

THE HIGH COURT

[2023] IEHC 766

[2021 No. 86 M]

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

IN THE MATTER OF THE FAMILY LAW ACT 1995, AS AMENDED

BETWEEN

D

APPLICANT

– AND –

D(3)

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 29th December 2023.

SUMMARY

In this judgment, I indicate how I will proceed following on an application for variation of maintenance.

1. I originally gave judgment in this case in January 2023. This followed a hearing at which Mr D gave evidence that, as I said in my original judgment, was, I regret to observe, ‘patently false’. The difficulty with misrepresenting oneself to a court is that so much of what happens

in court relies on truthfulness. Once misrepresentations are discovered, a court has to take every care that it is not misled by the party who has been caught out in misrepresentations.

2. For the benefit of the parties I note that the anonymised terms used in this judgment have the same meaning that they had in my original judgment.

3. Mr D behaved badly as a director of Company A. As I said in my original judgment:

“3. *Regrettably, trouble may lie ahead for Mr D as regards his actions as a director of [Company A]. It is clear from the evidence that he has been using [Company A]’s monies as something a privy purse, latterly spending large untaxed amounts of the company’s funds on what might euphemistically be described as ‘personal entertainment’. Mr D accepts that this expenditure occurred and has suggested that it has ceased (though, as will be clear from the next paragraph below, it has not). This usage by Mr D of [Company A]’s monies has not been accounted for properly in [Company A]’s account-books. Consequently, the annual accounts filed with [Country A]’s equivalent of the Companies Registration Office do not correctly represent [Company A]’s financial position. Mr D says that he intends now to approach the authorities in [Country A] and tell them the truth of what he has done. I do not know if he will or not. What I do know is that he has been saying this since at least August 2021 and has done nothing about it. If the authorities of [Country A] are ever approached or otherwise become interested in the affairs of [Company A], Ms D may well have reason to be thankful in the years ahead that she was never a director of [Company A].*

4. *Although Mr D maintained in his questioning of Mr Harding (a forensic accountant called by Ms D) that he had ceased to use [Company A]’s proceeds as he had previously done, Mr Harding was able to show that in a roughly 4-month period across April to August 2022 Mr D’s ‘personal entertainment’ expenditure (using primarily or exclusively untaxed company monies) has continued unabated. Thus, Mr. Harding gave evidence that the average amount of what he called “anomalous expenditure” (revenue authorities and lawyers might use alternative terminology) was close on €16k per month (yielding an annualised figure of about €190k). I note too (with*

regret) that the irregular accounting in [Company A] only came to light due to queries raised by Mr Harding and the details of same were never volunteered by Mr D. I must also regretfully observe that it is clear from the evidence before me that Mr D's affidavits of means of 15th November 2021 and 15th November 2022 contain falsehoods (especially as regards Schedule 2 Income and Schedule 4 expenditure). It is very hard as a court to achieve an optimally fair outcome between parties when one of the parties presents evidence that is patently wrong.

5. *In passing, though the issue was discussed when the financial evidence was given in this case, I do not see that I need to get into how [Company A]'s affairs (or indeed Mr Ds personal tax situation) might be regularised with the authorities of [Country A]. They should of course be regularised and, for the avoidance of doubt, I disapprove of the fact that (i) taxes owed in [Country A] have not duly been paid in [Country A] to this time, (ii) Mr D has used company funds as he has, potentially to the detriment of the creditors of [Company A] and of course with an impact on the accounted-for profits of [Company A], and (iii) Mr D has allowed incorrect accounts to be filed with [Company A]'s equivalent of the Companies Registration Office.”*

4. At the original hearing before me, Mr D expressed remorse for the manner in which he had spent Company A's monies.

5. It was my understanding from the original hearing that Mr D intended to rectify matters imminently with the authorities in his home country.¹ This he has not yet done and I am concerned that he may be seeking to use the *in camera* nature of these proceedings to conceal his corporate and revenue wrongdoings in such a manner as to impede the proper and informed course of justice, which is not of course what the *in camera* rule is designed to achieve. I will

¹ In the evidence before me I have a letter from a firm of accountants in Mr D's home country in which he states that “[Mr D] *has asked us to make a voluntary disclosure to [the revenue authorities of Mr D's home country]...in respect of under-declared company profits and under-declared personal income*’. However, there is no mention in this of any intention to make such report. Nor, I understand, has any such report been made close on a year later. And of course there is no mention of self-reporting of corporate governance misdoing, including the filing of false accounts by the company of which Mr D was director.

return to this concern later below. First, I turn to a brief consideration of what Mr D has done in terms of rectifying his affairs since my original judgment in this matter.

