Family Law Matters

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An tSeirbhís Chúirteanna
Courts Service

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Introduction

We have published over 150 reports in *Family Law Matters* to date as part of the Courts Service project to report on family law. They cover all court jurisdictions and include matters across the entire family law spectrum including divorce, judicial separation, nullity, guardianship, custody, access, maintenance and partition.

The Courts Service took advantage of the relaxation of the *in camera* rule following the enactment of the Civil Liability and Courts Act, 2004 to make information available for legal practitioners, the media, researchers and the public on the workings of our family law courts. For the first time, reports of the many issues of concern to litigants and the attempts by judges to resolve them were made available. The project was conducted without identifying the parties in the cases thus protecting the privacy of the families involved. The reports assisted in dispelling some of the misapprehensions surrounding the application of family law and helped open a window on the workings of this important area of our court system.

During the project we collected many more reports than we had space to publish at the time. We publish the outstanding reports now to further expand the knowledge and understanding of what happens in our family law courts. The reports are presented by reference to the primary relief sought by the applicants. An index of topics published in all *Family Law Matters,* is available on our website www.courts.ie.

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Overnight contact with child extended

In Cork Circuit Court, Judge Donagh McDonagh heard an application from a father who wanted more access to his child. The parties, who were not married, had a child aged three and a half, who lived with the mother in Cork. The father, who lived in Dublin, was a joint guardian following a District Court order. The couple had a previously agreed arrangement up to a certain date and that date had been reached.

The father had had one overnight access and wanted two nights, once a month in Dublin. The mother objected to the application because she believed the child was not yet ready for two nights overnight in Dublin. The one overnight access had always been in Cork and only once in Dublin. She was a shift worker and had to work some weekends. The father was a contractor and lived in Dublin. He was also a sportsman who was contracted to participate in a sport on certain weekends. The mother gave evidence in relation to her objections to overnight access.

Due to their work and the father's contractual sporting commitments, the weekends when the parents could take the child clashed so the judge made out a schedule of access for the year on the basis of specific dates, rather than the first weekend of the month. Overnight access in Dublin would not start straight away but take place in Cork for the first two months. Access on the child's birthday and Christmas access was also provided for.

The mother wanted to be able to contact the child by phone but the judge considered that the child was going to visit the father and he was not in favour of the mother phoning unless there was a reason to do so. The "first thing that would put the child in a flat spin would be a phone call from mum".

On where the child should be picked up the judge said: "If a child is picked up from a garage, hotel car-park or shop forecourt the child carries that into adulthood …from the child's point of view it is better to be picked up from home or from school."

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Father's appeals work against him

A father who wanted access to his child without the mother's supervision came before Judge Donnchadh O'Buachalla. The case was about the father's constitutional rights, his solicitor told Wexford District Court. She said these were the years when the child and his father would bond. The man still loved his wife and had never planned on being a part-time parent. He wanted access to occur at the family home, where he lived, from Friday evening to Sunday evening.

The pair had been married for two years but separated shortly after the birth of their child who was now nine months old. The mother had since moved and the father's access consisted of twice weekly three-hour visits at the mother's house.

"Does the father have the necessary parenting skills to have the child for the weekend?", asked the judge. His solicitor indicated that the paternal grandmother would help and a childcare nurse lived nearby. If necessary, an alternative could be provided by a friend of the paternal grandmother who lived near the mother and was willing to host visits.

The mother's solicitor said her client liked to be nearby during the visits as the child was very young. In addition, when access had been put in place, mediation was supposed to follow but the father had refused to participate. The matter was back in court simply to check that the parties were in mediation. Her client had contacted the mediation service but the father had not co-operated.

"But the mother appeared not to want to resume the relationship", said the father's solicitor. The mother's solicitor then explained that mediation was not about getting back together but regularising the financial position and child-related matters after the marriage break-up. It was the father who was refusing to go.

"The matter should have gone to mediation", the judge said. While the father's solicitor said her client had done nothing wrong the man interrupted to say the mother had left him while in the maternity hospital.

The judge noted that the file showed the matter had been appealed. The father's solicitor said it had been appealed to the Circuit Court as her client wanted Christmas access but there had been no hearing.

Judge O'Buachalla asked why he should spend any more time on this matter when the father had busied himself appealing rather than attending mediation. He refused to amend access. The father's solicitor asked if they could change the location instead then to the grandmother's friend's house. Again, the judge refused, saying the father had two issues to address – parenting and mediation. So far he had done nothing except appeal orders. The judge adjourned the matter for four months with access to continue as it currently was.

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Father applied for sole custody of his child

A father applied to Bray District Court for sole custody of his young child. The man told the court that his child had been living with him for the last year and a half. "The child's mother doesn't bother with [the child]. I have tried to get her to help [the child], but [the child] gets upset when going to see her. I have custody but I want custody in the eyes of the law."

Judge Connellan asked where the child's mother was today. The man advised the court that he had sent a registered letter and a reminder letter telling her of the court hearing. The man told the judge that the mother had come to court earlier in the morning but had left. "She came with her boyfriend and he tried to start trouble in the waiting room. She has a history of alcoholism. I don't want to cut her off altogether." The judge noted on the court file that the woman had been in court but had left.

The judge, in granting custody, told the man that "[the child] has the right to two parents. I am granting you custody and I would ask that you will be tolerant with [the child's] mother in respect of access. If the mother seeks access and has any difficulty in obtaining access she can apply to court."

Mother denies a father's access for non compliance with a maintenance order

At Bray District Court the solicitor for a mother of two advised the court that the parties had appeared in court a month ago and on that date the father of the two children had been ordered to pay maintenance. He had failed to pay any maintenance so the mother had suspended all communication and the father's access with the children until he complied with the court order.

Judge Connellan immediately interjected "Oh no. There is to be no denial of access because maintenance is not paid. These children have a right of access to their father. Their mother has no right to deny them that right. I will accept no arguments about it." The woman's solicitor advised the court that the woman had only denied access once. The judge replied that "Once is too many."

The father explained that, as the court was aware, when he appeared in court a month ago he was waiting to hear whether he had been successful in a job interview. He now had that job and had started work but as he is paid a month in arrears he had no money on the maintenance date. He told the court that he had sent a text message to the woman telling her that the maintenance payment would be late. The judge directed that the matter be put in for mention in a month's time.

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Father makes *ex-parte* application to prevent child from being removed from this jurisdiction

Judge Thomas Teehan, in a sitting of the Eastern Circuit Court, heard a contentious application in relation to access. The parties were unmarried and had one child aged five and half years. The applicant father was an Irish national, while the mother was from another EU country. The court heard that the father had come to court some days earlier and made an *ex-parte* application, to prevent the mother leaving the jurisdiction with the child. Judge Teehan had acceded to his request and had made the case returnable for today, when all the parties would be represented.

At the outset the counsel for the father told the judge that he had a number of applications before the court, including an application for sole custody; an application to appoint him joint guardian; a continuation of the order preventing the removal of the child from the jurisdiction; an application to vary maintenance; and an order to have a Section 47 report on the child. He said that he had received a very substantial reply to his affidavit and he was proposing two possible courses of action; either adjourn the matter in order that he might properly consider the affidavit; or arrange that the judge might interview the child and ascertain his wishes. Counsel for the husband said that the child did not speak the language of his mother's country and would be better off in Ireland with his extended family.

At this point, counsel for the mother said she was seeking clarification of proceedings at the *ex-parte* stage. She asked Judge Teehan, who had dealt with the matter, if a District Court Order had been brought to his attention. She told him that the District Court Order had been made on consent terms when the child was aged two and half years, and it included a provision stating that if the respondent mother wished to return to her own country, that would be agreed, providing access remained in place.

The judge turned to counsel for the father and told him "there's a strict obligation on the part of a person bringing an *ex-parte* application to alert the court to anything which might preclude the making of an order, or which might go against the interests of another party. This Consent Order manifestly goes to the substance of the matter."

Counsel for the mother said the Consent Order also provided that, in the event of a disagreement, the couple would attend and complete mediation; in fact, the couple had started, but not completed, the mediation process. She indicated that this was another breach of the Consent Order. She said that both parties had had the benefit of legal advice at the time of the Consent Order was made. She told the judge that the Circuit Court had no jurisdiction to vary the valid District Court Order. She said there was no application to vary the consent terms before the Circuit Court, and accordingly, the court had no function.

The judge told counsel for the father "the District Court Order states that the consent terms are made an order of court. It couldn't be clearer. It wasn't brought to my attention at the *ex-parte* stage. Counsel for the mother has raised the point that this court has no jurisdiction to vary the order."

Counsel for the father told the judge that the application had been brought in circumstances where his client had discovered that the child was to be taken abroad this week. He said his client was not agreeing to the child going at this important developmental stage. He said the court had to address the issue of the welfare of the child as being paramount. The court had to ask "is it in the best interest of the child to be taken to a country not knowing anyone or not speaking the language?" He went on to tell the judge that the mother had recently had another child and was estranged from that child's father.

He said the mother's principal reason for leaving the country was in order to disassociate herself from that relationship, and that the best interests of her child with the applicant were not being taken into account. He said he had had no choice but to make the *ex-parte* application, faced as he was with the child's removal from the state. He said the consent order had been made in different circumstances.

Counsel for the mother agreed that her client had been intending, as was her right, to fly to her home country this week. She said the social welfare system in that county would allow her to avail of maternity leave until 2009. She would be available as a full-time mother to both her children. All her extended family was there. She intended to return there to live permanently as soon as possible. The couple's child was due to start school later this year, and she wished for this to happen in her country, and she believed that the child was at just the right age to integrate successfully. She said her client had only stayed in the country to deal with property which she and the father owned between them. Counsel for the mother reassured the court that her client would continue to facilitate access to the father. She believed it was in the best interests of the child to have a good relationship with both his parents.

The father's counsel again told the court that the child's welfare was paramount, that it should be at the core of the matter. He said that the welfare of the child wasn't mentioned in the mother's pleadings. His client wanted the child's welfare addressed carefully by a qualified person. He accepted that one party would be unhappy with the findings, but he would accept the advice of a professional. He wanted the mother to stay in Ireland to either complete mediation, or pending the commission of a Section 47 report. He also complained that the mother was relying on procedural matters, but that these could not trump the best interests of the child.

The judge told the father's counsel "when I granted the *ex-parte* order, sufficient grounds were put forward to satisfy me to make an interim order preventing the child from being removed from the jurisdiction. However, an extremely important issue was not flagged to me, that is, that an Order of another court had dealt with matters in relation to the proceedings being brought. I must accede to the point made by the mother's counsel. I simply do not have the jurisdiction to overturn or vary that order. It has not come before this court by the correct procedure.

I note that in the terms of the 2005 Order, the domicile of the child was a central issue. I have no doubt that both of the parties have the child's welfare as a matter of high priority. The Order says that in the event of disagreement, the parties must attend mediation. It is not disputed that mediation wasn't completed, yet the parties have agreed to be bound by the mediator. It seems to me that they must complete mediation, and take the advices of a person more qualified than I am in relation to the best interests of their child. I am vacating the *ex-parte* order in view of the existing District Court Order. I am tempted to grant costs against the applicant in the circumstances but I won't as I believe that he is motivated by the welfare of his child".

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Mother seeks unsupervised access

An applicant wife was seeking to vary an access order in relation to her two children. The court heard that the children had made allegations that their mother had physically abused them. The marital relationship between the wife and her husband had broken down and they had separated. The wife had originally been granted three hours supervised access twice a week but this had been changed to unsupervised access. This access had been supervised by the H.S.E.

The mother's barrister told the court that she was looking for unsupervised access with overnight weekend access. The father's barrister was opposing this. He said the senior social worker allocated to the case "believes supervised access should be recommenced and you will see why when you read the report… my client's concerns are in the content of the report". The judge read the report. A *Guardian Ad Litem* has been appointed to represent the best interests of the children and express their views but had not been nominated as of yet.

The mother's barrister said the mother was concerned at the way the case was being discussed with her children. "The children are familiar with the courts process. She (the mother) has concerns at the way in which it's being discussed. That's the essential problem. She has put her life on hold." He said that the relationship between the mother and her children had improved when access was changed to unsupervised. The judge said he wished to hear the social worker.

The social worker told the court there were physical abuse allegations by the children. "The access aspect has been very difficult for all the parties. The mother doesn't like the social work staff supervising access. Access goes well when the children are relaxed in her company. In light of this I had recommended a change to unsupervised access". The judge asked the social worker if she had changed her view. The social worker was reluctant to give a firm view pending the nomination of a *Guardian ad Litem*. However, supervised access was the children's preference "It's what the children have expressed, they're worried about the impact if mom knows that they've said they've been hit."

The mother's barrister suggested that the allegation of physical abuse had come from the elder child. "The younger child made allegations as well", replied the social worker. The mother's barrister asked the social worker if there was any other evidence of physical abuse apart from the children's allegations and the social worker said no. When asked if the father was exercising 'a large influence over his children' the social worker said there was "no evidence of this, no evidence to suppose that they've been coached".

The mother's barrister asked the social worker to what extent she encouraged a relationship between the mother and her children. "I made the recommendation that the *Guardian Ad Litem* be appointed in the interests of the children and the parents. It is important for children to have a relationship with their mother."

The mother's barrister suggested the social worker should assist and 'push through this resistance to get a proper functioning relationship.' The social worker said that she was not making any recommendations. This was a matter for the *Guardian Ad Litem*. She added that the children had expressed the view that they did not want unsupervised access and until a *Guardian Ad Litem* was nominated she thought it best that access be supervised.

The husband's barrister cross-examined the social worker next. The social worker confirmed that she was independent of either parent and that there has been difficulties in the family for over two years. She said that the nomination of a *Guardian Ad Litem* was important as the case was complex. She said the case is "only about what's in the best interest of the children. The *Guardian Ad Litem* can be in court next time and represent the children's views. It is for the court to exercise discretion until the *Guardian Ad Litem* is nominated".

The judge ordered that the access be supervised until the *Guardian Ad Litem* is nominated. He said that the issue of access was "very difficult to deal with on an urgent basis. It would seem appropriate that a *Guardian Ad Litem* should definitely advance the process. That should take a little bit more time. There are two issues; what the child says and the best interests of the child are not always the same.

The very clear issue contains an allegation of the use of corporal punishment by [the mother] while historically it was used, it's not allowed now in a divisive family situation where there has been a breakdown and where there are custody and access issues…the supervised access is far from ideal but we're going to have to introduce that again and restore supervised access." The judge asked how long it would take the HSE to get a social worker or contractor to supervise the access. The social worker said that it could take a few weeks.

The judge adjourned the matter for four weeks. "It's in everyone's interest that the nomination of a *Guardian Ad Litem* is accelerated. This is purely an interim order. I don't want my name being used as grounds for saying it was my view that access should be supervised." The judge said he was making the interim access supervised due to the allegations that the "children are at risk. I purely dealt with it on an emergency basis. This order stands until the *Guardian Ad Litem* is nominated."

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Parents asked to focus on generosity

A father came before Judge Donagh McDonagh on the Southwestern Circuit seeking enforcement of an access order because the mother was refusing it. The mother was in court to contest this allegation.

The father's counsel said that when his client arrived to pick up the child the "gates were closed, curtains were pulled and there was no sign of the child". The mother's counsel denied this and added that the boy played soccer on a Saturday and the father was asked to collect him afterwards but had not co-operated. Counsel stated that the father was also in arrears with maintenance.

Judge McDonagh replied: "There seems to be complete lack of co-operation between the parties [and] this is ridiculous." He suggested the pair should draw up an access schedule and advised them:

"The one thing which always works … is generosity … Where nothing else will work, generosity will." He said: "Forget about yourselves and your own petty arguments … only one person counts now and that's your child." The parties left to negotiate and returned with a schedule. The matter was then adjourned to return at a later date to see how matters were progressing.

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Father has had no access for a year

In a matter before Judge Terence O'Sullivan on the Eastern Circuit there was no appearance by the respondent mother. Counsel for the applicant father complained to the judge that this was the second occasion that the mother had failed to show up. She said the mother was attempting to delay matters by not co-operating. The judge asked if she was served with notice, and counsel showed him an Affidavit of Service. The judge said he would hear the application, and asked counsel what access the father was seeking.

She told the judge that the father had been one of the child's main care givers until the relationship between the parents, who were married, had broken up. Then, the mother had cut off all access and communication. The father hadn't seen the child (who is now two) for a year.

The judge said that a child as young as that would fret on being separated from its mother during access to the father, as he was now a stranger. He said that the child would suffer separation anxiety. He asked if anyone could assist with the access, anyone who knew them both. There wasn't anyone as communication between the mother and family of the father had been completely cut off.

The judge said that he would order 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 the dad again. He indicated that 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, so he gave him liberty to apply to him for enforcement at whatever court he should be sitting.

House repairs needed to secure overnight access

A couple who had separated some years previously and who had one child came before Judge Sean Ó Donnabháin on the Cork Circuit. Access had been agreed but there was no court order in place.

At the time of the marriage the couple had lived in a southern city and the husband was a stay-at-home dad, while his wife worked outside the family home. When they separated, the husband moved to the outskirts and bought a house that was, according to the applicant wife, unsuitable for their child to stay in. On that basis, she wanted to restrict his access. The wife's counsel made it clear that his client did not want to prevent access but was merely seeking to limit it because the house was in poor repair and could pose a danger to their child.

