother said it was so that maintenance could be dealt with. He had never paid maintenance, she said, and the court had ordered it. But she did not have the order with her. The father insisted he had paid some maintenance and offered a witness who saw him give the mother money. The judge found no maintenance orders on file and so could not deal with it. He ordered that the file be brought from the District Court and adjourned the matter for three weeks.

In Brief

An expensive business, raising children

In an uncontested divorce application on the Northern Circuit, Judge John O'Hagan amended the terms agreed between the parties. There were two dependent children, aged 14 and 12. Both parties were in rented accommodation. The applicant husband was unemployed. Sole custody to the wife with flexible access to the husband was agreed between the couple, with no order for maintenance being sought. The judge told the couple: "I think I should make an order granting either party liberty to apply should the applicant get work. It's a very expensive business, raising children." Accordingly, the judge amended the terms to read "no maintenance at this time".

'The cost of a Section 47 report is astronomical'

Of the 42 cases before him **Judge John O'Hagan** grants nine divorces and four judicial separations. In one case, a woman is absent and her application for divorce is struck out. When she arrives later, the case is reinstated and the divorce decree granted

The high costs involved in obtaining social reports in family law cases were referred to by Judge John O'Hagan at a sitting, in a northern town, of the Circuit Family Court. Section 47 of the Family Law Act 1995 gives the court power to obtain a report in writing "on any question affecting the welfare of a party to the proceedings", either of its own motion, or on application to it by a party to the proceedings. Judge O'Hagan was hearing an application for an adjournment of an interim custody and access application to the next sitting of the court to enable the preparation of a Section 47 report. The husband and wife sought a judicial separation and the husband had been given sole custody of the two children aged six and three years through a consent order in the District Court.

The wife was now seeking interim custody pending the judicial separation proceedings. The judge asked if the parties realised how much a Section 47 report cost. "Who pays?" he asked. "She [the applicant wife] wants interim custody. You [the husband] already have the protection of a District Court order. Painful as it may seem to [the wife] that order still stands and I will be making no order regarding custody in this matter today. The District Court operates a fire brigade service. I will need the whole picture."

Judge O'Hagan suggested that the parties should consider the possibility of getting a social report from an organisation such as Barnardos. "They might be able to do it at quite a reasonable fee. Think about it when you are considering a Section 47 report. The system is crying out for back up support. The cost of a Section 47 report is astronomical".

In another application, Judge O'Hagan was asked to make a recommendation on who should carry out a Section 47 report. Counsel for the husband and wife had the names of four potential nominees, three of whom were

clinical psychologists. "Do you have any idea how much they charge?" he asked. The judge was told the report would cost €3,500 to €5,000. The husband's counsel said her client was prepared to pay the entire cost.

In another case, the wife's counsel asked Judge O'Hagan for directions on the disclosure of her husband's bank accounts, tax returns and the valuation of properties which he owned. The husband had been directed at a previous court sitting to provide the disclosure but the wife's barrister said that, so far, only one of the husband's 19 bank loans had been disclosed. The husband's legal representative said there had been a mistake in the office and that the outstanding bank accounts could now be supplied.

The wife's barrister said they had received the tax returns which made no sense and the husband had given only his own valuations of the property which he owned.

"If he decides to mess around, he runs the risk. You can get your own professional valuations" Judge O'Hagan told the barrister. "I will extend the time for discovery. She can get her own independent valuations and I will allow her the costs. That might soften his cough."

In a separate case, a husband said: "With your leave, I didn't want any of this" as Judge O'Hagan granted a decree of judicial separation. The couple who were married in 1993, separated in 2006 and had two children aged 12 and 14 years whom the husband saw every weekend. Under the terms of their settlement, the husband was to pay maintenance to his wife and children and a lump sum of €75,000 to his wife who would leave the family home. The children would be the beneficiaries of the father's pension until they reached the age of 18 years. "It's not of my choosing," said the husband.

"It's a very good settlement," Judge O'Hagan told him. "And it's interim until the divorce. There's a lot of give and take in these settlements and I am not unaware of the difficulties".

The next case concerned a husband and wife who had accumulated a lot of property during their marriage.

They agreed terms of settlement which included the transfer of the family home to the wife as well as a holiday property in Europe. Both were working and the two children would live with their mother. Judge O'Hagan granted a decree of judicial separation and congratulated them on the agreement. "It's very difficult when you amass a lot of property. There's a lot of give and take and there's luck in a settlement too. This will come in again and any loose nuts and bolts can be tightened too."