6. Following on that judgment, Mr D has had himself declared bankrupt in Mr D's home country. As I understand matters from the way in which they have been sketched in the evidence and submissions before me, the way in which this process occurs in Mr D's home country is that (i) one applies for bankruptcy, (ii) within a short period thereafter, one is adjudged bankrupt by that country's insolvency service (possibly after some questions have been raised by the adjudicator, an employee of the insolvency service), (iii) the official receiver thereafter seeks more information about the bankrupt's assets and income, *etc.*, and (iv) (I presume) such assets and income as are identified are used in (part-) discharge of the bankrupt's debts.

7. Two points arise. First, the act of being adjudged bankrupt in Mr D's home country involves a self-reporting of one's assets and liabilities, here from someone whom, I regret to observe, has not hesitated historically to provide evidence to me that is patently false. Second, as I stated in my second judgment in this matter (which issued following a contempt application made by Ms D), *"Like counsel for Ms D, it is not clear to me how Mr D has made some of the representations that Mr D appears to have made to the insolvency service of Country A."*

8. I am told that as part of the bankruptcy process, Mr D's bankruptcy file will be passed to the tax authorities of his home country, *i.e.* he no longer appears to have any intention of approaching them directly despite my firmest impression at the original hearing that Mr D intended to remedy his affairs in his home country imminently. In this last respect, as I have already stated, it is not clear to me how Mr D has made some of the representations that he appears to have made to the insolvency service of Country A. Moreover, the bankruptcy file, as I understand matters, will relate to Mr D's revenue liabilities only, not to any liabilities that he has incurred for his actions as a director.

9. Remarkably, Mr D after all that he has done avers as follows in his affidavit evidence:

"Correspondence [from Ms D's legal team] is exhibited...which claim criminal offences and a breach of statutoryThe letter alleges that Company A is in breach of the Insolvency Acts, regulatory and contractual obligations and that the accounts present a false picture. After a detailed consideration of the various alleged serious

breaches the applicant says, making a complaint [to the authorities] 'is very much a last step, our client would much rather talk to you in a manner that is constructive and seek a consensual resolution...'. The letter is silent on what a consensual resolution is however, the meaning is clear, the applicant will turn a blind eye to the regulatory and other breaches, if an agreement can be reached."

10. A 'consensual resolution' to my mind means merely that it is best for the parties to discuss how to resolve matters; at no point is it suggested that anything required by law to be done would not be done. It is telling as to Mr D's mindset that he assumes that what is proposed is an agreement to conceal the unlawful, and doubly telling as to his approach to matters that he would seek to 'weaponise' an effort at resolution and throw it back at Ms D, when it is his use of unauthorised company withdrawals that is the central wrong (or at least a central wrong) in his dealings with Company A and Ms D.

11. Obviously, it is for Mr D's home country to police corporate and tax wrongdoings done within its frontiers. Likewise, subject to any applicable legal constraints and obligations, it is a matter for Company A and Mr D's brother as to what they respectively decide to do. Where I can and do take legitimate concern is with the notion that the *in camera* nature of Irish proceedings before me would operate in such a manner as to impede the proper and informed course of justice anywhere. Again, I will return to this aspect of matters later below.

12. I turn now to the variation of maintenance application that has been made before me. The background to this application, as I understand matters, is that (i) Mr D considers that I got matters wrong in my original judgment (following on his untruthful evidence to the court)² – for the avoidance of doubt I do not consider that my original judgment was in any way wrong – ; and (ii) more pertinently perhaps, Mr D's self-declaration of bankruptcy (leading to the near-automatic adjudication of bankruptcy prior to the involvement of the trustee in bankruptcy) offers a basis for a variation of the payment of a maintenance order with which (a) he has never complied, and (b) in the circumstances now presenting, he claims that it is impossible to comply.

² Quite remarkably, in some of his averments in this application, Mr D seeks to blame Ms D for his untruthfulness averring that '[Ms D] knew or should at least have suspected that she did not have the proper information about my finances and Company A's finances', *i.e.* she should have known or suspected the extent of his misdoings and/or untruthfulness and proceeded accordingly. I do not accept this as a proposition.