The husband denied that this was the case. He admitted that the house was some years old and needed cosmetic repairs but was otherwise perfectly habitable. He conceded that communications between the pair were very poor and this was impeding the previously agreed access arrangements. During the marriage he had opted to stay at home and had left his job to do so.

This was, he said, because he wanted to spend as much time as possible with his child. Currently he organised outings and events for his child during access but it was important that they simply spent quiet time together at home because he did not want the child to regard him simply as an events organiser. The house was perfectly habitable with the first floor in excellent repair although his financial situation prevented him from renovating as quickly as he would have liked.

The wife had particular problems about overnight access, saying the child was suffering from anxiety as a result of the situation. The judge suspected that the wife could be somewhat responsible for this anxiety along with being partially responsible for access difficulties. The husband conceded that he would be willing to forgo overnight access for the time being in order to assure the court of his true intentions but he wanted the court to revisit the matter in the near future and if the court was satisfied, that it would resume.

The judge then set about ordering access for the week ahead but the parties found it hard to agree hours of collection and return. When agreement was reached, the judge said he would revisit the matter shortly, and anticipated that overnight access would resume once the husband had made the necessary improvements to his property.

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Rows between parents not the issue, says judge

A father who said the mother of his child was refusing access since he had declined to get back with her came before Judge Mary O'Halloran in the District Court. The court had made an access order previously which had operated until recently. The parties were not married. It was put to the father in cross-examination that the mother's refusal had to do with a complaint of assault she had made against him. He replied that that charge would "be contested in court". The mother told court that he had been "abusive" and had "shouted at me in front of the child".

Judge O'Halloran interjected: "The allegation of assault is between you and him … nothing [has been] proven in relation to the assault." The judge stated that while there may have been slight lapses on the father's part, nothing indicated the need to alter what was in place. The court stated that the arrangement "worked well in favour of the child which is the court's primary concern, not the issues between the parties". Judge O'Halloran therefore left the original access order in place so that the father could continue to see his child.

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Children too young for overnight stays

A man trying to prevent the removal of his two children from the jurisdiction by their mother appeared before Judge Gerard Griffin in the Circuit Court. He also wanted an access order that included overnights. The parties had not been married and he had three children from another relationship. He was a lay litigant while the mother had legal representation.

The mother refused overnight access because she felt the children were too young and had reservations because the father supplied no exact address. She feared the children would be transported in the father's van without car seats. Her counsel said she would allow the father access to the children every Sunday and that he could come to her home on Christmas and New Year's Day from 11am-2pm. She had no intention of leaving the jurisdiction.

The father provided his address to the court and told the judge that he used car seats when transporting the children. The father was not happy with the access offer because the children had siblings that they did not see often enough and because he had not seen his children in 37 days.

Judge Griffin considered that overnight access was not appropriate given the children's age. He informed the parties that his order for access would be "interim and reviewed". He granted the father access from 1pm-6pm on Saturday and the following weekend from 1pm-6pm on Sunday, those weekends to alternate. The father was also granted access every Tuesday from 3pm-6pm. As for Christmas holidays the father would have access from 1pm-6pm on Christmas Eve and from 10am-2pm on Christmas Day.

Judge Griffin also said the father would collect and drop off and that there were to be no arguments or confrontations at these times. The mother undertook not to remove the children from the jurisdiction. The mother's counsel then informed the court that the father had another motion returnable for a future date and asked leave for short service of the mother's maintenance motion to be returnable for the same date, which was granted.

On that date the father, this time with legal representation, appeared before Judge Martin Nolan with another motion seeking further overnight access to the two children. At the call over, the mother's counsel indicated to Judge Nolan that there would be talks which carried on over the morning and concluded with a settlement. The father agreed to strike out the motion that was before Judge Nolan which meant Judge Griffin's access order would continue. He also agreed to pay monthly child maintenance of €810.

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No communication over Christmas access

A woman came before a Dublin Circuit Court to appeal a District Court access order. She was not married to the child's father and they were no longer together. They both represented themselves. The man said that when he had previously applied for holiday access, the judge gave him two weeks in the summer. The court heard that the woman would not let him take his child on holidays. At the time he thought that the arranged Christmas access was fine but the woman was not happy because Christmas fell on his days. "If Christmas falls on my days, I have no problem giving her half of those days," he said.

"I think that both parties should have their child for parts of each day over Christmas. I think the child would want to see both of you" said Judge Martin Nolan. "But there is no communication between us," replied the woman.

The judge said: "You should be in communication. Christmas Day is a long day. There is plenty of time for everyone. No matter when Christmas occurs it should be split half and half." Judge Nolan wanted to know if there was any principled objection to access on Christmas Eve going to the party on whose day it fell.

If the child slept in one party's house on Christmas Eve then it made sense for the child to go to the others party's house for the latter part of day. Judge Nolan concluded by saying: "The court is here to settle these things. You are both intelligent people and you love your child. I don't think that this should come back to court. If you do come back what I think of you both will be reduced."

Father gets access re-instated

A father of two, who hadn't taken up any access to his children for over six months, brought an appeal to the Circuit Court after the access order was discharged in the District Court. The parties had had some discussions outside the court and it was agreed that access should take place although the parties hadn't agreed what that access should be.

The couple were not married and the children were aged 2 and 4. The mother wanted an introductory period of 16 weeks to take place whereby she would be present during access as the youngest child didn't know his father. The father wanted access on his own or a shorter introductory period. Judge Terence O'Sullivan ruled that an introductory period would be necessary in the circumstances and ordered a period of 4 weeks.

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Father gets order to take son out of the jurisdiction during access visits.

At a Circuit Court sitting, 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 parents met in 1997 and their relationship ended in May 2002, just after the birth of their child. The mother told the court that she discovered the father was in a relationship with another woman. She said he was now living in Northern Ireland with his partner and her three young children. She was worried about the effect that the visits to the partner's house was having on their son. She said he sometimes came home with cuts and bruises and that he had told her he was promised a T-shirt by the partner if he called his mother names. She said he had also been told "it won't be long before you are with your real mammy".

The mother told the court that she had been pushed by the husband's partner while walking on the street of her home town. She had reported this, and the abusive text messages which she had received from the partner, to the Gardaí. She said she was happy with the times of the access and would facilitate any access but did not want her son to be taken to the partner's home. The father of the child told the court that the allegations were untrue and that his partner was afraid to come into the town without her own mother or someone else.

He denied he had brought his son to stay overnight in breach of the District Court order but said he had brought him to the house on one occasion when his partner's sister had been involved in a car crash, they hadn't stayed overnight there. During the 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 is even mentioned during access and said his partner looked after his son just as well as her own. Regarding the cuts and bruises he stated "It happens. He plays football". He said his son was never left alone with his partner's three children.

There was 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 father's 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) brings her mother to the bank once a week and (the mother) always seems to be there".

The judge 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 alternate weekend of the access weekends from 7pm on Friday to 6pm on Sunday. He adjourned the matter to the next term. "I won't interfere unless I have substantiated complaints of insults then I will look at it again", he said.

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Father seeks reinstatement of overnight access

At Trim Circuit Court a father made an application to reinstate overnight access, which had been agreed previously but had recently broken down. Judge Esmond Smyth heard the mother's concerns in relation to overnight access.

She was concerned that the 2 children (one boy and one girl) have to share a room when staying with the father and that they were getting too old for this. The mother was also concerned that the father would not contact her if the children were upset or had an accident and that the mother did not know the father's current partner whom he now lived with.

The father represented himself and had a recent report from a family therapist, which stated that he had worked well to restore his relationship with his children and that the original agreed access should be reinstated.

Judge Smyth would not depart from the report of the family therapist and ordered that overnight access with the father be reinstated. The judge also told the father that he should contact the mother if anything happened to the children and the judge strongly urged the parties to make this work.

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Father worried that his child would become alienated from him if access couldn't be sorted out.

In an application for access by a separated father before Judge John O'Hagan there was no appearance in court by the respondent wife. Counsel for the father complained that her client was distressed and concerned about the length of time it was taking to get an order. She said her client was worried that his child, who was three, would become alienated from him if access couldn't be sorted out. She said that they had made every effort, but the wife was not co-operating.

She reminded the judge that the wife had made certain allegations about the husband on the last occasion she had turned up in court. The wife refused to allow access at the husband's accommodation, which was his father's home. The husband's parents were separated. Counsel for the husband wondered about having a Section 47 report prepared. The judge asked counsel for the husband who would pay for the report.

The judge suggested to counsel that she approach Barnardos for assistance. "Ask them to volunteer themselves to facilitate access. It's a wonderful environment, and I know they have facilitated access in other cases".

Counsel for the husband later returned to court to say that Barnardos couldn't help in cases where the child was under ten years old. She repeated the concerns of her client, and again told the judge how distressed he was. The judge told her "I'm taking the bull by the horns then. I'm directing that the child be brought to the grandmother's house, that is, the Dad's mother's house". Counsel for the husband told the judge that it would be preferable if access were ordered in his father's house, as that was where he now lived.

The judge replied "No, I want it to be a neutral venue. I'm directing that the child's mother bring or arrange for the child to be brought to the paternal grandmother's house on the 23rd of December, between 10am and 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.

Parents disagree about who should supervise access visits.

At Trim Circuit Court in a case where allegations of sexual abuse of the children were made by the mother, supervised access was proposed so that the father could see his four children. The applicant wife was agreeable to supervised access, but there was a dispute between the parties as to who should supervise the access. The respondent husband proposed three people who were all well known to the wife, two of his siblings and a mutual friend. The husband's solicitor stated that the wife wished to conduct the supervision herself.

The wife would not agree to one of the husband's siblings in particular, as she had had a poor relationship with her. She was agreeable to the husband's other sibling or a mutual friend doing the supervision but these two individuals were not as available at the first sibling. The judge heard the wife's evidence of her problems with the husband's first sibling and then the husband's solicitor called that sibling to give evidence. She said she was willing and available to supervise and that she did not understand the wife's concerns.

The husband wanted supervised access to the children three times a week, one of the days being a Sunday. The wife was not agreeable to every Sunday as the children have various activities but would agree to every second Sunday. Judge Smyth ordered that there was to be supervised access three times a week including each Sunday. The supervisor was to be the mutual friend of the parties *or* the sibling acceptable to the wife, according to their availability. The wife was not to be present during the access.

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Each time access is due, father is told that child is sick

An unmarried couple were in Cork Circuit Court where the father of their young child was seeking to have a District Court Order affirmed. The original access order had been varied, granting the father unsupervised access. Unsupervised access was to take place on a Saturday from 1-5pm and on the following Sunday from 1-5pm.

The mother represented herself and told the court that she had contacted a psychologist because of nightmares her child was having. She said that the nightmares always took place after access.

The barrister for the father told the court that on a previous occasion the mother had made allegations against the father to the effect that he slapped the child and that the house in which access took place was too cold and resulted in chest infections.

In his evidence the father told the court that he had not seen his child since the first week of December. He said that the mother phoned him to say that the child was sick and in hospital but that she wouldn't tell him the name of the hospital. He and his own mother checked around all the hospitals and finally found the child. The child had been admitted with suspected meningitis but was in fact suffering from gastritis. The father told the court that he had been told each time he was due access that the child was sick.

When asked by Judge O Donnabháin if she would be facilitating access this Saturday, the mother replied, "if [the child] is well". The judge warned the mother that she should be "very, very careful". He adjourned the case until Tuesday and directed that access should continue on Saturday and if it did not take place he told the mother, "We'll have the doctor in here".

When the matter came before the court on the following Tuesday the barrister for the father told the judge that access had taken place on Saturday and that although the child had chicken pox, there were no other difficulties. The court was told that the matter had been in the District Court twice and this was the fourth time in the Circuit Court. The father was seeking to have the unsupervised access order of the District Court affirmed.

The judge heard evidence from the mother regarding previous access arrangements and the recent illness of the child and concluded, "It seems to me that I have no choice but to affirm the order of the District Court granting unsupervised access on Saturdays from 1-5pm."

Binge-drinking mother loses custody of child

Two former partners of an unmarried mother, who had each made *ex-parte* applications for sole custody of their respective children the previous week, appeared before Judge Dermot Dempsey. Both men had been granted an interim order for sole custody until the current hearing. In the first case, the man wanted the order made permanent.

Although he had split with his partner the previous year, he had remained in their apartment in a separate room. He had resigned a job abroad because he was concerned for his child's welfare and safety.

He told Dublin District Court that his daughter was nine months old and he was alarmed by her mother's bouts of uncontrolled drinking. He said: "She got hammered at her Christmas work do. She insulted her colleagues and fought with the coach driver on the way home because he wouldn't bring her to a fast food outlet. Then, on Christmas Eve, she went downstairs to her pal's apartment, supposedly to wrap presents. She came home at 5am roaring drunk. She had told her other daughter, who's 11, not to open her main Christmas present until she was with her in the sitting room because she wanted to see her open it. She didn't wake up until 11am. The little girl was upset and crying. When her dad arrived, he took her. He still has her to this day."

He then described a second incident: "Another night over Christmas, she went out and got absolutely blind drunk. When she came home between 3am and 4am, she put rashers and sausages on the pan and then went to bed and fell asleep. The house almost went on fire. The smoke alarms went off, but she slept through the lot. I dealt with it and got the situation under control. I drove to the gardaí in desperation. Then, I decided to come in here and try and get custody of my daughter before she came to some serious harm. I dread to think what might've happened if I hadn't been in the apartment."

On a holiday abroad, he said, the mother had the eldest girl sleeping in the bed with her. "One night, she got absolutely legless and puked in the bed with the child in it. She never even woke, just slept the night through in the vomit."

His counsel asked if they were both recovering alcoholics. He said: "Yes, we met in a rehab clinic. She still has problems. She stops drinking for a while, then she binge drinks … sober, [she] is a good mother. She truly means what she says when she says it, but she's not sober long enough to carry anything through."

While he was also a recovering alcoholic, he had a lot of family support. The mother's solicitor asked if it was true he had sent a Christmas card to his client saying: "To the Best Mother". Judge Dempsey intervened: "He's already admitted she's a good mother when she isn't drinking."

The solicitor asked the man when he had last taken a drink. "Christmas", he said. He then confirmed that this was when he had been minding his daughter. He had three beers, and added: "I know I shouldn't drink, I accept that, but as soon as I got custody of my daughter, I haven't touched a drop. I've phoned two addiction counsellors for support, and I've gone back to A.A." The judge asked him what his attitude to drink was now: "I've absolutely finished with it. I've made arrangements in my home town for support."

The child's mother then said that the father could not accept their relationship was over. This was really why he was dragging her through the courts and it was not the first time he had done it. "Last Christmas, when I was heavily pregnant, he brought me to court saying I wasn't a fit mother to my first daughter."

She had cared for the children while he had worked abroad. When he came back, he had offered to baby-sit while she went to her office Christmas party. She said: "It was my turn to party. I admit I had a few too many and that I rowed with some of my colleagues. I was very apologetic about it afterwards. These things happen, but I'm still employed there."

As for almost setting the house on fire, she said: "We had been to [his] home town for the weekend. We had a good time, but it's a long drive. I was wiped out. I went out, and when I came back, I noticed empty beer bottles, so I tackled [him] about them. He was minding our daughter. I put some rashers on and I admit, I went into the bedroom and dozed off, but I am very careful. If anybody is aware of the dangers of house fires, it's me." She outlined briefly that she had lost close family members in a house fire.

It was true she had instructed her older daughter not to open her Christmas present until she woke up, saying: "It was because I wanted to see her face. I put so much effort into the present, I wanted to see her open it." She had slept until 11am on Christmas morning, but it was not because of drinking. She said: "I only had four or five bottles. I wasn't drunk. But [former partner] rang my elder daughter's father and exaggerated the child's reaction at not being able to open her present. Then he came over, and handed my daughter over to him without consulting me."

Her older daughter now wanted to live with her father because she was not happy over Christmas. The father's counsel asked: "Didn't her father come to court and make an application in relation to custody?" She replied: "Yes, after [former partner] filled him up with lies."

The judge interjected, saying: "What lies? You've admitted most of what's been alleged. I'm continuing the interim order for sole custody."

The woman began sobbing and said "I'm pleading with you not to give him custody, I'm heartbroken. I know I made a few booboos over Christmas. I'll do anything. I'll do daily urines. I'm seeing a psychologist. How am I supposed to see my child? [He] lives miles away and I'm working." Turning to her former partner, she said: "After all I did for you, you're taking my baby away from me. I can't believe you're doing this … two people with alcohol problems, but he gets the child, how does that make sense?"

The judge answered: “It’s an interim order. I’m adjourning it for three months. The children are the most important people here. You’ll have to prove yourself. I’m directing a psychologist’s report on [the mother].” He repeated to her that the order was not permanent and that the final outcome was in her hands.

The woman’s barrister told Judge Dempsey that the next case also involved his client and the father of her eldest daughter who was applying for sole custody. The father’s solicitor said an agreement had been reached and that the pair had agreed to joint custody, with primary care to the father. He asked for, and was granted, liberty to re-enter the matter should the situation change.

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I don’t agree to access – we won’t be there, says mother

A man who had brought a summons for breach of access before Dublin District Court was challenged by his partner who said: “I don’t know why I’m here. There is no access order.” Neither party was legally represented. In the spat that followed, the mother persisted with her argument and the father with his that an order was in place.