'[Barnardos] might be able to do it at quite a reasonable fee. Think about it when you are considering a Section 47 report'

In Brief

Judge praises provision on family home

An uncontested judicial separation application before Judge John O'Hagan on the Northern Circuit contained an unusual provision on the family home. The couple had three dependent children and the youngest daughter had health problems. She had undergone an organ transplant and had learning difficulties. As a result of the care she required, the wife was unable to work outside the home. The parties had agreed that the family home be transferred to the wife, but that if she eventually returned to the workforce the matter could be revisited and the wife was to buy out the husband's interest. The judge congratulated the couple on reaching this settlement in light of the child's difficulties.

South Eastern Circuit processes 22 consent divorces

The cases finalised in the South Eastern Circuit showed that the majority that came before the court in October 2006 were settled, writes **Carol Coulter**

The South Eastern Circuit has a broad geographical spread, stretching from Nenagh on the western end of Tipperary to Wexford and Waterford coastal towns, taking in Kilkenny and Carlow. In October 2006 family law hearings took place in Nenagh and Wexford, and 26 cases were heard in all.

Of these, 22 were consent divorces, of which 14 were preceded by separation agreements or judicial separations. The terms of these were made rules of court in the divorce proceedings. Two judicial separations were granted on consent.

Figure 1 **Issues concerning children**

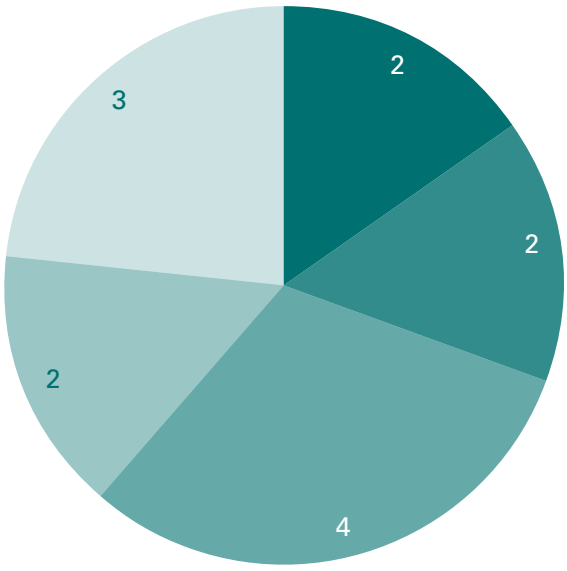
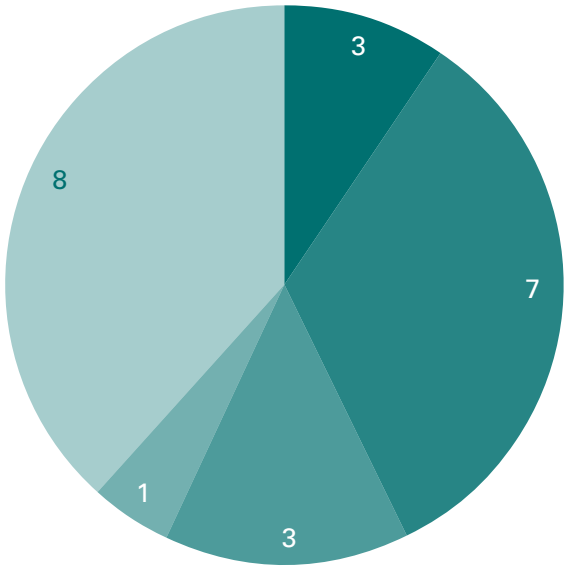


Figure 2 **Family Home**



Two divorce applications were heard, both unusual. In one the only issue being tried was where the applicant wife sought a declaration of an interest in a house owned by the respondent's mother, who was a notice party. This application failed, and the divorce was granted, with costs awarded against the applicant.

In the other case a judicial separation had been granted some years earlier, and financial reliefs ordered, but the terms of this had been appealed to the High Court, and the appeal had succeeded, leaving no financial reliefs in place. The applicant husband then sought a divorce. The wife made no appearance. Judge Olive Buttimer refused to grant a divorce, as no proper provision had been made for the wife, with none claimed by the wife and none offered by the husband, who had substantial means.

Another unusual feature of this group of cases was that in two of the consent divorces the father had sole custody of the children and the mother paid maintenance. In one case the father paid maintenance, but in the majority of cases no maintenance was referred, perhaps reflecting the fact that such issues had been agreed earlier.

In eleven of the consent divorce and judicial separation cases there were no dependent children, and there were dependent children in 13. It was agreed that the mother have custody in four of them; the father in two; joint custody with no primary residence specified in two; and four instances in which there was joint custody, but with the children residing primarily with the mother in two and the father in two. In one case no custody was specified. In all cases but one access was either as agreed or not specified, and in the single judicial separation case a detailed access schedule was spelled out.