13. Before turning to the financial substance of Mr D's application, I should note what Ms D makes of matters. She avers, among other matters, as follows:

3. *...[O]n...8th of February 2023, Mr Justice Barrett made various orders for maintenance....[S]ince [that time]...the Respondent has failed to comply.*
4. *I say that as the respondent has wholly failed to comply with the order of the court...he is not entitled to the reliefs as set out in his motion....*

[Mr D separately avers that he has made best efforts to comply with the court's orders.

5. *...I say [that in]...addition to [the maintenance order]...there was also an order for vouched expenses in relation to the children['s] educational and dental needs....I say that the respondent has continually ignored requests from your deponent to discharge significant vouched expenses in relation to the dependent children. I say that this has contributed significantly [to] the difficult financial position your dependent finds herself in, whilst she recovered from serious illness....*
6. *I refer to...the respondent's affidavit, wherein he avers to having been adjudicated as bankrupt in [his home country]....I say and I am advised...that the process wherein a person is declared bankrupt in [Mr D's home country] is no longer a court-driven process...but rather that the person self-refers to an insolvency agency and they make online application to be determined bankrupt. This is then granted by a civil servant without any formal examination of the individual's financial situation. The civil servant relies on honest and accurate representation made by that person in their application. There is no detailed scrutiny required by the civil servant at the time they declare a person bankrupt under this process.*
7. *I say and believe that the respondent cannot rely on this bankruptcy determination to vary Mr Justice Barrett's order as it is not a finding of a tribunal or a court. I say and I am advised, further, that the respondent is still subject to investigation in relation to his debts and liabilities under this process by the trustee of the bankruptcy. I say and am advised that the debt*

has not been verified by [Company A]...to the trustee of the bankruptcy. I say and am advised that, with regard to the stocks and shares of [Company A], the trustee of the bankruptcy will not merely accept the figures provided by the respondent and will require independent verification and valuation of same....

8. *I say that the respondent has continued to frustrate the implementation of this Honourable Court's order by refusing to cooperate with the administration of the bankruptcy estate.*

[Mr D separately has averred that this is not so.]

I say and am advised that the process is a complex matter which requires time to resolve all matters pertaining to it. I say and I am advised...that the maintenance payments fall outside...the bankruptcy, therefore meaning that payment of the outstanding maintenance cannot be enforced by the bankruptcy trustees.

[I do not fully understand this averment as worded. What may be intended to convey (I do not know if this is so) is that the trustee does not see maintenance payments as debts that fall to be discharged as part of the bankruptcy.]

I say and [am] advised that...the respondent and his accountant have failed to satisfactorily cooperate with the trustees. I say and am advised that the trustees are considering making an application to court to suspend the respondent's automatic discharge from bankruptcy....

[Mr D separately denies wrongdoing in the context of the bankruptcy proceedings. He suggests that a contretemps with the trustee last September as to the allegedly late provision of documentation was a mistake on the part of the trustee. The trustee admitted to being mistaken as to having provided Mr D or his representative/s with a list of outstanding documentation. However, despite this formal deficiency, the trustee clearly did not see any substantive deficiency to present, moving on to observe as follows in the email of 27th September 2023 in which the error is acknowledged:

“Nevertheless, there are no matters raised that were not discussed in our meeting....and our expectations have not been met to date, hence our desire to progress matters as quickly as possible.”

So there does seem to be some difficulty presenting in progressing the bankruptcy, with the blame for that difficulty lying at Mr D’s door.]

[Ms D moves on to aver to her view, based on written correspondence received from Company A (signed by Mr D’s brother), that Mr D continues to play an active part in its affairs and that he has disclosed details from these in camera proceedings to his brother. It is troubling if he continues to be involved in the promotion or management of Company A as I understand from the papers before me that for Mr D to be so involved is a criminal offence. Ms D then continues as follows.]

11. *...I further say that the respondent has still failed to pay the VRT on the camper van further to both interim and final orders in this regard and continues to deny his ability to discharge his obligations to this Court. The respondent has also failed to transfer the [Brand of car]into my name as directed. I say that the respondent has instituted proceedings and retained legal representation to continue to frustrate the efforts of your deponent to maintain herself and the dependent children at this time.*
12. *I beg to refer to...the respondent’s affidavit in which he refers to having rented two properties....Your deponent disputes that this is ‘historical’ as the respondent suggests....[T]he respondent was renting those properties while claiming [that] he was unable to afford maintenance.*

[As of 15th December, Mr D avers that he is renting only one property. That may be true as of that date. It does not meet the allegation made by Ms D as to a previous date.]