Judge Dermot Dempsey said: “Judge Furlong made an order for access. It was to be as agreed by the mother.” She responded: “I don’t agree to any access. He goes for months without wanting to see the child, and then he decides he wants her. He’s a coked-up drug dealer.”

The father responded: “When that order was made, I wasn’t in court. I want to see my daughter. She’s five, and I haven’t seen her for over 13 months. [The mother] doesn’t want me in my daughter’s life at all. I have all her birthday and Christmas presents that I haven’t been able to give her.” The judge said he would treat the application as one for access.

Again, the mother said: "I'm not agreeing to access. We've been through all this before with Judge Furlong. When he had access, he didn't take it up. He's a drug dealer. I don't want my daughter near him." Judge Dempsey asked if she had proof of drug dealing and she said no, nor did she know of any criminal convictions.

The child was of primary importance, said the judge, and he was going to grant some form of access. The mother argued: "I'm not agreeing."

Judge Dempsey replied: "I'm making an access order. What access do you want him to have? It was previously noon to 4pm on Saturdays at a Dublin shopping centre." She insisted: "I'm not agreeing. She won't go anyway."

The judge said: "She's five years old. She'll have to do what she's told."

The father said: "I'll pick her up at the shopping centre on Saturdays at 12 noon." The order was interim and for one month only and the man was warned that if he breached it, was late or did not turn up, it would be discharged entirely. As they left court, the mother told the father: "We won't be there."

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Woman's arithmetic just doesn't add up

In applying for a rise in maintenance, a woman submits income and expenditure details that suggest she can save a €100 a month despite a €400 shortfall.

A woman, who received €175 a week for two children under an order made four years previously, wanted this increased to €300, along with lump sums for back-to-school and Christmas expenses. She told Cork District Court that she was not working, received social welfare and was taking a university course. She had no statement of means prepared and her calculated income and outgoings revealed a weekly deficiency of €400 yet she had no debts and even managed to save €100 a week. When questioned on this she said she was always "robbing from Peter to pay Paul".

Judge John O'Neill retorted: "Peter must have a lot of money to be robbing to make up €400 a week." The father's solicitor said she had other undisclosed bank accounts – which she denied.

The father, who earned €50,000 a year, said he had income from leasing a farm he jointly owned, which amounted to €3,000 in annual rent. The land was worth €54,000 and he was entitled to half. He offered to raise maintenance to €185 a week along with a €400 lump sum for school, with receipts, and the same for Christmas.

He said he had difficulty forwarding money to the wife as he was concerned about where it was all going. When he collected the children from school, people commented on the state of his children's clothes. Their footwear was poor and their coats worn.

Judge O'Neill said the mother's accounts did not add up. But he increased child maintenance to €200 a week along with a €300 payment in September and another at Christmas.

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Father fails to show in arrears case

In a maintenance arrears case, Judge Donnachadh O'Buachalla was told that a warrant for €1,200 had been issued and the amount outstanding was €3,840. A month previously the defaulting father had agreed to pay €50 a week to clear his debt and had been remanded on bail. But he had paid nothing, the mother said, nor had he paid anything in the past year.

The judge asked if she thought he had the capacity to clear the debt. She claimed that although he said he was not working he had always worked for cash in hand. She had agreed on the last day in court to €50 a week even though she had a maintenance order for €80 and still he had not paid. She had two small children to feed. She had tried ringing him that morning as he was not in court but he had hung up.

Access was not a problem for her, she said, even though the father sometimes arranged to see his children, he had only ever turned up once. The judge then issued a committal warrant for seven days' imprisonment with a stay of 28 days.

Later that day the judge was told a solicitor was appearing for the father. The mother had already left. The solicitor told the court that he had not known the case had been called earlier but the father had instructed him by telephone that morning saying he was in hospital. His client would produce a medical report on the next date in court, the solicitor said.

The judge asked if he believed the father's story and the solicitor said he had no reason not to. The judge noted that the mother had been distraught earlier, having received no payment whatsoever even though the father had previously agreed to pay €50 a week. The solicitor said there was an application to vary the maintenance payments. The judge said he had heard evidence that the father could pay and there had been no appeal of the previous order.

Judge O'Buachalla put the matter in for hearing again in two days at which point the father was to be present. In the meantime, he was remanded on bail and the committal warrant order was vacated.

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Man faces jail for failure to pay maintenance

A man jailed for three weeks because he failed to comply with a maintenance order appeared before Judge Rory McCabe to purge his contempt. He had not paid maintenance since 2006 and his arrears exceeded €7,500. He told the sitting of the Western Circuit Court that he was jobless and wanted to apply for legal aid. His wife was working hard but could not manage without maintenance.

"I can't pick him up and shake him upside down and see what comes out" said the judge before putting the matter back until later in the week to see what the man could come up with by then. He told him: "If you want a solicitor or barrister in the matter go and get it but you are not using that to avoid it and put it back."

When the matter returned to Judge McCabe later that week, the man had €300 to offer and said it was all he could afford. The judge adjourned for another week, saying: "Come down next Friday with more money … People have to accept the consequences of their actions."

The following Friday the matter came before Judge Michael White who heard that the man and his wife had separated in 2006 after a difficult relationship. He had moved to another city partly because his wife had kept coming to his house, making his new partner uncomfortable. He now had another child. He had not worked for the past two years and applied for legal aid since he was only recently receiving social welfare.

The judge asked why he had not taken steps to review the court order he replied: "I thought it was an agreement between us. I didn't know it was made a rule of court. She knew I wasn't working." He said he had given €300 the Friday before but that it had been his rent and food money.

"You signed €300 a month for your son. He doesn't live on fresh air. The reality is that there is an order of court and when you didn't obey or apply to change it the applicant brought proceedings for contempt. If you want to bring an application to say you can't pay, that is your responsibility." The judge asked him if he could pay something every week. The man said his monthly welfare was less than €800 and that while he had €290 rent allowance the rent was actually €370. He could maybe pay €100 or €150 a month.

The wife's counsel said her client had never wanted to bring the proceedings but had been put in this position. She asked the man why he had walked out on a good job to move elsewhere. "I didn't walk out of my job. I relocated. I wanted to move on with my life and she was stalking me. My partner did not feel safe."

This had not been cited as a reason the last three times in court, counsel said. The man replied: "I've never had an opportunity to speak before. You are questioning me as if I'm lying. I've taken an oath. This is the first time I've had an audience, I've never been asked why I moved before."

Judge White adjourned the contempt proceedings to March to allow the man to obtain legal aid and to apply for a maintenance review on condition he pay €150 per month off the arrears. "If you don't you could go back to prison," the judge said.

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Judge congratulates husband for reaching agreement on maintenance

At Trim Circuit Court in a motion by a respondent husband to vary the amount of maintenance he had to pay in respect of the dependent children of his marriage, the husband claimed he was finding it difficult to pay the amount ordered (€320) and had gotten into arrears. On a previous occasion in court the amount of maintenance had been decreased by €90 to enable the husband pay off the arrears. At this stage not all the arrears had been discharged and the wife, through her counsel, said it was difficult to make ends meet and wanted the maintenance originally ordered to be restored. The husband who was representing himself gave evidence to Judge Esmond Smyth stating that he was in too much debt and couldn't pay the maintenance originally ordered.

The husband was cross-examined by counsel for the wife. The husband stated that he was the owner of a farm with a multi-million euro value. He couldn't dispose of some of it due to Capital Gains Tax. It also came to light that the husband was to receive a significant sum of money from the EU in the next few weeks. Judge Smyth the asked the husband why he would not sell his farm and the husband replied 'what would I do then?' Judge Smyth said he would not advise on that but told the husband that the Court could order the sale of that property.

Judge Smyth gave the husband time over lunch to think about paying the €320 and informed the parties that if an agreement could not be reached that he would make an order. When they came back to court the husband agreed to pay the €320 and an Order was made on consent. Judge Smyth congratulated the husband for his ability to reach an agreement.

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Husband will pay €125 but wife wants €150

"Isn't this disgraceful, to come into court to litigate €25?" asked Judge Mary O'Halloran in a District Court in Limerick dealing with a maintenance arrangement where the former wife sought a variation in circumstances where she could "barely make ends meet". She cared for the pair's three children and lived in the family home. The husband had agreed to pay off the mortgage at €125 a week but the wife wanted €150. Of the €25 shortfall, the husband's solicitor stated: "My man doesn't have it".

The wife had no work outside the home while the husband had employment. He said he paid rent for a three-bedroom house which he had to have if he wanted his children to stay with him. He had his own bills to pay but he also contributed to the family's bills. The judge indicated that he would no longer have to do so if a new arrangement of paying the mortgage and maintenance was put in place. He then said he was paying for his college night course.

The wife's solicitor put it to him that this course did not further his existing career, that it was "a luxury". He retorted: "It means a lot to me." The solicitor asked him if he had recently bought a guitar and if so how much had he paid for it. He said it had cost €1,000, asking: "What has a guitar got to do with it?" The judge said it was relevant "as regards your responsibilities".

To come to court over €25 a week was "a most unfortunate situation", she said. She ordered the husband to continue paying the mortgage and to pay €145 per week to his former wife.

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Squabbling couple test judge's patience

In a matter described by one solicitor as 'litigated to death', Judge Donnchadh O'Buachalla adjourns for a fourth time.

A husband, who represented himself, wanted to vary maintenance. Judge O'Buachalla noted that the order had been made about a year previously and it was for €150 a week. He asked what had changed since then. The man replied that his financial circumstances had changed but the wife's solicitor said he had supplied no statement of means. The husband had a report in court that showed his annual income stood at €11,000.

The wife's solicitor said his client was in full time employment and that the husband had "run himself into a whole pile of debt". The husband interrupted to say she earned more than he did. The judge told him he should have come to court with a statement of means. The husband interjected: "She went to New York for Christmas and spent €4,000 on a hotel."

The judge replied: "You know yourself the hours we have listened to you in this case."

The husband said he owed the bank €60,000. The wife's solicitor wanted to know what he owed the money for and demanded that he "swear up". The judge noted that the husband had recently appealed a safety order and he asked what had happened. The wife said she had won the appeal but he again interjected, saying: "It is all lies." He wanted a month to produce a statement of means.

The wife told Wexford District Court: "[My husband] has been saying to people that he is going to keep bringing me back to court." She claimed he had taken two or three holidays. He had a girlfriend and had brought her children abroad. He was also driving a SUV. At that point the parties started to argue across the table.

The wife's solicitor said the matter had been "litigated to death". The wife shouted at her husband: "Shame on you. Why don't you get up off your butt and do something?" The husband kept repeating that the wife earned more than him.

Judge O'Buachalla repeated that he had already spent hours and hours on this case. The wife's solicitor suggested he should strike out the application. Every time his client came to court, he said, she lost a day's work. The judge remarked that it had been adjourned three times.

The husband said his adviser was calculating his finances and he would have them the next day. Judge O'Buachalla adjourned the matter peremptorily with the husband to file his statement of means 14 days before the next date. When the husband again attempted to interrupt the judge told him he would call in a garda if he did not contain himself. The court's patience was running out, he said, as he adjourned the matter for three months.

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Parties disagree over maintenance

A couple came before Judge James O'Donohoe in Cork Circuit Court. They had married abroad in 1988 and had five children, one in college. They returned to Ireland when the eldest child became ill and lived in a council house, which they bought with a credit union loan of €81,000. The house was bought as a joint tenancy and is now worth €150,000. The wife was currently paying off the credit union loan. The husband had an affair and they separated in 2000. They reconciled shortly afterwards, but split again in 2001. The children lived with their mother. The husband leased a business premises which he lived over. The wife's weekly income was €907, composed of €250 maintenance, State benefits of €561 (including children's allowance of €167 and one-parent family allowance of €190, plus other benefits) and work yielded a further €96.

She wanted to an increase in the weekly maintenance to €400 from €250 and she wanted €15,000 to buy a five-seater van. Her husband's barrister said €907 was a good income and she should be able to manage on it. Her husband was in a worse financial position.

She disagreed and told the court that she had to pay off a credit union loan of €1,400 a month. She could not get a mortgage until the judicial separation proceedings were concluded. The husband said he had annual drawings of €27,000 from his business, or €500 a week, and half of this went on maintenance. The business rent was €17,500 a year and he had savings of €25,000. This was how he would get his foot on the ladder, he contended.

The wife argued that his business earned €72,000 in one weekend alone which he said was rubbish.

In the end, the judge increased maintenance to €350 per week, €150 for the wife and €40 for each dependent child. The husband agreed to give her a lump sum of €12,500 towards a new car. There was a declaration that the husband had no interest in the family home. Access to the children was agreed.

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Affidavit of means fails to convince barrister

A man with maintenance arrears of €5,000 represented himself before Judge Con Murphy in Cork Circuit Court seeking to reduce the amount he was paying for his children. He wanted to pay less because, he argued, he and his wife now had the children for equal amounts of time. The wife's barrister said her client opposed his application because the husband was back at work. The husband had applied for and got half of the domiciliary allowance and was trying to do the same with the children's allowance.
There were significant assets on both sides and there was a suspicion that he had rid himself of his company by signing it over to his brother and sister so he could tell the court he was unemployed on the last occasion.

At one point, the husband said, he had had assets but the property market had taken a downward turn and left him in a bad position. His wife had a very good job, earning up to €76,000 a year and she had no mortgage. He had not gone near the children's allowance, he said. "But you intend to," said the judge. "Not at the moment," he replied. The judge asked him if he still had €700,000 in the bank. The man said he did not and the judge said his own affidavit of means, drawn up four months previously, stated that he did.

The wife's barrister was suspicious of the documentation the husband had provided as there was little by way of vouchers to back it up and she had never heard of his accountant. Judge Murphy adjourned the matter to allow the wife's legal team to check that the documentation was correct and gave him seven days to file a full, frank and vouched affidavit of means. He also ordered that the husband pay the arrears. The husband said that he could not.

"You have to pay them and that's it. Your first priority is your children. It is unbecoming for people to fight out disputes and get their children involved. If it turns out that your documentation is correct, then we'll review the payments," said the judge.

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‘The children are clearly being used as pawns’

A couple who had lived together for 12 years came before Judge Alice Doyle at a sitting of the Waterford Circuit Court. Their house had been sold and the proceeds split but the woman was seeking maintenance for their two children. She told the court that when the relationship ended, the man had continued to live in the family home for 12 months during which time he paid the mortgage and utility bills while she paid for the children’s needs and the groceries. They then agreed, without solicitors, that he would pay €200 a week for the children. The house was eventually sold and they each got €28,000.

She spent some of this on a tractor lawnmower, some on a newer car and she had brought the children on holiday. She worked from home and averaged about €320 a week but the income fluctuated. Her barrister asked her to outline what she spent on the children. She said about €100 for the child minder and for swimming, horse riding, dancing and gymnastics and of course there was general outlay such as food. She had asked her former partner for help at back-to-school time and he gave her €220. The woman said that last Christmas he had given her nothing nor had he bought the children any presents.

“Do the children spend time with their father?” asked her barrister. “They used to go to his house every second weekend. Then he came down here every Sunday but since he got married he stopped coming,” she replied.

The man’s barrister said her client had always bought Christmas presents for his children and then asked the woman about her living circumstances. She was in a house with her new partner and they hoped to marry, she said. She had no legal interest in the house. The man’s barrister contended that when the family home was sold her client suggested that they both put some of the proceeds aside for the children. The woman had not done so because they urgently needed the money for other things. She was seeking €200 a week for the children and help at Christmas and when the children were going back to school.

"You have seen his affidavit of means. You know he is on a fixed wage with an enormous mortgage which his mother had to guarantee," said the barrister. She accepted that, along with the fact that he was driving a car that was older than hers with a very high mileage. His barrister said that her client could afford was €600 a month. The woman wanted him to honour their original agreement. How would the children benefit if their father lost his home, asked the barrister.

The case then turned to access. The man's counsel said the mother had decided of her own accord that the children could not go to their father's house. She believed the children found these visits upsetting.

Her husband's partner told the children they had no manners and that they could not eat or speak properly.

The man said he lived further away now and driving to his children was not always practical. He was also under severe financial pressure. His partner had had a baby and could not return to work due to illness. As for Christmas, he had given his children presents but they had left them at his house. He had no problem giving money at Christmas and when they returned to school as long as it was reasonable. But the last Christmas bill he was shown was for €1,400 which he felt was crazy.

Judge Doyle said it was apparent that the children were being used as pawns. "The parties will have to behave as adults. The children are entitled to a relationship with their father and it is important for their growth. It is not appropriate or morally correct for you or your partners to reprimand the children in such a way as to get back at each other".

"Mr ... is to pay €75 per week per child and is to pay €220 on August 1st each year for back to school expenses and €200 by December 1st each year for Christmas expenses. Access is to resume at the children's father's house," said the judge.

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Father has problems with Section 47 report

A Section 47 report was before Judge Anthony Kennedy at a sitting of the Midland Circuit Court. This social report, governed by Section 47 of the Family Law Act, 1995, allows a court to appoint either a probation and welfare officer, or a suitably qualified person nominated by the health board as the author. It often projects a child's views to the court.