In relation to the family home, the husband bought out the wife's share in the majority of cases where it was an issue (seven instances) and in three cases the wife bought out the husband's share. It was ordered to be sold and divided in three cases, though in one of those there was a stay, and the husband was to live in the house until the youngest child was no longer dependent, with the wife paying the mortgage. In one case both parties already had a house, and

Figure 3 Length of marriage ending in judicial separation

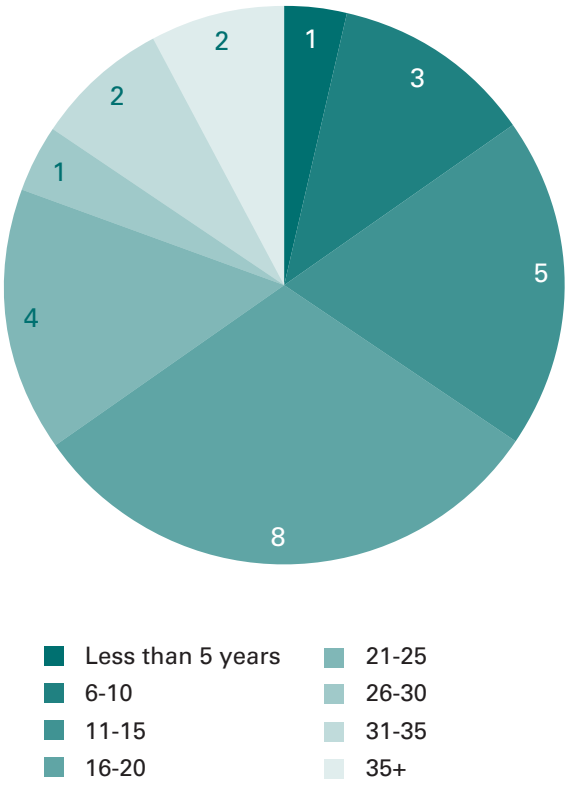
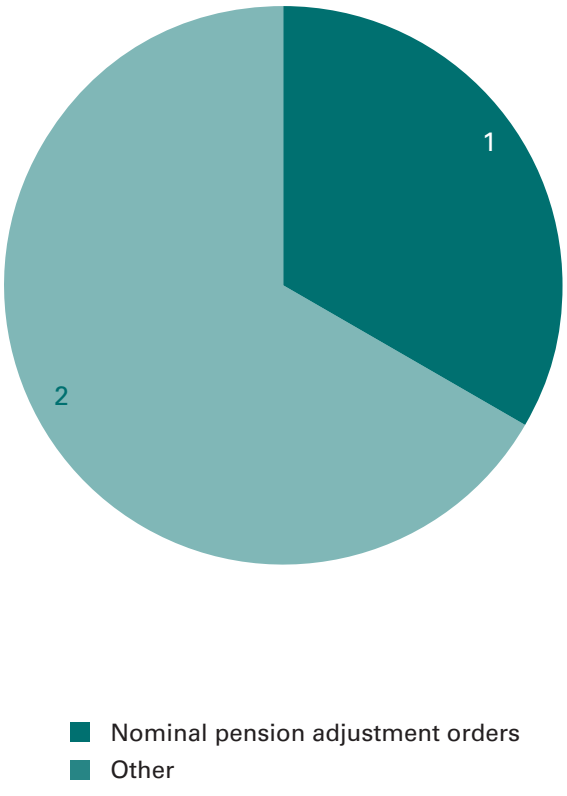


Figure 4 Other financial orders



in eight cases either the family home was rented or there was no reference to it.

Maintenance for children was agreed in three cases, and in two of them it was paid to the husband by the wife. As in most other circuits, pension adjustment orders featured only rarely, with one nominal order made. There were two other financial adjustment orders, involving the transfer of land and other property.

As in other circuits, there appeared to be a bulge in those seeking divorces after about 15 years of marriage.

The largest group (seven of the 26, with an eighth seeking a judicial separation) fell into this category. Four couples who had married between 11 and 15 years earlier sought divorces, and the same number who had been married between 21 and 25 years (one in this age group sought a judicial separation). Two couples married between 31 and 35 years, and one married over 35 years, sought divorces, while one couple sought a judicial separation after this length of marriage.

The fact that only two of the 26 were fully contested meant that there was a settlement rate of over 90 per cent.

Mediation – 'a good alternative' to court for some couples

Set up in 1986 as a Dublin pilot project to help couples sort out their separation issues, the Family Mediation Service has become a national organisation with 16 offices and 25 mediators who in 2007 dealt with 1,500 clients. Service manager **Polly Phillimore** talks to Luke O'Neill about the evolving nature of family mediation

The Family Mediation Service primarily helps separating couples by sitting down with them and helping them to identify and negotiate their way through issues surrounding their separation. It is not a counselling service nor does it dispense legal advice.