13. *I say that these proceedings have had a detrimental effect on your deponent and on the dependent children. I say that your deponent and the children are*

currently homeless since I could no longer pay rent. We are residing with your deponent's parents at their kind invitation....

14. *I say that the respondent has continued to frustrate the order of this...Court....I say that he has continued to refuse to give any satisfactory explanation as to his non-compliance with court orders. I say that it is clear from correspondence with the trustees of the bankruptcy proceedings that his application for bankruptcy was...designed to frustrate the orders made in these proceedings and prevent your deponent from ever receiving the proper provision as determined by this...Court.”*

14. In passing, I note that in my original judgment, I treated at some length with the unpleasant HR-related treatment meted out to Ms D by Mr D, Company A (at his behest), and a ‘HR company’ which Mr D engaged. These ostensibly HR-related dealings (I believe myself they were just a nasty turn in the marriage breakdown) occurred at a time when Ms D was seriously ill. They involved the HR company (acting at Mr D’s behest) levelling a charge of breach of Company A’s HR policies at Ms D at a time when Mr D (the person behind these charges) was taking upwards of the equivalent of €20,000 a month from the company, untaxed and without permission, to spend on ‘personal entertainment’. Following on my judgment, this ill-treatment of Ms D appears to have continued to the extent that she was dismissed by Company A (of which Mr D’s brother is now sole director) on 23rd September 2023. For my part, I would simply note that I am struck by the remarkable seriousness with which Company A, a company of which Mr D’s brother is now sole director, appears to approach its handling of HR matters (at least so far as its treatment of Ms D and her alleged HR transgressions are concerned), yet appears satisfied (so far as I am aware) to take no action in terms of expressly reporting to the authorities Mr D’s protracted extraction of company funds from the company without authorisation, and his repeatedly allowing false annual accounts to be filed during his tenure as a director of Company A.

15. In this last regard, I note that I have been provided with draft accounts of Company A for the year ended 30th April 2023. These have to be filed by January 2024. They have been prepared by the same firm of accountants in respect of which Mr D has sought advice concerning his misdoings with the company monies. (A letter of advices was received from this firm of accountants by Mr D dated 3rd February 2023). One would struggle in the current draft of the financial statements to find any express mention or suggestion that the director who

resigned had, for a period of time, spent tens of thousands of euro each month on his ‘personal entertainment’, without authorisation from the company (and without of course declaring that income). Where I *think* the monies are accounted for is in the figure of 816,186 of ‘Disallowed Expenses re Prior Years’ (in the Trading and Profit and Loss Account page, which does not form a part of the statutory financial statements). Again, however, they are only draft statements and one has yet to see whether Mr D’s brother will be satisfied to put his name to the company accounts in all the circumstances presenting.

16. There are difficulties with the financial information that has been supplied by Mr D in support of his application for a variation of maintenance:

- (1) he states that his rent is paid by his parents but gives no indication of whether and how much tax he has paid on the amounts received.
- (2) he gives no explanation of how someone who is ostensibly bankrupt is able to pay for legal representation (barrister and solicitor) in the contempt and maintenance variation proceedings or how this was paid.
- (3) he gives no explanation of how he has been able to afford the advice of an accountant in Mr D’s home country or how this was paid.
- (4) he has given no explanation of how, at least for a time, he was possibly paying rent on two properties in Ireland.
- (5) he has provided a series of A4 pages of what appear to be bank deposits/withdrawals; however, these are on un-headed paper and I have no idea if they are complete or not. In truth, I do not even know what they are.
- (6) he has provided three electricity bills, for a roughly three-month period to June 2023, in the amount of c.€157, but no later bills and given no indication of how he is paying same. While it would be a mistake to go on the bills for one quarter, this figure is markedly different from the €250 p.m. that Mr D claims, in his affidavit of means, to spend on electricity.
- (7) he has given no indication as to what, if any, state benefits he is receiving.
- (8) apart from a few payslips containing the usual tax deductions, he has provided no tax related documentation (either in Ireland or in his home country); the payslips end in May even though this matter was being heard

in December and it would have been perfectly feasible to hand up in court the additional payslips that issued in the intervening months.