The mother had given a copy to the father who did not fully agree with the doctor. Her barrister exhibited a letter from the absent father which stated that he did not have time to discuss the report. Her barrister told Judge Kennedy that recently there had been no difficulty with access which was from 4pm until 6pm every Tuesday and Thursday with the father picking up the child every alternate weekend. He then had access from 4pm Friday until 4pm Sunday.

The mother's barrister said the three-year-old would become distressed if separated from her mother. The doctor's report said access should be streamlined for one midweek visit and then for one full day every weekend instead of two days every second week. The father lived 12-15 miles from the mother and he picked the child up and brought her to his house. The mother's barrister said the father had problems with the doctor's report. Judge Kennedy examined the doctor's recommendations and varied the access in accordance with it.

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Home transferred into wife's name by agreement

A couple before Judge Rory McCabe at a sitting of the Western Circuit Court were granted a judicial separation having agreed between them that the family home would be transferred into the wife's name but that she would pay her husband €20,000. In addition to this, if the property was sold the husband would receive a further €15,000. The judge made this "lien" on the property a rule of court and directed that that part of the order could be displayed to the Property Registration Authority for the purposes of registering it as a burden on the title.

Woman told to apply for maintenance

A mother of two told Cork District Court that she was applying for maintenance at the behest of the Department of Social and Family Affairs. The father had no proof he was unemployed but swore under oath that he was. Since both parties were being supported by the State, Judge David Riordan made a nil order for maintenance but said that the father would have to inform the mother if he secured employment.

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Father asks judge to double maintenance

By the time a woman's application for maintenance came to Cork District Court, the child's father had become unemployed. The man had paid support but not for the past year because, he claimed, he had been denied access to his daughter. He said: "She can have my dole in the morning if I can see my daughter."

The man lived in his brother's house. Judge David Riordan said he would make a maintenance order but that it would be a "nominal" amount and "would not represent the true maintenance necessary". When he made the order for €25 a week, the father interjected and asked him to double it. The judge declined, saying: "We've enough people up in Cork prison for good reason and I don't want to put a man up there for the wrong reason."

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Defaulter ticked off for wasting Garda time

The Garda Síochána brought a man to court on foot of a warrant for non-payment of maintenance. The warrant was for arrears of €1,300 for one child, the Wexford District Court clerk told Judge Donnchadh O'Buachalla, and the total outstanding now was €2,370.

The father had €500 in cash and expected to collect two cheques that week. He could "cover [the arrears] by Friday no problem". He handed over the money and undertook to pay a further €400 by the end of the week with the balance to be paid before the next court date.

He was remanded on bail on his own bond of €300 to the following month. Judge O'Buachalla noted that if the arrears were paid by then he would not have to attend court. He reminded the man that he also had to continue making weekly payments and ticked him off for "taking up valuable Garda time".

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Lump sum outside court's limit

A separated couple before Judge Dermot Dempsey in Dublin District Court said an agreement had been reached on maintenance for a non-marital child who was now aged 18 and attending college. There were no existing orders in place. The father was to pay a €25,000 lump sum to his former wife by the end of the month. This was to cover education and maintenance. In addition, he would pay €25 a week directly to the child for continuing maintenance. Judge Dempsey told the parties that the maintenance was enforceable, but the lump sum was not since it was outside the District Court's monetary limit. Nevertheless, the father wanted to give the undertaking under oath and the judge allowed this after which he made the order for weekly maintenance.

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Husband ignores all court orders, ill wife abandons claim for maintenance

In a maintenance matter which came before Judge John O'Hagan in the Northern Circuit Court, counsel for the wife said his client wished to abandon her claim. He said that the husband had no legal representation and wasn't present in court.

The parties had been granted a divorce seven years ago, at which time a maintenance order in favour of the one dependant child of the parties had been made. Counsel told the judge that no maintenance had ever been paid, that the husband had ignored all court orders and had consistently failed to turn up in court. The wife was ill and was now so ground down by the proceedings that she wished to drop the matter and get on with her life.

The judge read a letter from the wife, who wasn't in court, having only recently come home from hospital. He remarked that it was a very emotional letter. He said he was reluctant to strike out the matter, as there was evidence that the husband had a pension fund. He said he would adjourn the matter generally, giving the wife liberty to re-enter proceedings should she change her mind. He made an order for costs against the husband, telling counsel for the wife that the husband could be pursued in relation to that order alone if she wished.

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Man drank to calm 'court' nerves

During an application for a safety order, Judge Donnchadh O'Buachalla noted that he had heard the wife's interim application for a safety order the previous week in the husband's absence. Both parties were present in Wexford District Court with no legal representation. The judge referred to previous compelling evidence of the enormous difficulties presented by the man's alcohol and possible drug abuse. He had gone for treatment and the judge asked him if he could assure the court that he would cause no further problems. He said he would "try his best" and that he was consenting to the order.

The wife hoped the safety order was temporary and that her husband would get himself sorted out. They had three children, she said, and she feared for them as he talked about suicide. He had never harmed them but "you see the media reports".

Judge O'Buachalla asked the man what he was doing to address his problems. He replied that he attended Alcoholics Anonymous but had had a drink the night before because he worried about coming to court. He had got out of hospital a fortnight before and he had not had a drink until then.

His wife believed he needed more than AA and said she could not let him mind the children anymore. She had a job which she could not just leave but her parents would help with the children while she was at work. She would arrange for the father to have some access with them. The safety order was granted for a year and the parties could re-enter it on seven days notice if things changed.

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She's too drunk to strike me hard

An unmarried father, who wanted a barring order against his partner , told Judge Dermot Dempsey that his partner, who was not in court, was a violent and abusive alcoholic. She had twice been to a rehabilitation centre but was now totally out of control. He had told her the case was on but she refused to attend. She was 39 years old and he was 50. Their children were aged 17 and seven.

She was constantly screaming, shouting and breaking things, he claimed. He was asked is she had physically assaulted him and he said: "She tries to hit me, bit she can't strike me hard on account of being so drunk."

Asked if she had assaulted the children he said "hand on heart, I have to say no, but her behaviour is affecting them badly. The older boy has gone to live with his granny because he couldn't take the stress anymore. The younger one loves the bones of his mother when she is sober, but he can't cope with her erratic behaviour, never knowing what mood she will be in. She's been barred from his school, it's an awful situation".

The judge suggested a protection order might be more appropriate, but the father said his children needed her to stay away. Judge Dempsey replied: "I'll grant the barring order for one year. It might bring her to her senses. Your grounds wouldn't be terribly strong if she had appeared, but as she didn't see fit to come, I'm granting it".

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HSE seek extension of interim care order

A matter came before Judge Halpin in which the HSE were looking to extend an interim care order in relation to a girl.

The solicitor for the HSE contended that there were notice parties involved in this matter but that they had no legal rights to the child and had no custody. The notice parties previously had custody of the child. The HSE stated that the girl did not wish to live with them but that they still had a degree of influence over her.

The judge interjected and commented that the girl had been used as a slave to which the solicitor for the HSE agreed. The solicitor stated that the notice parties had lied in respect of the child's origins but had come clean about it subsequently. It was further contended that the child was being influenced in a disadvantageous way and that it was doubtful whether the welfare reports prepared in contemplation of the matter should be tendered to them. The solicitor then asked the judge for a ruling in that regard.

The judge stated that in a nutshell he was being asked to release the notice parties as their continued involvement with the child would have a "detrimental effect" on her. He stated, however, that he was obliged to listen to them and to identify their attitude to this matter. He stated that this was the discrete issue and that if they were not given this opportunity, this matter could be judicially reviewed.

The judge asked the notice parties to be called into the court. There was only one of them present. She stated that she was related to the girl. The judge asked her whether she considered her involvement with the child in question to be detrimental or not. She stated that she did not but that "they [the HSE] are just leading towards destruction. I know that for good." The judge asked if she wished to say anything else. She made the following comments in reply: "I know the HSE does not have love. They are just out to destroy. …"

The judge told the notice party that having heard the application and the reports before him, he was going to release the notice parties. He stated that she could appeal the matter or judicially review it, if she wished to.

The notice party interjected and stated that she had no lawyer. In reply, the judge stated that the jurisdiction of the court was to protect the child and that at this particular stage, the rights of the notice party had been frozen until it was ascertained what was in the best interest of the child. He stated that the notice party present should have legal representation.

The judge allowed a month for the notice party to seek out a solicitor to represent her in these proceedings. The interim care order was extended for a period of twenty eight days with further screening to take place to assess the age of the girl.

Internet DNA test poses problems

The adequacy of a DNA test was queried in the context of the HSE applying for a supervision order for two children whose mother had been admitted to an addiction treatment centre. The mother consented to the supervision order.

The father of one of the children was present and there was an issue over whether he was also father of the second child. Until paternity was disproved, Judge Con O'Leary in Cork District Court said he would treat the man as father of both. The father said an internet agency was conducting the DNA test which the judge was told had already been paid for. The judge said there was "no way of knowing how reliable these people are" and that it was normal practice in family law proceedings for both parties to attend their GP and for the test to go to a recognised and established laboratory. "If we are determining who the parents are we want to be sure we're right," he said.

The judge asked the HSE if it could contribute to another DNA test given that the present one was inadequate. The HSE said it would. No order was made.

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Appeal Court refuses to discharge Care Order

In the Circuit Court, a mother appealed the refusal of the District Court to discharge a Care Order in respect of her youngest child

The mother is 35 years old and lives abroad. She has three children, two of whom are still dependant. The two dependant children are currently residing with their maternal grandmother in Ireland. There is a one year care order in respect of the youngest child which is due to expire in March 2008. The appeal was in respect of the refusal to discharge the care order relating to that child. Her former husband, the father of her youngest child, is currently serving a prison sentence.

The barrister for the HSE outlined a number of concerns in respect of the mother's application. First, she said that the mother had previously been on a methadone programme and had been off heroin for four years but went back on it. Secondly, she said that the mother had always prioritised her own needs over her children's needs and that a 30% school attendance had been recorded in respect of her youngest child while living abroad. Thirdly, the mother was to move to Ireland in April 2006. Accommodation and welfare payments had been secured on her behalf but for whatever reason she decided against this. Finally the HSE was concerned about the effects of the release of her former husband from prison.

The mother gave evidence as to the importance of the support which she received from the addiction treatment centre abroad. The level of methadone she is taking has decreased in the last year. She is also assisting in the care of her grandchild. She minds the child of her eldest daughter every Tuesday and Wednesday from 8am to 6pm, every Thursday evening and for two nights every month. She has completed a 13 week parenting course and is in the process of completing a two year commerce course.

In response to a question as to whether she had ever intended to move to Ireland, the mother told the court that she had planned to move over at one stage so that the HSE could do "some sort of assessment". She said that there had been a delay in the paperwork and by the time it was complete the proposed accommodation was gone.

She also explained that she would need to be completely discharged from the treatment centre abroad. [New treatment centre] was quite a distance away from where it was proposed she should live in Ireland and she would not have received the same level of care. The judge agreed that this would put the mother at a huge risk.

The mother suggested that this year was an appropriate time for her child to move abroad as children there began secondary school at 11 years old. If they waited for the child to complete primary school in Ireland there would be an obvious age difference when starting secondary school abroad at 12 or 13 years old which would create obvious disadvantages. The mother reiterated that her youngest child had always expressed a desire to move abroad.

In cross examination it was put to the mother that she had first made an application when her child was 6 years old and that prior to that [the child's] life had been very unstable. The mother admitted that [the child] was on the pre-birth at-risk register and that at the time of the birth the other two children were in foster care. It was put to the mother that in January or February of 2000 the police were called to her house because of domestic violence. The mother accepted that her former husband was extremely violent and that it had been an abusive relationship. She denied that her eldest daughter had attended ten different schools but acknowledged that her eldest daughter was put into care at the age of 14.

The mother told the court that she visited her children in Ireland about every three months and that the HSE funded most of it. When asked why she didn't avail of the offer of funded access this Christmas she told the court that she couldn't call to her mother and that there was no point taking the children to a bed and breakfast at Christmas. It was put to the mother that she did not wish to avail of an access visit on this occasion because she couldn't get the methadone prescription extended. She disagreed and said she liked to give the children some notice and that she had appointments herself and had to get her prescription signed.

When asked if she accepted that the grandmother [her mother] was a good carer she said "to my knowledge, through word of mouth – she is doing OK. She is my Mum – I was brought up by her and it wasn't always a good experience. I am biased, she's doing OK".

The barrister for the HSE suggested that the applicant's perception of her life is somewhat skewed and not very realistic. She conveyed her clients concerns about the mother's history and the past pattern of events. The barrister indicated that all the reports and the advice of the *guardian ad litem* indicated that [the child] needed stability. She said that [the child's] education had greatly improved since moving to Ireland and that a move abroad would be very disruptive. It would necessitate a break in contact from all those she had become used to, brother, grandmother etc. The mother said that she could provide stability for her child now and could provide the necessary love, support and care and that there would be contact with the sister and niece.

The team leader from [named] Community Services began her evidence. When asked as to her concerns regarding the application, she said that it would involve taking the child from a stable and consistent situation to an uncertain situation. She accepted that the mother had done exceptionally well in the methadone programme but warned that she had been on it previously for four years and had relapsed because of the stress in her life. She added that the mother has only completed two years at this stage and that the transfer of the child would inevitably involve stress on some level. She said that past history had shown that the children had endured multiple moves and had been in an environment where their mother was depressed because of the domestic violence situation. She also expressed concern as to the effect of the child's past on her future. She believed that the child would need to deal with the past at some stage. Concerns were also expressed as to the involvement of the child's father on his release from prison.

In cross examination the team leader explained that it may be difficult to have the transfer of the child monitored especially if the mother decided to move around as she had done in the past.

The judge posed the question, "Looking from the outside, is there a risk? What is the nature of that risk"? He said that "It is necessary to err on the side of caution".

The judge said he did not need to hear the other witness for the HSE. "If there is ever to be a transfer", the judge said "it will need to be a transfer under supervision". He reiterated that if the social services abroad would not monitor the transfer the mother is in a difficult situation. In summing up, the judge commented,

"[The mother] is to be commended for the tremendous progress made in a very difficult situation and in getting herself into a productive place. No one knows if she will step backwards or forwards but she is more than entitled to bring this application because of the huge improvements she has made. However, as an outsider I have to look at the entire background".

He noted that in the past there have been multiple break downs in stability which have necessitated a huge involvement by the social services abroad. The children have found themselves in care or with their grandmother. He said that since they came to Ireland with their grandmother they have had stability – have been well looked after and have improved in school. He acknowledged that if the care order was discharged everything might be alright but that it would be a risk and he was not prepared to take such a risk with the first degree of stability the children had experienced.

In considering the entirety of the case, the judge was not minded to remove the care order where the transfer of the child abroad would not be supervised. If the care order is to be lifted there should be in place a long term, well thought out provision which involved the social services abroad. The judge affirmed the order of the District Court refusing to discharge the care order. The care order is due to expire in March 2008 and it is the intention of the HSE to renew the application at that stage.

Father fails to get in touch with child for 10 years

Judge Raymond Fullam granted a decree of divorce to a woman who told the Northern Circuit Family Court that her husband had not seen his daughter for nearly 10 years despite her pleas that he do so. The woman said she and her husband were married abroad in 1994. A few years later, they decided to return to Ireland and she arrived here ahead of her husband. Shortly afterwards, he called her to say he had met someone else and would not be coming back. He had not seen his daughter since 1999 and paid no maintenance. Judge Fullam asked if any arrangements had been made to facilitate access visits.

"In the first couple of years I was begging him to have some form of contact with her. I begged him to come for her First Holy Communion. I offered to pay for his flights but he phoned a few days beforehand and said he couldn't come."

The wife's barrister said the onus was on the husband to make contact at this stage. "I'm just concerned that channels are kept open and that at some stage he would acknowledge some interest in the child," replied Judge Fullam.

The husband was not legally represented and the court was told that he was consenting to his wife's application for divorce. She was in a new relationship and had a four-year-old son with her partner. She had a fulltime job and could provide fully for her daughter. She had bought a house in her sole name and she also wanted a declaration from the court that her husband had no rights or interests in her property.

Judge Fullam granted the divorce along with a declaration that the husband had no interests in the property of the wife as well as orders preventing either spouse from seeking a share in each other's estate.

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Court refuses to revisit divorce proceedings

A woman had previously applied to have divorce proceedings re-entered on the basis that she had not been given adequate legal advice on the meaning of 'proper provision'. She was not satisfied that she had got a fair deal under the terms of the divorce. On that occasion Judge Raymond Fullam had ordered both parties to file new affidavits of means, telling the wife that she had to state clearly the change in circumstances she was relying on to have the case re-opened. The barrister acting for her during the divorce proceedings was told to attend before the court to detail the evidence his client had given on the day in question. Judge Fullam also stipulated that only evidence of matters post divorce were relevant; anything pre divorce would not be considered. He then adjourned the matter.

The matter was now before Judge Anthony Kennedy at a sitting of the Midland Circuit Court and the wife's barrister renewed the application to have the divorce proceedings revisited. The judge stated that this would involve demonstrating a dramatic change in her circumstances. The husband's barrister said that although the wife had filed a further affidavit of means, it dealt with pre divorce issues. She had failed to convince that proceedings should be re-opened.