In 1986 the service was established as a pilot in Dublin to focus on married couples who had decided to separate in the context of the failed divorce referendum. Over the years, the Service has expanded, as has the definition of the Irish family and the legal status of divorce. In 2003, the Service came under the umbrella of the newly formed statutory body known as the Family Support Agency.

Today, the Service runs 16 offices around the State and employs 25 mediators. Four offices in Cork, Dublin, Galway and Limerick run on a full-time basis, with the remaining offices operating two-and-a-half days a week - around 1,500 people used the Service in 2007.

Service manager Polly Phillimore says: "When people come here and we have a first meeting with them we do ask them whether they have been to counselling. We stress that the Family Mediation Service is for people who have made that decision to separate. What mediation is for is people to come and negotiate all the issues around their separation."

While many clients are either married or unmarried couples who have decided to resolve such issues, the Service also mediates in diverse situations. A recent research paper marking the twenty-first year of the Service notes new challenges in what it calls "starter marriages" (marital break-up after just a few years), parenting concerns arising from parents who were never in a relationship and matters to do with step-families arising from divorce.

As it is a voluntary process, both parties have to register with the Service before an appointment can be made. Typical sessions last an hour, with the first devoted to finding out about the couple's situation and needs.

After five or six sessions, it is hoped that the couple will agree items such as family home, pensions and access to children. If this is the case, the mediator draws up a note of mediated agreement based on the template of a separation agreement. This can be made a rule of court or later used as the basis for a divorce.

Mediators cannot give legal advice. Occasionally, in situations where they notice something that might cause problems for the clients, they will advise them to seek

'Success in mediation [is not measured] entirely by whether [couples] reach agreement or not because often it really improves their ability to communicate better around their children'

'We can't give legal advice. But hopefully we are skilled enough to ask the questions that "reality test" *the agreements'*

further professional advice from solicitors, accountants or actuaries. Ms Phillimore sees the Service working as a parallel process between the clients and their solicitors.

"We would say to them 'maybe you should get financial advice on your pension' and that could cost money while they are going through the process with external professionals. On the other hand, it's quite important because if they have done all that work then the mediation agreement is more likely to hold up when they take it to a solicitor.

"The mediation service and the mediated agreement need the legal profession because we can't give legal advice. But hopefully we are skilled enough to ask the questions that 'reality test' the agreements."

FMS follows an all-issue model of mediation – in other words the final mediated agreement can cover finances, maintenance, the family home, additional property, parenting arrangements, insurance, pensions and succession.

The process works well for couples who have accepted that the relationship is over and that practical matters need to be dealt with. It is not a counselling service. A small number mistakenly come seeking counselling. This Ms Phillimore attributes, possibly, to the wording of the section of the 1996 Family Law Divorce Act which requires solicitors to recommend "counselling or mediation" to their clients.

There are other instances too in which the service may not be right for the clients. Occasionally, the mediator may detect "a balance of power" between the couple that they simply cannot shift. Other factors that hamper effective mediation include domestic abuse, addiction and mental capacity.

Yet the Service maintains a 55 per cent success rate in reaching agreement between clients. In 2006, exactly 875 couples participated in mediation and 488 of those reached an agreement. There were 336 couples who were assisted but did not complete the process and 51 couples returned to their marriage.

The process, while not always leading to the drawing up of a mediated note of agreement, can lay the groundwork for a more amicable relationship between clients.

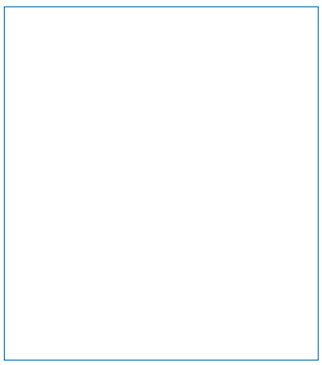
"We wouldn't measure success in mediation entirely by whether they reach agreement or not because often it really improves their ability to communicate better around their children."

Ms Phillimore believes collaborative law offers a way forward in the family law process. Mediation becomes a more difficult task when clients have already appeared before the District or Circuit Courts, owing to the difference between the adversarial and conciliatory systems. For this reason the Service would like more information to be available for those separating who are due to appear before the courts.

"Maybe mediation could happen before it ever gets to the court. I think it would be fantastic if there was a mandatory information session about mediation before people go into court. And that you would have to make an appointment with the [Service], to hear what it's about and hear what your alternatives are. Or even that in the courts, a mediator could be there and say this is what the process is."

She says mediation is a good alternative for certain couples or family members, "rather than it being something you might do so it looks better when you go back to court".

"What should be the primary concern for us, the courts and the legal profession is the client. Going through a separation and any kind of relationship breakdown is traumatic. I think it's our business to make that smoother to the point where people can improve their lives and respect each other, which can be incredibly difficult."



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