- (9) his liability on the ***fields property appears to have remained static since at least 21st March 2023 when in excess of €60,000 was owed, despite the elapse of time between the insolvency papers in which this amount is stated and the affidavit of means.
- (10) he makes no mention of the rent received on The ***** House property despite mentioning this in his insolvency papers.
- (11) he lists the outstanding VRT liability but does not quantify same.
- (12) he maintains that he spends nothing at all on (i) heating which seems unusual, (ii) a TV licence (an offence if Mr D has a television set, though it is possible that he does not), or (iii) dry cleaning/laundry, which is possible but seems a little unusual for someone with an office job who likely dresses occasionally in a suit.
- (13) he maintains that he spends nothing at all on clothes or shoes, which again is possible but seems a little unusual for a gentleman who has consistently been notably well presented in court.

17. It is also difficult to reconcile some of the financial details in Mr D's affidavit of means with Mr D's insolvency papers, *e.g.*,

- (a) those papers state him to be living in his home country whereas in truth he seems to be renting property here.
- (b) he claims as of 21st March 2023 not to have been employed by anyone in the previous 12 months despite having been employed by Company A.
- (c) he includes details of a Marriott Vacation timeshare in his affidavit of means which appears to get no mention in his insolvency papers.
- (d) he, in the insolvency papers refers to an Ulster Bank account in Ireland, no details of which are in his affidavit of means.
- (e) he refers to a Natwest Bank Account (ending 09), no details of which are in his affidavit of means.
- (f) he refers to a Natwest Bank Account (ending 52), no details of which are in his affidavit of means.

- (g) he refers to a Natwest Bank Account (ending 43), and states that to have a present balance (as of 21st March 2023) which does not tally with the details for that date in the Natwest Bank Account Statement (for account ending 43) in the papers before me.
- (h) he refers to an offshore bank account (ending 00), no details of which are in his affidavit of means.
- (i) he refers to a second offshore bank account (ending 98), no details of which are in his affidavit of means.
- (j) there seems to be some confusion as to who owns the [Brand of Car], with Mr D stating himself to be the owner in the insolvency papers, and stating Company A to be the hirer in his affidavit of means.

18. Mr D seeks the variation of the existing maintenance order under s.18 of the Family Law Act 1995. That provision states, among other matters, as follows:

- “18. (1) *This section applies to the following orders...(b) a periodical payments order...*
- (2) *...[T]he court may, on application to it in that behalf by either of the spouses concerned...if it considers it proper to do so having regard to any change in the circumstances of the case and to any new evidence, by order vary or discharge an order to which this section applies, suspend any provision of such an order or any provision of such an order temporarily, revive the operation of such an order or provision so suspended, further vary an order previously varied under this section or further suspend or revive the operation of an order or provision previously suspended or revived under this section...*”

19. Here Mr D claims that the fact of his having been adjudged bankrupt in and of itself gives ground for acceding to the present application. However, as mentioned above, a closer examination of the way in which bankruptcy occurs in Mr D’s home country (to the limited extent that it has been sketched out for me by the parties) reveals that all that has occurred is that Mr D self-referred himself to the insolvency service, was granted an order on the basis of the information provided (and on the assumption that that information was true), and with the

trustee in bankruptcy dealing with the truth of matters thereafter. Given the particular manner in which the bankruptcy process is structured in Mr D's home country, I do not see that the fact that an adjudication in bankruptcy has been secured on the assumption that what Mr D has stated to be true (when he was previously guilty of patent falsehood before me) suffices in and of itself for me to vary the maintenance order. Coupled with the foregoing is the fact that the affidavit of means sworn by Mr D in the context of this application is highly deficient in terms of the information provided and even more deficient when one considers it by reference to what has been stated in the insolvency proceedings (in the manner described by me above). And again I have to bear in mind that Mr D has not shrunk from falsehood in the past. It follows that I consider the present application to be somewhat premature. Even if it were not premature the evidence placed before me in terms of his current means suffers from the various deficiencies described above. So what should be done?