Judge Kennedy called the wife's original barrister who outlined how the case had eventually settled with the terms committed to writing and handed into the court to be ruled. The divorce application had then proceeded uncontested. As a result, he said, it was only necessary for his client to give formal evidence which included the fact that she was satisfied with the terms of settlement and satisfied that they constituted proper provision for her. The judge accepted this evidence.

Judge Kennedy added that the wife had previously been granted leave to have the matter re-entered. He then stated that she had failed to show any reason for the decree of divorce to be declared null and void as her affidavit showed no substantial change in circumstances. He was satisfied that she had given evidence of being properly provided for under the terms of her divorce. The husband's barrister then sought a court order stating that the wife's new affidavit showed no substantial change in her circumstances. Judge Kennedy made that order and awarded her husband his costs.

Woman challenges validity of husband's third marriage

A wife wanted a declaration to state that her marriage in 1947 was valid. Appearing before Judge Sean Ó Donnabháin in Cork Circuit Court she said she and her husband, who had been married once before, met in 1945. He divorced in February 1947 and they married the following March.

In 1959, they moved to Ireland and built a house. Her husband began a new relationship in 1968 and moved his girlfriend into the family home that year. The wife had to leave and moved in with her sister.

Her husband had requested a divorce and she refused. He put an advertisement in a newspaper stating his intention to divorce and remarry. The wife lodged an objection but she could not afford the solicitor so it was discontinued. Her husband said the marriage was not valid because he had not waited the requisite time period to marry her after the first divorce. He then married for the third time abroad in 1969 and this marriage lasted almost 40 years until he died. The action was being defended by his estate and his third wife.

Counsel for the third wife stated that the second wife was not entitled to the declaration given her inexcusable and inordinate delay in bringing the proceedings. She was asked why she had waited until 2003 to revisit the issue and why she had abandoned a petition instituted in the High Court for a judicial separation.

The wife replied that she could not afford it. Legal aid had been available since 1974 – why had she not used it? Lack of money was not a credible reason since in 1968 she received weekly maintenance of £20 – the equivalent of a teacher's salary.

An independent authority on law in the jurisdiction where the marriages had taken place submitted documentary evidence on the 1947 certificate. He said it was valid and that the union had never been dissolved by a relevant court. In the 1969 ceremony, the husband had indicated that his first marriage had been dissolved but had concealed the second.

The third marriage, according to the expert, was bigamous but valid as such until declared void by a judgment of a competent court. Under the relevant law, the spouses of the previous marriage and the public prosecutor were entitled to bring a law suit for a declaration of nullity. He found that Irish courts had the jurisdiction under Article 2 of Council Regulation (EC) No 1347/2000 to do this.

Judge Ó Donnabháin found on the balance of probabilities that the parties were lawfully married as the husband had made full disclosure of his divorced status to the marriage bureau abroad. Therefore the marriage office was well aware of the divorce, its date and that it was entitled to lawfully marry the couple. He declared the second marriage was valid.

Considerable debate followed on whether the wife was entitled to costs which Judge Ó Donnabháin refused to grant in the end on the basis that she was at considerable fault in delaying litigation. She had been well aware of the problems associated with her marriage and had chosen to do nothing about it for almost 40 years.

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Woman seeks recognition of foreign divorce

In Wicklow Circuit Court a woman sought a declaration that the divorce obtained by her husband in another EU country is valid in Ireland. The couple had been married over thirty years ago. The relationship broke down and whilst she remained in Ireland her husband had moved to the other country where he later obtained a divorce. The woman's former husband, who was still living abroad, had been notified of this application. The woman told the court that her husband moved abroad in 1984 to make his life there. Judge Terence O'Sullivan stated that in 1984, under Irish law a wife did not have domicile independent from her husband and therefore he was satisfied that the woman at the time of the divorce was also domiciled in the other EU country. Accordingly the judge made a declaration that the divorce obtained abroad was entitled to recognition in Ireland.

Woman accepts offer 'to get it over with'

A husband who had come in to money after he and his wife had separated offered to give his wife €15,000 of the proceeds to cover the outstanding maintenance but Judge Petria McDonnell was unhappy with this amount.

During the application for consent divorce in the Dublin Circuit Court, only the wife was present but both parties were represented. The wife said they had married in May 1991 and had two children, one of whom was still dependent. The family home was a rented council house and under the consent agreement the tenancy had been transferred into her sole name. The parties had separated in October 1998. There was no previously existing maintenance order for her or the children and the husband, who was unemployed and an alcoholic, had not given her any money. The woman worked.

The husband had, since the separation, come into money through €214,000 damages awarded to him in a case which was now under appeal to a higher court. He had received €100,000 in the meantime but had already spent a lot of that. The wife had moved to prevent him dissipating this further and the courts had restrained him from spending the remaining €40,000.

Under the agreement he was to give her €15,000 to cover the years where he had given her no maintenance. The judge was dissatisfied with the amount she was getting but the wife said that at least she was getting something. She doubted she would get any more from him. Her barrister confirmed that there was no more on offer. The judge noted that she could just hear the case and award her more. "I just want to get this over with", the wife replied.

The judge said that if she (the wife) was happy she would not interfere with it. "However," she said, "I feel you are getting short shrift really." The wife noted that it had been going on for years and she just wanted an end to it.

The husband's counsel said the offer was very generous since the husband could very well lose the appeal and the remaining €40,000 could be taken away from him.

The wife's counsel did not think the wife wanted to gamble with the appeal and he was happy to advise settlement. The judge said she would make the orders though reluctantly.

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Husband shows no interest in divorce proceedings

At Dundalk Circuit Court an applicant wife sought a divorce after 8 years of separation. She was represented, while her husband had not come to court or entered an appearance despite being served with the court papers. The wife was looking for a divorce and transfer of the family home in the absence of her husband. The wife's barrister told Judge Michael White 'any communication (solicitor's letters or court papers) was put in the bin by the husband …. they live in the same house.'

The court heard that the marriage lasted 12 years. There were two dependent children of the marriage aged 18 and 16. The family home was the principal asset. The wife worked and earned a good income, while the husband ran a business of his own. The family home was in their joint names and was valued at €380,000. There was a mortgage owing of €46,000 giving an equity of €334,000.

The wife gave evidence that her husband lived in "a room downstairs. He would use that room, he uses a sofa bed in the sitting room , he cooks his own food, it's all done separately, there's been no communication in the last year in part because he's being completely unreasonable. I tried mediation counselling, he'd never turn up. It was a brick wall". The wife's barrister said the wife was looking for the family home in the absence of the husband.

"This is quiet unusual. He's taken no interest at all. Have you spoken to him about this?" the judge asked the wife. "Yes I have. He will not accept that people cannot live the way we are living," replied the wife.

The judge asked if the husband was looking for money for his share of the house. "At one stage he said he didn't want anything for the house, when we went to marriage counselling", said the wife.

The judge asked the wife: "What kind of money does he make?" "I don't know", replied the wife. The wife told the court that she had always paid the mortgage. "I always ran the household", she said. Her barrister referred to the home situation as 'intolerable'.

The wife told the court that the family home was purchased in 1994 for £56,000 and that she had always paid the mortgage. She claimed the husband had inherited the sum of €18,000; he had spent €4,000 on furniture and given her €2,000 towards the house. She claimed her husband had written off the car in an accident and she had allowed him to keep the settlement money.

In relation to providing for and raising the children, the wife said "I did everything to do with the children, he had no involvement with the school". "Who paid the childcare?" asked her barrister. "I did." the wife replied, "He has squeezed every drop of my life force from me. He's healthy, he's functioning perfectly normally." The wife confirmed that her husband was running his own business and had capacity to earn.

She said of her husband's relationship with their children "he's more like a pal than a parent." The wife in addition sought joint custody of the children and a minimal pension adjustment order to protect her pension. The judge asked the wife whether there was a realistic chance of him (the husband) paying maintenance?" the wife said "No, it's more realistic to transfer the family home". "Did you speak to him this morning?" asked the judge. "No, but he's aware" replied the wife.

The judge granted a divorce and transferred the family home into the sole name of the wife. In the event of a failure to transfer the family home the County Registrar was to sign the appropriate documents. A minimal pension adjustment order was made.

The court granted both the husband and the wife joint custody of the children and directed that the husband be given four weeks to leave the family home, thereafter the wife was to live in the family home to the exclusion of her husband. The court ordered that the husband was to be served with a copy of the order personally and abolished the right of both to claim from the estate of the other.

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Court aims to leave a divorcing couple with equal debt

A woman's barrister began his presentation before Judge Olive Buttimer by noting that the case had been in the list twice previously in 2006 and 2007 when interlocutory applications for custody and access to the parties' three children, now aged 17, 14 and 12, had been heard.

The South Eastern Circuit Court heard that following an interim agreement in May 2006 the parties had operated a 50:50 week-on, week-off care arrangement for the two younger children pending completion of a psychologist's report. They returned to court in January 2007 and the arrangements were reaffirmed. The wife's barrister said access had since broken down entirely for the middle child who was getting into serious trouble. Since November 2007, he had not lived with his mother at all, had been suspended from school the previous term and received a warning letter about another suspension. At a previous hearing, his teacher had given evidence about him. The mother believed supervision of her son was seriously lacking now. The younger son, still in primary school, was also under threat of suspension due to behavioural difficulties.

The case was now in for full hearing on judicial separation. The wife had issued the civil bill in April 2006 and the husband his defence and counterclaim in June 2006. There had been significant discovery and cross-discovery of documentation on finance and property which was handed in to court. The parties had been married since 1989 and both were self-employed with their own businesses. They owned two houses and a site with a partially built house on it.

In 2005, they separated and the wife remained in the family home which was in her sole name. The valuation of the home, which her parents had given her after the marriage, was disputed. She put it at €250,000, the husband at €285,000. It had a €20,000 mortgage which she paid.

The second house was an investment property in both names, bought during the marriage and rented out. The husband had moved into it after the break-up. Rent had largely covered the mortgage but he paid for any shortfall. Initially they had got a credit union loan of €20,000 to pay the deposit but the wife had been paying this off and €5,000 remained. The wife valued this property at €245,000 and the husband at €210,000. Its mortgage of €121,000 was €8,000 in arrears.

The site, near the family home, was in joint names and they had begun to build a house on it which was not finished. To buy it, they had got a mortgage in the wife's name and this was charged on the family home. Costs had been shared and the husband had supplied the labour. Maintenance was not an issue for either parents or children; division of property was.

The husband's barrister said since at least 2003 the wife made far more than her accounts suggested. He also noted that her place of business was occupied by her under leasehold and this should be acknowledged when valuing her assets.

The wife's barrister said that two day books recording receipts from her client's business in 2003 and 2004 had been removed from the family home in January 2007 while she was on holiday. She had complained to An Garda Síochána and the husband had returned the book for 2003. He was subject to a barring order and the wife suspected he had asked a child to get it for him.

The judge asked how the husband had come by the book and his counsel said the wife had packed a bag for the husband when they separated in 2005 and it had contained the book. He noted that the husband was on the accounts and that accounts were returned to the revenue in his name.

The wife's barrister said the couple had not been jointly taxed from 2003 and it was not sustainable for the husband to say he had any interest in her tax affairs in 2003. He was concerned also that the court should not allow the book in evidence, adding that if a 13-year-old had been commissioned to remove it then this was a "staggering" thing to do.

The judge stated that under-declaration of income while they were jointly taxed would reflect equally badly on the husband. The husband's barrister said his client had nothing to lose and was living from job to job. The wife's other asset, her actual business, had not even been discussed yet. "Common sense is needed here", said Judge Buttimer, "at the end of the day the wife had to keep her business".

The husband's barrister said that at the end of the day that would affect his client's entitlement to assets of the marriage, particularly where she made far more money than he did. Her assets far outweighed his, he argued, and the parties should be allowed to keep their own houses but the site with the partially built house should be given to the husband.

The wife's barrister said her client would be content to see the site sold as it was now, with the proceeds split 50:50. She would pay the mortgage taken out on the family home to buy the site. That way the husband would still get more. Having calculated that the wife would then have net assets of €242,000 and the husband €101,000, the judge said: "That won't fly."

The husband's barrister added that the calculation also failed to take account of the wife's business and the imbalance was stark. His client should keep the site which would probably be sold.

At this the judge said it would be better for the court to direct the sale of the site first. Then it would know exactly what money was in the pot before making any orders. The husband's barrister said his client wished to finish the house to maximise the value. The wife said this would "open up all sorts of problems" since he was barred from the nearby family home.

She said swearing her affidavit of means had been made difficult because her day books were missing. She was anxious about flawed custody arrangements and that her son's teachers were worried about his poor behaviour. Judge Buttimer noted that specialist help might be needed. She might seek another report on the children and have someone appointed from Barnardos. She asked counsel to discuss with their clients what help the boys might require since they had clearly been traumatised by the break up.

On the property issues, she "was not going to hold it against the wife that she has worked hard to build up a business" and "was not going to be the collector-general". The court would aim to leave the parties with largely equal debt and whatever the site realised it would have to leave them relatively secure in their accommodation.

Later, the wife's barrister said the parties had resolved the property issues which would take three months to implement. The wife would keep the family home and continue to pay the mortgage while the husband would take the investment property and its loan. She was then to buy out the husband's interest in the site and unfinished property for €125,000. She also retained her SSIA.

She wanted to go back into the witness box to talk about access. The judge said she had already indicated they would need outside help with that. The barrister said her client believed the children needed counselling rather than further observation and diagnosis, particularly where one son had already pulled knives on his parents and been mixing with drug dealers. The judge agreed that counselling was necessary.

An agreed Barnardos counsellor was to be financed jointly. Custody would continue pending that counselling. The judge took undertakings from both parents that they would actively encourage the children to attend counselling. She then remitted the matter to the District Court with liberty to apply to the Circuit Court in the future on custody issues.

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Financial risk too great for husband to attend court, solicitor says

Judge Rory McCabe refused an application to adjourn a divorce hearing because the husband was in another jurisdiction. The husband's solicitor said his client was absent due to confusion over the judge's availability on the Western Circuit. He could not financially risk coming if no judge was available and in addition was caring for his two elderly parents. The solicitor said the sole issue was property and the wife would not be disadvantaged if the case was adjourned since the house could not be sold before then.

The wife's counsel countered that her client was very anxious for the matter to proceed as she was under a lot of personal and emotional pressure. The husband had left years before and she had never received maintenance for their child who had had a lot of difficulties because of his father's behaviour. This resulted in medical fees and expenses. She claimed that the husband lived in a different place to his parents. The court heard that he had adjourned a previous case between the parties for three years and the wife was afraid this would happen again. She had attended court for this case every time it was listed and wanted to get on with her life. Judge McCabe refused the adjournment.

Later that day when the case resumed the wife said there had been long-term violence in the marriage. She had a child from a previous relationship and her husband wanted them to have another baby. She had reluctantly agreed. "After the baby was born he changed. The violence became more frequent and lasted longer." He was violent to her other child and eventually also turned on his own son, which she said "seemed even worse as he was younger".

This child had terrible trouble in school and had told his teachers he was very frightened of his father. He had also been bullied. He had attended counselling and changed schools and had now come on in leaps and bounds. She related how her husband had once put all her possessions in a caravan and burnt it. He had borrowed money from her while she was trying to pay debts. And he had never paid maintenance.

Judge McCabe ordered that the only asset, the property which was a one-up one-down, be transferred into the wife's sole name adding "an order for costs for what it is worth".

Wife seeks order to sell family home situated next to husband's business

A woman succeeded in obtaining a court order for the sale of the family home so she could buy a smaller property away from her husband's place of work. The wife's divorce application was heard by Judge Raymond Fullam at a sitting of the Northern Circuit Family Court. The husband was not legally represented at the hearing and the wife's barrister said he had never filed an affidavit of means despite a court order that he do so.

Most cases, she said, were listed six or seven times before getting a hearing and the wife was very anxious to get the divorce. The husband had delivered a defence and counterclaim. The parties had married in 1997 and there were four children, three of whom were still dependent. The wife lived in the family home and the husband lived in a mobile home during the summer months and with his mother during the winter.

The family home, which was built on a site given by the husband's father at the time of the marriage, was valued at €320,000 in May 2007 and estate agents said the valuation had not changed since then.The wife's barrister said the family home sat next to the husband's business and her client was very uncomfortable there. She suggested the house could be valuable to the husband and his business. The wife gave evidence that she had worked for most of the duration of the marriage and everything she earned "went on the house."

She now earned €260 a week from her job, €23.44 a week family income supplement, €80 weekly child allowance and maintenance of €250 a week. She gave each of her two sons, aged 22 and 20, €50 from that. She wanted to move away and get on with her life. She wanted peace and quiet and a small home and needed about €240,000 for a house.

The court was told that the husband worked in the family business which was managed by his father. He had got a personal injuries award of about £75,000 sterling some years ago and the wife got £10,000 which she spent on home improvements and items for the children including school uniforms.

The wife said she had problems getting him to pay maintenance. It had been €200 but he stopped paying it. He ignored an interim court order and went to jail for one night after which "he never missed a payment", she said.

"She's a compulsive liar," the husband interrupted. "She was out drinking. I wanted my children to have the money. She's not to sit in the pub drinking my children's money. I don't want to talk to her. I walked out six years ago and I didn't want to disturb my children. I got a phone for my daughter but she [his wife] threw it away."

The wife denied that she ever left her children alone, claiming that he had been phoning the daughter to find out where she [the wife] was. She handed in photographs to Judge Fullam which showed the proximity of her husband's workplace.

Her father-in-law lived to her right and the family business premises where her husband worked were to the left and above her. She told the judge she had seen a house which would cost €200,000 but had also seen bigger and more expensive houses. She wanted something small and easy to maintain. Judge Fullam said: "You're both looking for divorce and the court is now concerned that everyone is properly provided for."

The husband said he earned €450 a week in his father's business where he worked six or seven days a week. Asked what he had done with the personal injury award of £75,000, he said he had bought a few cars, put money into the house and paid for a few holidays. He put the remainder into a bank account. He had no chequebook. He was now in another relationship with a woman who was expecting a child. She was working and lived in a council house. He had no intention of moving in with her. "I never want to get into that situation again," he said. He wanted his wife to stay in the family home. "I'd like her to stay so I can keep an eye on the kids but if it's sold it's sold."

Judge Fullam said the basic issue was what to do with the house. "The court has to do the job of Solomon to ensure that the wife and children are properly provided for."

The husband said: "My father doesn't want to buy the house." When the judge asked how much it would realise, he answered: "Around about what she says. I'm not an estate agent. I don't know."

Counsel for the wife then suggested that the most preferable way of dealing with the matter would be to put the house up for sale with a certain amount out of the proceeds going to her client to allow her to buy a property. She could also get a loan of a maximum of €20,000 from the credit union. The husband told the judge: "If she needs €200,000 give it to her and give me the rest. I want my children to be looked after."

Judge Fullam replied: "This matter looks as if it's resolving. Mr X you have been helpful. Mrs X, your future looks clear. Congratulations to both of you."

Judge Fullam granted a decree of divorce and ordered the sale of the family home with the wife to get €200,000 from the net proceeds of the sale. He ordered the payment of €250 weekly maintenance up to the time the youngest child reached 18 or was no longer in third level education. Any future problem regarding maintenance was referable to the District Court. "I'll rely on the good sense of both of you to arrange access," he said.

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Husband claims maintenance letter took him by surprise

Two people representing themselves came before Judge Alice Doyle seeking a divorce. The husband had received a letter the previous day from his wife asking for more maintenance. He was very surprised because they had separated in 1992 and his circumstances had since changed. He lost his job in 2005 but got a new one the following year. He said they had four children together and he wanted a maintenance review.

The wife told Waterford Circuit Court that her husband could not possibly be surprised because she had been asking for an increase in maintenance for six years. The man argued that he had shown his wife files to back up his financial claims. He had asked her about a divorce 18 months ago but it was only now that she was asking for more maintenance. The wife maintained she could not proceed because her husband, despite what he had told the court, had not provided any paper work to back up his alleged financial position.

Judge Doyle adjourned the matter to allow the parties to exchange appropriate documentation so each could prove the truth of their finance claims. She also told them to bring in their State marriage certificate because it was a necessary proof to get a divorce.

The judge asked the wife if she was employed. The woman answered no but that she had been in contact with FÁS. "Next time," said the judge, "I'll be asking you for proof of your contact with FÁS".

"May I ask how this will be resolved if we can't agree among ourselves?" asked the man. Judge Doyle told him that she would examine the assets, income, debts, what happened at the judicial separation stage and also at the steps the wife had taken to get a job.

"What happens if there are things in his paper work that I know are not true?" asked the wife.

The judge told her that was why they might need a solicitor and if she was worried about the cost of one she could apply for legal aid.

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Woman gets house together with responsibility for mortgage payments

At the outset of a contested judicial separation before Judge Anthony Kennedy at a sitting of the Midland Circuit, a husband unsuccessfully sought an adjournment with the judge insisting the matter be heard. The couple had been married abroad in the 1970s. They had three children, the younger two were living with the wife and only one was dependent. The marriage had broken down when the wife realised her husband was having an affair. The husband had accused her of similar conduct which she vehemently denied during cross-examination.

The dependant child is supported by the mother since his father stopped paying €100 weekly maintenance in 2007. Payments had been sporadic, the wife said: "There could be a four- or five-week delay between payments."

The family home, in which she and the children lived, as well as two further plots of land, were owned jointly. The husband had paid the €840 monthly mortgage payment on the family home. The wife worked for an hour a week and in addition received One Parent Family Allowance and Child Benefit. Her weekly liabilities were €360. She wanted the family home to be transferred into her sole name and she also wanted €100 a week from her husband.

The husband's barrister told Judge Kennedy that his client could not do this as his "company was in difficulty". He gave a financial rundown of the company's debts.

During cross-examination, the husband's barrister asked the wife how she would cover the mortgage payment if the family home were transferred to her. "I was hoping he [her husband] would pay off the mortgage," she replied.

Judge Kennedy granted the couple a judicial separation and transferred the family home and its contents into the sole name of the wife. He ordered that she was to take up the payment of the mortgage. He further ordered that the husband pay her weekly maintenance of €300. He granted her sole custody of the couple's teenager and ordered that custody and access was to be agreed between the couple.

He transferred one of the co-owned plots of land to the wife and the other to the husband who was to pay the wife's legal costs. He did this because the husband did not show up in court for the first hearing as he "was on holidays with his girlfriend and he failed to attend the court sitting". The wife, he said, had no interest in her husband's business.

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Parties praised for settling property dispute

A woman wanted to buy out her husband's interest in the family home and to retain two other properties which she had inherited from her father. Her husband claimed an interest in all these properties and sought a substantial share of the overall value. They had been married for 30 years and had two children: one was still studying and the other, who had dealt badly with the break-up, had dropped out.

The woman estimated the assets of the marriage at €790,000 but her husband put the figure at €1 million. The assets included the family home valued at €300,000 to €350,000, a nearby building from which the wife ran her business, an adjacent site of about 1.5 acres for which the husband believed they could get residential planning permission (the wife disagreed), both valuing accordingly and the wife's pension worth about €190,000.

The wife told Judge Rory McCabe that at the start of the marriage they both worked but after the children were born her husband had stopped and she had been the breadwinner. He then developed a company and had studied to become an expert in the business but financial success had eluded him.

Some years previously, her father had given her a property next to the family home. She then left her job and borrowed €69,000 to set up a retail business there. She managed the loan, €60,000 of it was still owing, and the company by herself. Her father also gave her a 1.5-acre site near her business.

A county council loan had funded the family home which she had partly paid off with a lump sum from her previous employment. Any outstanding mortgage and refurbishment she had paid for while her husband was establishing his company.

The family home was now fully paid off and she wanted to keep it, she told the Western Circuit Court. But knew she had to buy out her husband's share. He was not entitled to a share in the other property or adjacent site, she argued, as her father had given these to her and she had paid the loans.

The bank was prepared to give her €165,000 on top of her existing loan. While she would struggle to repay this, she was prepared to offer it along with a percentage of her pension to her husband. Since her husband had an income, a small pension of his own and savings of €34,000,the wife's counsel believed this offer was more than adequate for him to buy in the area.

Her husband's counsel said that great play had been made of the wife's property and of her role as breadwinner but in a 30-year marriage there were "swings and roundabouts". His client had "not embarked on a frolic of his own. There had been no disharmony; they were looking to the future equally contributing directly and indirectly". He added: "Contributions made to a marriage over 30 years cannot be excluded from family assets now."

Judge McCabe asked: "Do you accept as a matter of law that a court is entitled to take into account the origin of property in order to decide the distribution of property in a marriage break-up situation?"

Counsel said he did but that his client wanted a fair share of assets worth €1 million. If the wife did not want the husband to own the property they could sell everything and divide it. While this was not the most suitable outcome, neither was the wife getting three properties and a substantial pension.

While Judge McCabe told counsel he did not feel bound by the wife's offer, he said: "If the facts pan out as outlined to me re the acquisition, funding and use of the property, your client needs to be very aware of what is on the table and the risks. You have never seen me before. It is the equivalent of going in to ... [centre of city]... and asking someone 'do you know anything about property – would you sort our property out?' "

He told the parties that their lawyers were the experts and knew more family law than he did as they dealt with family law all the time whereas, being a Circuit Court judge he had to deal with many different areas. They had the option of having him make a decision, he said, which would possibly leave both of them unhappy or leave one happy and one not. It might not even end there, he said, as if one party was unhappy they could appeal and "that would involve money coming out of the pot and an increased level of difficulties." It was not good for them or for their children and there was "a huge premium in family law cases where parties resolve matters between themselves. It has finality and it ends today".

He then rose for 10 minutes to allow them to consider their position.

On his return, they had agreed that the wife would retain all three properties but would pay €200,000 to the husband and he would also receive €70,000 from her pension. The judge congratulated the parties on being able to come to an agreement.

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Man tries to track wife's property buys abroad

Judge Rory McCabe refused to adjourn a judicial separation hearing where the husband was trying to confirm that his foreign national wife had bought several properties in her home country.

The Western Circuit Court heard that the night before a previous court appearance the wife had, despite earlier denials, belatedly disclosed that she had bought the property. She had then given an undertaking to the court to provide both her identity number and that of her parents as these numbers were required to track property in her country.

On the following court date an order was made directing her to provide her identity number as she had not done so. The husband's counsel claimed that the ID copy supplied had been illegible. She said her client, the husband, had since travelled to the country in question and discovered that property had been bought in the wife's name and that of her family. The husband believed there had been other purchases and he intended to return the following weekend to continue his search. His accountant would give evidence that at least €24,000 had been taken from the parties' business and sent to the wife's country; and there might have been more. He believed he would be severely prejudiced if the case went on without allowing him to conclude his search.

The wife's counsel admitted that they had disclosed belatedly the property and had given an undertaking to provide identification. But there was a long history between the parties and her solicitor had written to the other side explaining that as the husband had written to her national embassy to say that she had an Irish passport, her embassy had cancelled all her identification documents. This was done as nationals of her country were not permitted to have dual nationality. Furthermore she claimed the husband had taken her identity card from her wallet and she did not have a copy. The ID number had, notwithstanding this, been given to the other side. Counsel continued that it was open to the court to take a view of the late disclosure.

Judge McCabe refused the adjournment and let the matter take its place in the list. Due to the length of the list, the item was not reached and was adjourned to January.

Husband doesn't comply with terms of judicial separation order

A motion to compel a husband to comply with the terms of a judicial separation which had been ruled a year ago came before Judge Terence O'Sullivan on the Eastern Circuit. He heard that contrary to the terms of the judicial separation order the husband who was not present or represented had failed to transfer his SSIA savings fund to his wife. Neither had he paid for an NCT nor outstanding bin charges, nor discharged half of the back to school expenses for the children.

Counsel for the wife told the judge that the two eldest sons worked for their father and there had been an agreement that they would pay their mother €50 a week for their board and food. Their father told them not to pay, and the wife hadn't received a penny. The balance of the maintenance was set at €340 per week. The judge asked "so are you asking for an increase to €440 per 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 told him that they were reluctant to do that, the judge pointed out that it was part of the order that the husband was to transfer the SSIA, and said, "I think a 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 get his attention".

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Couple divorcing after 40 years of marriage can't agree on division of assets

A couple came before Judge Terence O'Sullivan on the Eastern Circuit seeking a divorce after forty years of marriage. They were both in their sixties, and the family home of the parties comprised a house and quite a number of acres of land with possible development and tourism potential.

The judge heard that the wife did not want the house sold. She was adamant that the land could be split up. The husband could do as he wished with his portion, but the wife wished to remain on the land. For his part, the husband said the land was only valuable as a whole entity, and that dividing it up would devalue the entire asset. The couple had purchased the property jointly many years previously.

Counsel for the wife told the court that her client thought she could make a small income from the land. At present she had no income. The parties differed in their views on the valuation attributed to different sections of the land. 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 told the judge that the husband had been to all the valuers available locally, 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 was called.

He said it was a difficult property to value; it was unique in many ways. He said he had been retained in February 2007, but that today, some twelve months later, he had to reduce his estimate downwards by three quarters of a million euros. He said that in his opinion it was worth €2.5 million. He went into detail as to the zoning attaching to various parts of the holding and gave reasons for his valuation.

The court heard that there was development potential for part of the land, but that it would have to be low density. Also, there was tourism potential, but it was an ambitious project requiring money, vision and energy.

He said he was of the view that the property ought to be sold as one lot in order to achieve the best possible price. The wife told the judge that 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 sold the business a number of years previously without consulting her. The judge asked her if she had signed the documentation required and she said 'yes'.

In addition she had received half of the monies achieved. She said she didn't agree with the valuation. They had been offered a million for the land six or seven years ago. She said she felt she could support herself and generate income from the land. She said her husband didn't want to work and she didn't wish to retire.

In his judgement Judge O'Sullivan said that the valuer had been a very impressive witness. He said it was a very straightforward case. He went on "I understand [wife's] 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 [wife] should retain the family home and the lands and [husband] should be left to take his chances?

The fairest thing to do is to sell the entire lot and divide the monies. [wife's] evidence regarding her business plans and the income she would hope to generate is too nebulous. She is in her mid sixties. The best way to ensure relative equality is to sell the whole lot. I'm not convinced that [wife] 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 were to be split equally after all costs and loans were discharged.

He said there was to be a reserve of €2.5 million put on the property. The wife's counsel asked for a stay on the order, pending her client's decision on whether to appeal or not. 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 with her client and told the judge that 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.

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Judge orders sale of family home with two year stay

On the Eastern Circuit a husband and wife applied to Judge Terence O'Sullivan for a divorce. The parties had married in 1974 but by 1996 the relationship had broken down and the husband had moved out of the family home. There were three children of the marriage aged 24,18 and 15 years when the parties split.

The wife lives in the family home with her grandchild, who she looks after as the child's mother (daughter to the parties) is not capable of looking after the child. The judge heard that neither party was in a position to buy out the other's interest in the family home. The husband accepted that after separating he had not paid any maintenance in respect of their youngest child.

The judge stated that although the wife has taken on the burden of looking after her grandchild, a grandchild falls outside the terms of the Family Law (Divorce) Act as a factor for consideration. Judge O'Sullivan having heard the evidence said, "I hate putting someone out of the family home."

Taking into account the fact that the husband didn't pay any maintenance since he left the family home in 1996 and the fact that the wife had the full responsibility for looking after the children, the judge said, "I believe a determination that the wife is entitled to a 60% interest in the family home meets the justice of the case. I will make an order for the sale of the family home but put a stay on it for two years to enable the parties to take on board the consequences of the decision and perhaps give the wife time to obtain finance to buy out her husband's share in the family's home."

Judge O'Sullivan went on to say that in determining the parties' respective interest in the family home "I have taken into account the fact that the husband will not receive his money for two years" and said that he would have awarded the husband a lesser percentage if he had ordered an immediate sale of the family home.

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Man has no resources to pay money owed to former wife

A woman appeared before Judge Donagh McDonagh in Cork Circuit Court asking that orders made in her divorce six years previously be complied with. The order involved the former husband paying her €3,726 so she could have their council house transferred into her sole name. She was now on disability payment and had three children by the husband, two of them dependent. He paid her weekly maintenance of €60.

The husband represented himself and informed the court that he did not have €3,726 to give. He had remarried and had another three children, the youngest being 18 months old. He said: "My job at the moment is precarious to say the least … I live in a mobile home, next to a house that I've no way of finishing." His wife was unemployed. He said he could pay €10 a week to pay off the sum owing.

Judge McDonagh asked the woman's counsel: "How can I get money out of this man? Am I to grab him by the heels and shake him down?"

The woman's counsel asked if a mortgage could absorb the debt but the man said he had a mortgage and his wife had a mortgage and that now no bank would touch him because he was not living in the house and that it was merely a shell. The suggestion that the man pay an extra €50 a week in maintenance was considered but he interjected: "If I'm unemployed by Christmas, what will you do then?"

Judge McDonagh replied: "This is an impossible situation … this is a lot of money when you haven't got it." The judge ordered that the man pay a weekly sum of €10 until the debt was discharged in full.

Judicial separation granted while husband seriously ill

In a case before Judge Terence O'Sullivan on the Eastern Circuit the matter was a priority as the respondent husband was very seriously ill. The parties had married in April 2002 and been living separate and apart since 2006. There was one child of the marriage, aged 3. The assets of the marriage included the family home with an agreed valuation of €500,000 (subject to a mortgage of €154,000), a bank account containing the proceeds of the sale of land which amounted to €250,000 and the wife's two small pensions.

Counsel for the applicant wife told the court that the wife wanted the sale of the family home, and out of that money and the money in the bank account she wanted a sum of €330,000 to purchase a site to build a house. She wanted a lump sum payment of €80,000 in respect of future maintenance for the dependant child which she intended to invest for the child's education. The wife gave evidence and was cross-examined.

The respondent husband's counsel put forward their proposal, he wanted maintenance to remain as is, that is €80 per week; he wanted to remain in the family home as it catered for his needs and wanted to give the applicant the entirety of the monies in the bank account (€250,000). The respondent then gave his evidence.

In coming to a decision the judge took into account that it was a "difficult case and very different from an ordinary case, one couldn't ignore that the respondent is extremely ill".

He was satisfied that the parties had entered the marriage in good faith. He said that the wife and child had to be looked after and that he was satisfied that the respondent was being looked after. He granted the decree of judicial separation, directed the sale of the family home with the net proceeds to be divided 70% to the wife and 30% to the husband.