20. I have to acknowledge that, notwithstanding the structure of the bankruptcy process in Mr D's home country, it is the case that he has been adjudicated bankrupt (albeit subject to the caveats that I have mentioned above as to what precisely this involves in Mr D's home country and the extent to which it relies on the truthfulness of what Mr D has stated to the insolvency authorities in his home country [notably when he has a history of having been untruthful before me]). In all the circumstances presenting, it seems to me that the fairest way to proceed for all concerned is that I will not, at this time, vary the amount of Mr D's outstanding maintenance liabilities at this time. However, in acknowledgment of the details that he appears thus far to have provided to his home country insolvency service I will suspend (*i.e.* not extinguish) the need to pay more than €3,000 per month for the duration of the bankruptcy process (backdated to the commencement of that process in March 2023) or for a period of six months from the date of this judgment, whichever is shorter (the 'Suspended Period'). That monthly figure of €3,000 is an amount which Mr D appears to find affordable. At the end of the Suspended Period, I will consider matters afresh. The parties should note that I am not at this time extinguishing any unmet liabilities under the maintenance order; I am merely suspending for a short period when they fall to be paid so as to allow the bankruptcy process to work through to completion and/or so that I can see how matters are progressing six months from now, whichever is the shorter period. (All of the foregoing comes subject to what I state in the next paragraph.)

21. I will not vary the previously ordered liability for Mr D to meet his fair share of any medical or dental needs with which his children present. Nor will I suspend his liability to meet those expenses (duly vouched). Even in Mr D's affidavit of means – so taking his case on his word, something I do with some unease – there does seem to be some surplus cash floating around. For example, I do not believe by reference to the one quarter's worth of bills put before me that Mr D is spending €250 p.m. on electricity, the monthly entertainment/socialising budget of €100 can be dipped into in any one month, and one or two ferry trips can be avoided (saving €200 a go). I do not say any of this lightly and I know that cutbacks in any of the foregoing will be hard to bear for so long as they last; however, the health and dental health care of Mr D's children must take priority in terms of where their best interests lie. Indeed, he has been at pains to stress throughout the various hearings before me (and I believe him) that he loves his children and wants the best for them.

22. I note in passing that I was referred to two judgments by counsel for Mr D. The first is the long-ago decision of the Supreme Court in *H v. H* (Unreported, Supreme Court, 24th October 1985). There, the then Costello J. was reversed on the facts because, per Finlay CJ, he was “*probably by nature of some of the accounts and documents produced before him in evidence led into error*”. As I understand, the contentions of counsel for Mr D in this regard, the equivalent of the tens of thousands of euro per month that Mr D took for a time from Company A's account to pay for (what, rather than delve into their true nature, I have taken to describing euphemistically as) ‘personal entertainment’, were neither spendings nor earnings but actually a sequence of director loans and have now been added to the director loan account, yielding a tax cost for Mr D (and possibly also, I note, for Company A given that Mr D was both a shareholder and director). Ms D takes a rather different view of matters. Even Mr D's brother, his former co-director and now the sole director of Company A, seems to take a varying view of matters, assuming he is now ready to sign off on the revised accounting that features in the presently draft accounts. After all, in a letter of 25th February last, written by him in his capacity as a director, that brother writes:

“As a result of your disclosures relating to the incorrect accounting entries [sic] you have put through the Company accounts in recent years. I feel it is inappropriate for you to continue to have any further access to the Company bank account. Therefore, I need you to give me the access details for the

bank so I can take the necessary steps to remove you from the bank mandate and restrict any future access.

In addition, as you have abused your decision as a director of the Company, I would request that you resign as a director with immediate effect.

Please confirm your agreement to the above so that I can take the appropriate action to update the details at [the state registry]’.

23. The mention of “*incorrect accounting entries*” (*sic*), the decision to restrict Mr D from any future access to the company accounts, and the statement by one of two directors to another that “[Y]ou have abused your decision as a director of the company” are all factors that seem difficult to reconcile with the notion that Mr D’s repeated dipping and delving into the monies of Company A were but innocuous director loans inadvertently mis-accounted for. So I do not see that it is necessarily the case that Mr D is correct in this regard and that the original judgment proceeded on some undoubted error – and I am not even sure that it is open to Mr D to seek to litigate this point at this time, following on my original judgment in this matter, though I have addressed the point in any event. I do not see that this case is akin to *H v. H*.

24. As to Mr D having been ordered to do the impossible, I do not see given the stage at which the bankruptcy proceedings now sit and the really deficient affidavit of means now before me (and the difficulty of reconciling it with what he has stated in his bankruptcy proceedings) that I could properly conclude at this time that the impossible has been ordered. The approach that I intend to take seems to me to be optimally fair to both sides, partly-capping Mr D’s liability (but not extinguishing it for a time) to a level that he does find affordable and seeing how matters stand at the end of the Suspended Period. In passing, I note that among the tasks that Finlay C.J. identifies as falling to a trial judge are “*to ascertain the true net take-home pay or income of the husband*” (at p.8). At the original hearing Mr D impeded this process by being false in his evidence; and again, given the extremely deficient latest affidavit of means (as considered above) and the difficulty of reconciling it with what he has stated in the bankruptcy proceedings, Mr D has impeded and continues to impede my so doing.