Of the money in the bank account €120,000 was to be given to the wife for her own use, and €80,000 as future maintenance for the child. The remainder of the monies to be given to the husband. He ordered joint custody of the child to both parents with primary care and control to the mother. He urged the wife to make as much access as possible to the respondent. No order was made as to costs. Counsel for the respondent applied for a stay on this order, which was refused.

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Parties reach unusual agreement in respect of family home

An uncontested judicial separation application which came before Judge John O'Hagan in Northern Circuit Court contained an unusual provision in respect of the family home of the parties. The court was told that the couple had three dependant children, and that the youngest one had health problems. The child had undergone a serious operation and had learning difficulties. As a result of the care 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.

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Respondent father objects to wife and children moving to another town

In an application for a judicial separation before Judge Esmond Smyth on the Eastern Circuit the parties were unable to reach agreement on the applicant wife's wish to move the three children to another town within the same county but a half an hour away from the respondent. The applicant wife was in a new relationship and wished to move to her current partner's house. The respondent did not wish the children to be that distance from him or for them to change schools.

Counsel for the wife stated that the proposed new schools were even better than the children's current schools. The respondent's counsel stated that the children would have to get a bus to the new schools and were able to walk to the current school. The respondent wished for the wife to remain in the family home with the children until they finished school.

Counsel and solicitors for both parties had been attempting to settle the matter through out the course of the day. The judge then said they would resume at 2pm. Over the break the parties reached an agreement that the respondent would agree to the children moving, that the parties would each receive 50% of the proceeds of the sale of the family home and that the respondent would increase the amount of maintenance in respect of the children.

Wife told to enforce barring order before proceeding with separation proceedings

At Cork Circuit Court the respondent husband was not in court and was not represented. The barrister for the wife told Judge Séan Ó Donnabháin that from day one the husband would not cooperate in respect of the judicial separation proceedings.

She said that there had been a number of motions for judgment in default of appearance and that the husband is still not cooperating. She said that the wife was in fear of her husband and had been afraid to proceed previously because her husband had threatened to commit suicide. However her client had availed of counselling and now "feels mentally stronger to pursue with the case".

A barring order had been obtained in 2003 and 2006; however the couple are still living in separate bedrooms in the family home. There are three houses close together, the family home, another house which was built by the husband and a cottage. There is also a farm and in total the assets are valued at approximately two million.

In response to the barrister's submission, the judge said, "The court grants protection, barring and safety orders and all that happens is that they appear as pieces of paper on the court file. She has to commit. We can't have a situation where someone comes in every two years, withdraws the application and comes back again".

The judge went on to raise the question; "What is the point in getting a barring order if no one does anything about it? What is the point of a barring order if it is not enforced? We are now in the same situation we were in two years ago. She needs to get the husband out of the house".

In her evidence, the wife told the judge that the atmosphere was very bad at home. She said that her husband controlled her and that he roared and shouted at her. She said that he used to belt her around the place and beat her while she was pregnant but no longer needed to as he now completely controlled her. The barrister told the court that the husband provides diesel for his wife's car from a diesel tank on their premises. However he would sometimes lock the tank and refuse to provide the diesel as a means of controlling her.

The wife is receiving €300 in maintenance from the husband. The judge directed that the barring order and maintenance payments should continue until the determination of the judicial separation proceedings. The judge also made an order directing the husband to provide diesel for his wife's motor vehicle on an ongoing basis.

He told the wife that she would need to prove bona fides in getting the husband out of the house before she could proceed with the judicial separation proceedings in his absence.

Recognition of foreign divorces—two linked cases

In the first case the applicant wife was seeking recognition of a divorce granted in the UK in 1988. The respondent was not present and the wife had not heard from him in over 15 years. The applicant had gone to great lengths to locate the respondent and had spent a considerable sum advertising in an English newspaper. The applicant subsequently found out that the respondent had been in prison for a period. The Judge made the Order recognising the divorce.

The next case to come before the Judge was the current partner of the applicant in the previous case. This new couple now wished to be married and the Registrar of Marriages was not satisfied with their foreign divorces and required a court order. The applicant husband in this case had lived with abroad with his wife for a number of years and the parties were divorced there. The respondent wife remains living abroad and is domiciled abroad. Judge Smyth was satisfied that the foreign divorce was entitled to recognition in Ireland and wished the applicant here and in the previous case all the best for their future together.

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No maintenance at this time

In an uncontested divorce application which came before Judge John O'Hagan, the judge made an amendment to the terms agreed between the parties. There were two dependant children, aged fourteen and twelve. 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".

Wife was not exercising her free will at the time of the marriage

In Dundalk Circuit Court a young wife sought a decree of nullity on the grounds that she had not freely entered into the marriage. The wife was represented in court while her husband was not present. The wife's barrister told the Judge Michael White that the whereabouts of the husband was unknown, he had last been know to reside in a city abroad. Her husband had been served with notice of the case at his last known address by post. In addition, an advertisement was placed in the local newspaper informing him of the case. The husband was a foreign national and the wife was Irish.

The wife told the court that her husband came to live in Ireland on a study visa in 2003 and they met when they were studying at the same college. The wife told the court "We were friends at the start. He dropped out (of college) and had visa problems. He had visa forms and wanted me to marry him. I refused to get married to him for religious reasons". (they were different religions).

I stopped seeing him and after that he called me and followed me. He knew everything I did…. he locked me up in his apartment and tried to hurt himself. He tried to cut his arms. He threatened he'd harm me and never leave me alone and kill me and after that I kind of went through with it". They married in a registry office and she went back to her own home afterwards, "Nobody knew", said the wife.

The wife's barrister asked the wife "was there a normal marital relationship, if you know what I'm getting at?" The wife said she went home after the wedding and only saw her husband once or twice at college, "after that he disappeared," she said. The wife's barrister said that she had married the husband because of duress, that as a result of the threats she was not exercising her own free will at the time of the marriage, "the marriage lacked the normal features of a marriage. There was incapacity to consent on the part of my client (the wife)…… they never lived as husband and wife."

Having heard the evidence Judge White granted a decree of nullity on the basis that the wife was overcome by the threats and was not exercising her free will at the time of the marriage. The court declared the marriage void and granted an annulment. The wife was ordered to notify the man she had married of the making of the order by way of advertisement in the local paper of the area where he was last known to have resided.

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Insufficient grounds to grant nullity application

A wife applied to Cork Circuit Court for nullity of her marriage on the basis that she did not have full and free consent in entering her marriage. The parties were married for about 2 years. They had known each other for 10 years before that and had been going out with each other on and off for about 8 years.

The wife told Judge Donagh Mc Donagh that she was told by her husband that he had been left his grandmothers house. The parties decided to do work to the house and move in. They spent about €70,000 doing up the house of which she contributed €24,000. Prior to the marriage she knew there were some problems with his business in that there were some unpaid bills. There seemed to be some issue also in relation to tax but her husband to be said he would sell a property he had abroad to sort that out but for the moment his hands were tied. At the time they had been thinking of a lavish wedding but she decided to have something more modest.

She first began to realise that things were not as they seemed when he sold the property abroad but this still did not sort out the bills. One month after the marriage she found out that he did not own the property which he said his grandmother left him. When speaking to her husband's mother it became clear that the house and family farm was in his mothers name and had never been changed from that. The wife gave evidence that she was 'devastated' and that it was a 'bolt from the blue'. Shortly after that the bailiff came in relation to unpaid bills and the Gardaí issued him with a summons in relation to tax. The wife gave evidence that she tried to help him. She spoke to his accountant. Her husband assured her that it was all in hand.

After her marriage she found out that her husband's mother was an alcoholic and that this had been covered up for years. When asked by her counsel why this concerned her, she replied that 'he had been drinking a lot' and that it was a 'big concern to me'. The wife stated that his behaviour was of complete denial, unreasonable, and irrational and that all matters of a shocking nature were later learned.

When asked if she would have gone through with the marriage if she had known of these things before, she replied that she wouldn't. She said that she felt she had been 'dealt with dishonestly' and had been 'conned into the marriage.'

The judge indicated that he felt this application did not fall within the accepted brackets of nullity and that it 'doesn't come close with the standard of nullity.' He felt that you can be conned but 'that doesn't in any way go to the root of the marriage problem.'

Counsel for the wife laid emphasis on the fact that marriage is a contract and the issue was whether the consent was valid. The judge took the view that the 'problem in this case is not a conceptual view of contract vis-a-vis marriage the problem arose vis-a-vis money.' The judge took the view that there was not enough evidence to sustain nullity and refused the application. The parties were granted a judicial separation which had been pleaded as an alternative to an annulment.

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Separating couple wrangle over family home

At the Dublin Circuit Family Court, Judge Martin Nolan heard from a couple who had married in June 1997, had two children, now aged five and eight years, and who were seeking a judicial separation.

Their principal asset was the family home which the wife valued at €575,000 and the husband at €600,000. The judge put the value at €587,000. There was a mortgage of €260,000 and both parties were paying it equally. The wife proposed keeping the family home and buying out the husband while he wanted a sale with the proceeds divided.

The parties had separated in 2003 but had continued to live in the family home. The wife said the husband cared more about football than he did about her which was why they broke up. She had initially sought the separation under Section 2(1)(f) of the Judicial Separation and Family Law Reform Act, 1989 which stated that the marriage had ended more than a year before proceedings began. Her barrister said, however, that his client had had to obtain a previous protection order which he had breached and she now wished to give evidence of his recent bad conduct.

The wife said that some weeks before the hearing they had had an argument during which the husband struck her, giving her a split lip and bruising which she had reported to the Gardaí and which had been seen by her doctor. She had moved out of the house to stay with her mother who lived nearby.

In cross-examination the husband's barrister said it was convenient that she had decided to leave only weeks ago. He argued that she had started a row about money and then struck him. The wife said if she had done that she would have had her hands up then and would not have got "a smack in the mouth".

The barrister said she had provoked the incident ahead of the case and noted that she had not produced any Garda or medical evidence at the hearing. The husband said that allegations of domestic violence were lies. The judge said he had already decided there was "no case on conduct".

The wife had asked the husband to take on a job that would allow him to share child care. She had provided money for him to do this. Before this, she said, he had a "dead-end job".

The husband's earnings became an issue and the wife said he was not declaring all his income for tax purposes. She alleged that he had "kept two books, one for the tax man and one for himself". It was put to her that she had kept the husband's books but she denied this saying that while she controlled all household finances, she knew nothing about his business.

The husband conceded that he had not always declared his true earnings, adding that the wife had suggested keeping two books. She kept his accounts and since that had stopped he had lodged everything he earned to his account. His last P60 had shown earnings of €36,000.

The wife said he had failed to pay proper maintenance. It was put to her that she had a spending problem and that she had emptied their joint account at one stage leaving the husband to borrow to pay his tax bill.

The husband's barrister went through her credit card spending, noting that she had spent almost €800 on clothes and toys for the children in two months. She said this was not excessive when birthdays and holidays were included. The husband had never had a problem with her spending and had told her to go and dress the children for their holiday abroad. The barrister noted some double accounting in her affidavit of means and said it was not accurate. The judge responded that in his experience they never were.

The husband said the wife had begun to spend more than they were earning. She had spent €2,000 on Christmas which was too much. He had offered her €500 and €20 a week to cover half of it which she had refused. He never thought to lodge it to her account. It was put to him in cross-examination that he had allowed his wife's spending at which point the judge said: "From my experience, it is very hard to stop a wife spending." The husband thanked him.

He wanted the house to be sold so that they could each buy a house near each other and continue to share caring for the children. The wife wanted to keep the house because it was near her mother and family and the children were settled in the local school. The proceeds would not cover the cost of two houses, she said.

The judge granted the judicial separation. As for the family home, he had to do justice and his primary responsibility was towards the children. He ordered that the applicant was to reside at the family house with the children to the exclusion of the respondent until the younger child was 18 at which time the house was to be sold.

He put the value of the house at €587,000 and both parties had an interest of 50 per cent in it. He allowed one year for the wife to see if she could buy out the husband's interest at that value. Both parties were to continue to pay the mortgage.

The judge gave the parties joint custody and asked them to come back in a week with exact custody and access arrangements agreed on paper. On maintenance, he said he did not accept that the husband was fully disclosing the case aspect of his employment but he noted that he would have to leave the family home and possibly rent accommodation. He told the husband to pay weekly maintenance at €75 per child to the wife.

He ordered that the wife be responsible for the credit union car loan. The credit cards were to be a joint responsibility and were to be frozen from that date. Both parties were to retain their own pensions. It was up to both parties to maintain an amicable relationship for the sake of the children, he concluded.

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Husband given time to raise funds to buy out wife's interest

Judge Olive Buttimer ordered that a husband be given twelve months to raise €80,000 to buy out his wife's interest in the family home.

The husband had represented himself in judicial separation proceedings. The judge advised the husband to deal with his level of borrowing and debt as it may impact on his home should judgements be obtained and enforced against the house. The wife's counsel stated that there had been a previous court order in respect of inspection facilities in order to value the family home. The husband had torn up the order in front of the Summons Server and that this had caused difficulties in relation to getting the necessary information for this case.

The husband in reply stated that he had not known what the court order meant 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 stated that they would try to proceed without one and try to ascertain the husband's assets and liabilities.

There were two children of the marriage, one whose main residence was with the husband. The husband represented himself as he stated that he could not afford legal representation as he had several current bills and loans.

The wife stated that she had chosen to leave the marriage as it was experiencing difficulties. She stated that she had left to save her brain and that they had only spoken of facts and figures for the last year of their marriage. She said that she had a good relationship with her children and that 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. The husband said he would try and buy out 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 there may be difficulties with this as he had not been servicing the debts and so therefore those financial institutions could seek judgement and attach it onto the family home. She indicated that it may be better to sell the family home.

The husband stated that he was in shock and that he never expected to be on his own. He stated that he loved that home and had no interest in leaving it. The judge interjected and stated that with his level of borrowing she did not know how he could sustain a reasonable offer to buy his wife's share. The husband responded by stating that he could sell a boat he owned. The judge said she was afraid for the wife's share and entitlement. The husband said that he could juggle things around and that he would look after his family as his expenses were not great.

The judge in the end estimated the wife's share in the family home to be worth €80,000 after deducting any joint debts sustained in the marriage and gave the husband twelve months to pay. She further indicated to the husband that he should deal with his debts as he could find his family home being sold if those debts were not serviced.

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Maintenance only outstanding issue in divorce application

In an application for divorce before Judge Sean O Donnabháin in Cork Circuit Court the outstanding matter to be decided was maintenance. The couple had married in 1991 and have two dependent children. They had entered a deed of separation in 2002 which resulted in the family home being transferred to the husband in exchange for the sum of €69,250. The wife lives with her mother and the two children.

Under the separation agreement it had been agreed that the husband would pay €450 per month maintenance but no provision was included as to how this should be calculated. At that time he was earning €650 per week.

At a later date and by oral agreement the husband voluntarily increased the maintenance payment to €250 per week, €80 per child and €90 for the wife. In December 2006 the husband reduced the maintenance from €250 per week to €160; €80 euro in respect of each child.

In his evidence the husband told the court that he had reduced his working week from 5 days to 4 days because of a neck and shoulder injury and his earnings were now €500 per week. He has a new partner who lives with him and who runs a business from the home. Under cross examination he said the business was seasonal and no evidence was given as to the income from this business.

The barrister for the father asked the judge to look at the figures. She said that he had mortgage repayments in the sum of €140 per week and maintenance at the sum of €160 and would therefore only be left with €200.

The wife told the court that out of the €69,250 that she received, she had given her brother a loan of €22,000 which hadn't been paid back. She had given another brother a loan of €5,000 but he had since died. She has a loan of €4,000 with the credit union and the remaining sum had gone on other things.

Her total income is €530 per week which is made up maintenance and benefits and a small income from 3 hours per week employment. She had a serious operation and as a result she has only been working since Christmas. She had been in another relationship for two and a half years but this ended in May 2007.

The judge made an order granting the divorce. He directed that the husband pay maintenance in the sum of €80 for each child and €80 in respect of the wife per week. The judge declined to grant an order for the arrears of maintenance in the sum of €5,000 as he did not believe the husband could afford it.

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Concern over lack of funds to discharge liabilities

A couple came before Judge Sean Ó Donnabháin at Cork Circuit court for a decree of judicial separation. The couple were married in 1971 and have four children. In 1995 a separation agreement was drawn up whereby the family home would be sold and the proceeds of the sale divided 50/50. However, the couple reconciled in 1996 and so the house was not sold. The couple separated again in 2001 and as circumstances had changed since the original separation agreement, the wife sought a different arrangement with regard to the family home. The family home is valued at €250,000 and the mortgage repayments are €99 per month.

The wife is 56 years old and works five days a week. One of the children has been diagnosed with an intellectual disorder and resides with the mother in the family home. She did not want to sell the family home as her child is currently residing there. In addition, she could not afford to buy a new house.

The husband is on disability benefit and currently lives with his sister. He inherited €50,000 from his late fathers' estate which he believes should not form part of the assets. It was submitted on behalf of the husband that the family home should now be sold. He was looking for 40% of the net proceeds. It was argued that his child's condition would not be adversely affected by a change of residence.

At the outset the Judge Ó Donnabháin told the parties that he did not see any point in selling the house when neither party could afford to buy a new one.