25. In *F v. F* [2008] IEHC 471, [2011] 2 IR 100 a quite cataclysmic external event had occurred in terms of the sale of a property (from the funds of which sale proper provision was partly to be made) in that “*through no fault of the parties, and due to the dramatic and*

unforeseen turmoil in the financial markets, known as the credit crunch, the price at which [certain] premises [were]...to be sold [had] fallen dramatically...[being] the result of a dramatic collapse in [Ireland's]...property industry, which was largely unforeseen by a population who felt (at worst) that there would in fact be what was referred to as a 'soft landing' in the property market" (at p. 106). Here, nothing similar has occurred. Mr D has self-referred himself into bankruptcy and been adjudicated bankrupt based on the facts that he has provided. However, Mr D has previously been guilty of falsehood before me, somewhat colouring my impression as to reliability of Mr D's self-reported 'truths', and the trustee in bankruptcy is still probing the truth of matters. So I do not see that one is in the same terrain that presented in *F v. F*. Rather I consider that the proper way to proceed in the circumstances presenting, and the one that will yield optimal fairness to both parties, is as I have outlined in para. 20 above.

26. Finally, it will be clear from some of what I have already stated in this judgment that I am concerned that Mr D is, to use a colloquialism, playing 'ducks and drakes' as regards the family law system in this country and the insolvency process in his home country. As I mentioned above it was my hope following the original hearing of this matter that Mr D would seek properly to resolve his affairs. To this point, almost a year onwards, apart from placing himself in bankruptcy he has not done so. The *in camera* nature of court proceedings is a privilege bestowed on parties to facilitate truth-telling and honesty in the context of matrimonial proceedings, and I admit to some concern that it is being relied upon for contrary purpose in these proceedings, not least though in keeping truths from the insolvency service of Mr D's home country.

27. As the parties know, I had previously expressed concern that if I published my original judgment it could be that some finding therein might impinge on Mr D's presumption of innocence in his home country in what I then understood was his intention to resolve matters imminently with the authorities in that country. Such is the importance of that presumption that I decided not to publish that judgment immediately, mindful that it could always be published at some future stage. My hope that Mr D would proceed to resolve matters with the authorities has not been satisfied. Given that Mr D has not progressed matters in the almost 12 months that he has enjoyed to do so, save for placing himself in bankruptcy I now propose:

- (i) to publish the three judgments that I have issued to this time. In the manner in which they have been drafted they seem to me to meet the requirements of s.40(3)(b) of the Civil Liability and Courts Act 2004. Before publishing the judgments, I will hear the parties in the event that any concern presents as regards my intended publication of the judgments, whether by reference to s.40(3)(b) or in the event of any perceived potential to compromise Mr D's presumption of innocence in his home country, should matters take a criminal turn there; and
- (ii) to order that the DAR recordings of all the hearings in this matter be made available to either of the parties if those recordings are requested by that party (the cost of transcription to be met by the requesting party).

28. I note in passing the recent liberalising amendments as regards s.40 of the Civil Liability and Courts Act 2004 that have been effected by s.56 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023.

29. I will hear the parties on whether copies of the to-be-published judgments should be furnished to the trustee in bankruptcy or any other authority in Mr D's home country and, if so, on what legal basis.

30. I am mindful that counsel have very busy diaries. To facilitate the swiftest dispatch of this matter, and mindful that I am myself very busy in January, I am satisfied, if it facilitates the parties, to sit any day in January that suits counsel and solicitors for the parties, whether from 09:00-11:00 or from 16:00-18:00. I suspect that a two-hour hearing will suffice to dispense for the time being with any remaining issues outstanding following on this judgment.

31. This matter was heard on 21st December. As I indicated at the hearing, to avoid having the parties wait until the end of the Christmas vacation for a judgment on the application made, and in a bid to ensure that they all have as peaceful an end-of-year season as possible without worrying about what the outcome of Mr D's present application would be, I indicated that I would email their respective solicitors a copy of my judgment in advance of the courts opening up again and have done so.