Both parties accepted that the wife was not in a position to raise €40,000 to buy her husbands interest out but her barrister put forward an offer. She would pay €20,000 now and €55,000 at some later uncertain date. The 'uncertain date' caused concern for the husband's barrister.

The barrister for the wife explained her client's difficulty. Effectively she would be relying on her youngest child to help her raise the sum of €55,000 in return for an interest in the family home and that there would be some arrangement allowing her to stay there. She said her client could not bind her child to raise the sum within a defined period. She understood, however, that there had to be a default position.

The judge agreed and accordingly the proposed provision was that the wife pay €20,000 now, €55,000 within 5 years and if she failed to pay the €55,000 the husband could then apply to the courts to direct the sale of the house and if the house were sold, he would receive 40% of the net proceeds.

In her formal evidence the wife indicated that she would be raising the €20,000 through a credit union loan and that it would take her a long time to pay it back. She said that she had supported all her children and always paid the mortgage. The judge expressed concern at the wife's ability to ever come up with more than the sum of €20,000.

It was put to the wife in cross examination that the parties had separated in 2001 because she suspected that her husband reported her to social welfare for claiming lone parent allowance when in fact they were living together. She disagreed. It was also put to her that the husband had paid for new windows and repairs to the roof from compensation money he received. She said the windows are now falling out again and that he had not paid for the roof. She told the court that the mortgage would be paid by 2009.

Having heard the evidence, the judge said that he did not believe there was much money and asked if there was much point in imposing a five year constraint. The barrister for the husband submitted that the judge was obliged to take cognisance of the separation agreement and that under the agreement the husband had been entitled to 50% of the proceeds of the sale of the house. The judge said that under the Divorce Act he was required to ensure that proper and adequate provision had been made. He reiterated that he did not consider the option of directing the sale of the house to be a good one as both parties would then be on the housing list. In respect of the father, the judge said that he had the option of accepting "a very high amount of an unrealisable asset or a small amount of a realisable asset".

The husband told the court that the current living arrangements with his sister were not ideal and were envisaged as a temporary measure. He said he had a good job until 1983 but was forced out of work because of his back. He said he has arthritis in his hip and has a trapped nerve in his back. He is on medication for depression and is in receipt of a disability benefit. He told the court that the reconciliation had been going fine until the social welfare officer discovered the wife was in receipt of the lone parent allowance.

The barrister for the wife indicated to the court that there had been five protection orders against the husband. The judge interrupted and said he had read a psychiatrists report and he accepted that the history of the marriage was different to that put forward by the husband.

The judge raised the question as to the effect of the reconciliation on the current position of the parties. The barrister for the wife submitted that the separation agreement required the parties to live apart and as such was void and unenforceable as the couple had resumed living together in 1996. It was submitted on behalf of the husband that the separation agreement had been relied on in 2001 to get the husband out of the home and therefore was fully enforceable.

After much consideration, it was finally agreed between the parties and the judge that the wife should pay the sum of €20,000 to the husband within one month of today's date. The husband would transfer the remaining 20% share of his beneficial interest to the wife for her life and on her death it would transfer back to him. This meant that the husband would be entitled to go on the housing list as he was no longer the named owner of a house. The husband's primary concern that he would be able to pass some interest on was also satisfied.

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House transferred into husband's sole name

On the Cork Circuit, Judge James O'Donohoe heard that a couple who married in 1979 had one child together and the wife had one child from a previous relationship which the husband had adopted. They split in 1984 and the wife had numerous affairs. The husband reared the two children and although he had a maintenance order the wife did not pay him anything. They jointly owned a council house that was bought in 1982 and the husband wanted a property adjustment order in his favour since he said he alone had paid the mortgage from the outset. He had also made all the necessary repairs and improvements to the house from the breakdown in 1984 until now. The judge granted a divorce and transferred the entire ownership to the husband. He put a stay on the property adjustment order and instructed the husband's solicitor to inform the wife to consult a solicitor.

A Day in Court - Dublin

At a single sitting of Dublin District Court, Judge Ann Ryan handles 14 matters, four of which are contested – one by a sole applicant – and six consent agreements. She also hears three ex-parte applications

A father, representing himself, wanted a reduction in his weekly maintenance of €75. He told the judge that while he had earned €540 a week he was now working one week on one week off and when off received €197 a week social welfare. He had no arrears. Since his income was "down €300 every two weeks at the moment", the judge cut maintenance to €55.

In a case concerning a father's access to his child, a psychologist's report contained a proposal that became an interim rule of court and the matter was adjourned to February for review.

In a similar case, parents appeared over access to their three-year-old daughter. The father had previously been granted supervised access every second weekend which he had found unsatisfactory. He wanted his eight hours unsupervised and maintenance reduced from the present €500 a month. His counsel said allegations had been made and a Section 20 report obtained. A report from the Granada Institute had concluded that it was in the child's best interests to have a relationship with her father and a supervised access order had been made. But the availability of supervisors had been a problem.

The father, who had his own business, had cut his staff significantly and said his income had fallen by €900 a month. He had considerable outgoings, he said. When the maintenance order was made, he was earning €1,000 a week. He was now €100,000 in debt partly from solicitor's fees relating to a civil matter. "The solicitors are putting pressure on me. I'm paying maintenance from my credit card. All I'm asking for is a short period, my hands are tied…I'm €10,000 in debt on my credit card," he said. Judge Ryan reduced maintenance to €300 per month and this was to be reviewed within months.

The father in his evidence said that supervised access was difficult to arrange as he lived miles away from the mother. The agreed supervisor would not continue. “I have to pick up the supervisor halfway…they feel they’re being manipulated. I can’t make people do what they don’t want to do.”

The mother’s solicitor reminded him that his client had serious concerns about unsupervised access. “I have addressed all those concerns. I don’t know what more I can do,” he replied.

The mother argued that he had deliberately scuppered the arrangement. Since the consent supervision order in July only two supervised meetings had taken place. Before July when the access was increased, things had been fine. She proposed that a friend of hers supervise access. She said she could contemplate unsupervised access when the child was six or seven. “I have a huge fear if he has her. I don’t think he would harm her intentionally … I don’t even believe he loves his daughter. If he did he would have organised supervised access.” said the mother. The judge granted the father unsupervised access every second weekend in a family situation.

In another matter, a wife sought a protection order against her husband. She made the *ex parte* application on her own, telling court that she had married last year and had had a child. She was pregnant at present. She alleged she had been assaulted by her husband during a row about their child. The judge granted her a protection order.

Finally, a foreign national woman with her child in a pram was granted an order dispensing with the consent of the father for a passport in circumstances where he had not been seen for some years.

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A Day in Court - Galway

In a single sitting of Galway District Court, Judge Mary Fahy dealt with a list of over 70 applications nine of which related to married and 17 to unmarried couples. There was also an application by the Health Service Executive, eight applications for barring orders and 10 for safety orders. Twenty-six matters were taken by the family law District Court registrar against several maintenance defaulters who were paying through the District Court Office and had fallen into arrears. Some were struck out at the call-over of the list while others were adjourned to the next sitting so that they had time to clear their debts.

The first case concerned an unmarried couple with a child. The father had made two previous applications, one for DNA testing of the infant and another to vary a maintenance order. In the father's absence, the District Court had ordered that the mother be paid €60 a week. The man's solicitor told Judge Fahy he was unaware of the court date. The judge said this was nonsense and the mother's solicitor added that her client had not received a penny maintenance to date. The judge told the father that the order had to be obeyed. He had had an opportunity to appeal it but had chosen not to.

If the DNA test proved he was not the father, all the money would be returned to him, but he could not default until this was proven. The mother consented to the DNA test and agreed to share the cost. The matter was adjourned.

In another case a married man with maintenance arrears was brought to court by the registrar, who said the man had made some payments but had stopped again. He owed about €2,600. The man said he was a part-time taxi driver and that work had dried up. He had a new partner and another child and he cared for the baby when his partner was at work.

He no longer saw the children of his marriage as it was a long drive and he could not afford the petrol. Judge Fahy saw no option other than to impose a prison sentence. He had delayed too much, she said, and he seemed to prioritise his new family. She gave him a two-month prison sentence and placed a two-month stay to help him sort out his debt.

Then a married woman sought a barring and/or safety order against her husband. Judge Fahy noted that the woman had been bruised on the last day in court. The woman said that when her husband, who was absent on the day, got drunk he beat her and the children. He broke windows and had given her black eyes. He had beaten her 22-year-old daughter. But she did not have to live there, strictly speaking, said Judge Fahy. She granted a three-year barring order and put a stay on it until 6pm the following evening so that Gardaí could tell the man he had to leave.

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A Day in Court - Cork

On one day, 20 matters are listed for hearing at a sitting of Cork District Court. Nine of these do not proceed and a further seven are routine applications. Four substantive cases are dealt with

In a maintenance and access review before Judge Timothy Lucey the respondent wanted an adjournment because the private solicitor had not formally been given a legal aid certificate nor had he got his client's file from the Legal Aid Board. The applicant argued that yet another adjournment would be "a gross abuse of process" not to mention the difficulties presented by an increase in legal costs.

'Why should the Board be allowed to delay matters?, asked the judge. Following his strong urging the parties eventually agreed and the matter was dealt with on consent.

In an application for maintenance where the respondent lived in another country, the formal application was required to demonstrate to the social welfare authorities that the applicant had done her best to get financial assistance from the child's father. Judge Lucey set weekly maintenance at €20 but expressed the difficulty and potential futility in making such an order without evidence of the respondent's income, assets or liabilities.

The most difficult maintenance application of the day concerned a man who had paid no maintenance for eight years for a 12-year-old. He worked and had a pension and his current partner was on social welfare in her own right. The mother was on a very low income.

The child was not living in the same luxury as the father, said Judge Lucey, and he considered him well able to afford maintenance. He was ordered to pay €50 a week into the mother's bank account. The order was backdated to September 1st, 2008 when the child returned to school. The judge said he could backdate it to the original application but noted that the mother had left this aspect to the court's discretion. All arrears were to be paid by 15th December, 2008.

Finally a barring order application was granted in the absence of the respondent. He was currently out of the family home but his partner said she lived in constant fear of him and she had suffered considerable psychological abuse. A three-year order was granted with immediate effect to be served by a member of An Garda Síochána.

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HIGH COURT APPEALS

The High Court considers whether a property adjustment order of the Circuit Court in a judicial separation case could or ought to be varied

Mr Justice Henry Abbott heard an appeal from an order made in the Circuit Court. The case had its origins in an order for judicial separation and ancillary reliefs made in June 1996. At that time, the parties had a family home valued at Ir£45,000 with a mortgage of Ir£14,230. This left equity of Ir£30,770 in the house. The parties argued about how the deposit had been raised and what contributions each had made to the repayments, but there was no dispute about the fact that they now relied on social welfare payments.

The couple had married in 1974 and had five children. The applicant wife, after the judicial separation, had another child by a new partner.

The judge granted the parties a judicial separation in June 1996 and directed that the husband transfer the house to the wife for Ir£10,000 but no payment date was set. She dispensed with the husband's consent to any future sale of the house and made an order giving the wife the right to occupy the house to the exclusion of the husband.

The wife did not pay over the sum and the husband took no steps to enforce the order. The wife said that by about December 2002, she had sufficient funds saved, but when she tried to pay, her husband would not co-operate. In 2003, she tried to enforce the order by bringing an application which was eventually heard in February 2004. The husband opposed this and the Circuit Court judge indicated that the husband might have his own application to make.

In 2005 the husband brought a motion seeking to have the house sold and the proceeds distributed fairly between the parties, or, alternatively, that the court should indicate a future date when the house should be sold and directing in what proportion the proceeds should be divided.

He wanted the order giving the wife the exclusive right to reside in the family home varied, and/or that the court should direct her to pay him a sum set by the court. The Circuit Court refused this motion and the husband appealed to the High Court.

Counsel for both sides debated whether the case should be considered under the Judicial Separation and Family Law Reform Act,1989 or the Family Law Act,1995. Though the judicial separation was ruled in June 1996, the 1995 Act did not come into force until August 1996. The debate considered whether the court could vary a property adjustment order on a family home. Both barristers agreed that such an order could not be varied under Section 18 of the 1995 Act but that that section allowed a variation in a right of residence. The wording of the original judgment suggested that the case should be decided under the 1995 Act.

The husband's counsel described her client's poor circumstances since the judicial separation. He had initially moved in with his mother and brother, but that arrangement had ended. He had lived rough for a time and now depended on hostels. She argued that this, along with the upsurge in property prices during the period in question, should be viewed as a change in circumstances. The court ultimately rejected this on the basis that the judge would always have envisaged a rise in the house's value.

The wife's counsel said that the judge had taken into account that the wife reared the children and paid the mortgage without her husband's assistance. Her client had succeeded in doing this despite her difficulties. She said the judge's order did not contemplate a sale and that the husband's application would remove the wife's right of residence and replace that provision with an order for sale. She argued that this amounted to a variation of the judge's property adjustment order and that Section 18 of the 1995 Act specifically prohibited such an adjustment.

Mr Justice Abbott evaluated the husband's case under each heading as contained in Section 16(2) of the 1995 Act. He believed that selling the house would be more detrimental to the wife than it would be beneficial to the husband.

The wife had two dependent children, one of whom was from her marriage to the husband, and she was not in a position to raise a mortgage. He said: "Any lump sum over and above that to which he [the husband] is already entitled, under order of the court, might well be frittered away in a short time without any lasting benefit."

He compared the case to a previous High Court appeal where the decision favoured the retention of the house by the spouse whose abilities "presented the best chance for the family to establish an equity in the house".

In conclusion, he believed that though he could vary the property adjustment order, he considered that the first judge's decision ought not to be varied, given the circumstances of the case and the weight to be given to each factor under Section 16(2) of the 1995 Act. He said the husband was to have the lump sum as originally awarded but with the benefit of Court's Act interest, which is about 8 per cent.

In a case concerning the residence of a 20-month-old child of unmarried parents the High Court looks at whether the Circuit Court was right in deciding to refuse an absent mother's request for an adjournment.

The High Court was asked to review a Circuit Court judge's decision on the residence of a child of unmarried parents who had been the subject of several applications in the District Court. The mother was challenging the decision. During the leave stage of the process, the father was granted the right to be a notice party to the judicial review. The State then withdrew on the part of the respondent judge.

In the District Court, the father had sought guardianship, access and custody rights over his son. Before the hearing the mother had indicated that she would not attend because she and the child no longer lived in Ireland. The father sought, and was granted, an *ex parte* injunction preventing the child's removal from the country. The mother had that injunction vacated after she undertook to attend the District Court hearing.

At that hearing she said the Irish courts had no jurisdiction to decide the case as she and the child had been living and working abroad when the proceedings were issued. The father disputed this, but the District Court judge agreed with the mother and dismissed the applications.

The father appealed that decision to the Circuit Court. He notified both the mother's solicitor and the mother herself at her overseas address about a month before the hearing date. Before the appeal, he was granted a District Court order clarifying that the mother's promise to attend all District Court appearances was to include any appeals arising, along with a production order for the child on the appeal date. This was also served on the applicant mother who did not attend the Circuit Court hearing and instructed her solicitor on the morning in question that she wished to apply for an adjournment.

The father resisted this application on the grounds that it could be prejudicial to him under the Hague Convention, which concerns children being taken by one parent out of their country of residence without the permission of the court or the other parent. If a court did not deal with a "residential issue" question expeditiously, the courts in that country may be seen to have lost jurisdiction. The Circuit Court judge then refused to adjourn the appeal on the day of the hearing and proceeded to hear evidence from witnesses. The mother's Irish doctor said she was originally intended to have the child in Ireland, and an adviser from the college she was attending said fees had been paid for a further 200 hours for the course, which would have taken about a year to complete.

The judge then heard legal submissions from the father's counsel that suggested habitual residence was flexible and had to be dealt with on a case by case basis, within the guidelines of statute. The judge concluded that the Irish courts did have jurisdiction to hear the matter, but she adjourned the applications to a later date to allow the mother attend.

In the judicial review the applicant mother claimed that the Circuit Court judge acted in an unfair manner in not allowing an adjournment on the day. Her counsel also argued that the judge applied an incorrect test in assessing the child's habitual residence, that the judge failed to consider the relevant law on the child's habitual residence and finally, in not hearing from the mother, the judge would not have been in a position to make a decision on residence. On those grounds, she argued, the decision should be vacated.

The father's counsel argued that the judicial review procedure was not a new appeal on the merits of the mother's case and that the court could not decide whether an adjournment should have been granted, but whether the Circuit Court judge acted within her discretion to grant or refuse an adjournment. He also said that in the judicial review proceedings the High Court could not look again at the merits of any argument the mother might have made about the child's residence if she had attended the appeal. He said this would create a three-tier system in the courts.

Mr Justice Garrett Sheehan refused the mother's application to vacate the decision of the Circuit Court judge. Having reviewed the evidence on affidavit, he said the mother had not explained why she had taken no steps before the morning of the hearing to have the matter adjourned. He had to conclude that she had decided not to attend the hearing and therefore refused to abide by the order of the District Court judge. This appeared to be a calculated risk that it would be adjourned in her absence and that she had taken no steps to inform the father that she would not attend. The judge's decision to proceed was entirely proper and he refused to enter into analysis of her other arguments on the correct test in law to be used in assessing the residence of the child.

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