

Neutral Citation No: [2017] NIFam 11

Ref: McB10301

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 24/05/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

—————
FAMILY DIVISION

Between

—————
STEPHEN TWEED

Petitioner/Appellant

and

GEORGINA ELLEN TWEED

Respondent

—————
McBRIDE J

Introduction

[1] The appellant (“husband”) appeals against the decision of Master Redpath dated 22 May 2015 when he ordered that the husband transfer to the respondent (“wife”) his interest in;-

- (a) the formal matrimonial home at 164 Garryduff Road, Ballymoney, together with the surrounding lands of 60.2 acres, and
- (b) 7.28 acres of land referred to in the papers as Lot four Garryduff Road; and
- (c) further ordered “the petitioner is condemned in 90% of the respondent’s costs, such costs to be taxed in default of agreement.”

[2] The wife subsequently obtained an injunction against the husband on 26 June 2015. This injunction has been varied on a number of occasions and the court has ordered that the injunction remain in force until further order. Costs have been reserved. The injunction is not the subject of any appeal by the husband.

[3] At the initial review hearing the husband indicated that the only issue now being pursued on appeal was whether the Master ought to have ordered the transfer of the matrimonial home and lands to the wife rather than ordering the husband to

make a lump sum payment in lieu of the value of the matrimonial home and lands. The husband stated he was not seeking to appeal the percentage division of assets made by the Master. The husband also confirmed he was appealing the costs order.

[4] In light of the approach taken by the husband the court directed that the house and lands should be valued and the husband should thereafter demonstrate to the satisfaction of the court and the wife that he had the ability to pay a lump sum representing the agreed value of the assets Master Redpath ordered to be transferred. At a subsequent review hearing the parties informed the court that the lands and house ordered to be transferred to the wife were agreed at a value of £246,000.

[5] The parties further agreed that the appeal against costs should be adjourned as the bill of costs had not yet been presented to the husband. The court acceded to this request.

[6] The husband was initially represented by Ms Kerr of counsel. She appeared on his behalf at the review hearings and also on the first day when oral evidence was given. Subsequently Ms Kerr and her instructing solicitors applied for and were granted leave to come off record. Thereafter the husband became a litigant in person. The wife at all times was represented by Mr O'Donoghue QC and Ms Lyle. I am grateful to all counsel for their assistance in this case and in particular for the clear and concise manner in which the case was presented and argued. The case proceeded by way of a rehearing on the issue whether the Master ought to have awarded a lump sum in lieu of transfer of the former matrimonial home and lands. Evidence was given by both the husband and the wife. In addition a police log of complaints was admitted by agreement. Each party made a number of submissions thereafter. The husband submitted a very lengthy written submission. Much of this contained inadmissible and irrelevant material but it also contained a number of relevant submissions which were taken into account by the court in its deliberations.

[7] Before turning to the evidence in this case and the submissions made by the parties it is necessary to set out a little of the background history.

Background

[8] The parties were married in August 2003. There are no children of the family. Divorce proceedings were initially initiated by the husband in May 2006. He later agreed that the decree he had obtained should be rescinded and in 2008 the wife obtained a decree on the grounds of the husband's unreasonable behaviour. The husband thereafter issued ancillary relief proceedings in 2008. In March 2013 Master Redpath delivered a judgment dealing with a preliminary issue in respect of the ancillary relief proceedings namely the period of the pre and post-marriage cohabitation. In his judgment the Master found that the husband had "lied consistently and he had lied persistently". He indicated that he much preferred the evidence of the wife and found that the parties had lived together as husband and

wife from 1986 to 2006. The Master then directed a percentage split of the husband and wife's assets and adjourned the matter to allow the parties to reach agreement on the actual division of assets. In the event the parties were unable to agree the division the Master therefore adjudicated on this matter and made the order on 22 May 2015, which is now under appeal.

[9] As further appears from the judgment of Master Redpath given in March 2013 the matrimonial home was originally registered in the sole name of the wife. The matrimonial home was then subsequently transferred to the husband, apparently without the wife's knowledge. As of the date of the hearing before Master Redpath the matrimonial home and all the lands were held in the sole legal name of the husband.

Grounds of Appeal

[10] The Notice of Appeal contains a number of grounds which are no longer relevant given the approach taken by the husband. The relevant grounds appear to be that the Master:

“Refused to countenance the husband raising monies in lieu of the land the Master ordered to be transferred to the respondent wife. The Master was content to make an order that left the husband and wife adjacent land owners, forevermore holders of land that ran alongside each other. The petitioner husband respectfully suggests that this is contrary to the drive and spirit of Article 27 of the Matrimonial Causes Order that envisages where possible a clean break in cases where possible”.

[11] The husband further states in his Notice of Appeal:

“The Master ignored the fact that the wife was never a co-owner of the said lands ordered to be transferred to her ... The Master refused to consider ... the husband should be permitted to buy out the wife's interest... The Master failed to take note of the fact that the wife never farmed the lands in question, nor did she have any farmland connection with same unlike the husband whose family had been farming the land for hundreds of years ... and that the land ordered to be transferred severely restricts the husband's ability to run his remaining farm land.”

Description of the lands transferred

[12] The court was helpfully supplied with a map which coloured the lands transferred to the wife by Master Redpath in red and denoted the remaining lands retained by the husband in green. The red lands comprise the former matrimonial home and agricultural lands. The matrimonial home is situated and known as 164 Garryduff Road, Ballymoney. It is situate up a lane from the county road. The agricultural lands transferred to the wife comprise a number of fields which completely surround the matrimonial home and one field comprising 7.28 acres which is situate on the road opposite the lane which leads to the matrimonial home.

[13] The green lands are situated adjacent to and to the south west of the red lands. They comprise the premises at 29 Galdanagh Road and the surrounding agricultural land. Where the green lands adjoin the red lands they are physically separated by a river. The green lands also comprise an outlying field which although it adjoins the red lands is physically separate from the other green lands.

Evidence

[14] The court heard evidence from both the husband and wife who were both cross-examined.

Evidence of the husband

[15] The husband gave evidence that he lived at 29 Galdanagh Road, Dunloy. He stated that he had purchased all the red lands between 1986 and 1988. He took out loans to buy the red lands. These loans have now all been repaid. He stated that he purchased Lot 4 which contains 7.28 acres in or around 1989/1990.

[16] The green lands were inherited by the husband in 1996. These lands had been owned by his family for a number of generations.

[17] The husband said that he had an emotional and commercial attachment to the red lands. He stated that the red lands had originally been rented by him and his father for about 10 years before he purchased them from the previous owner, Mr Gault. He stated he purchased these lands partly as a "cold business enterprise" but also because they together with the green lands created a viable farm. He indicated that he wanted to keep the farm as this was what Mr Gault would have wanted him to do. He said he required both the red and green lands to have a viable farm.

[18] The husband averred that he was an active farmer and it was always his intention to farm on a full-time basis. As a result of this plan he had gained agricultural qualifications after he had left school and thereafter he had undertaken paid employment to enable him to pay off the loans required to purchase the red lands. He stated in evidence that although these loans were now repaid he continued to work full-time as a civil servant and also part-time for the Probation

Board because he required income to pay legal bills. Otherwise he had hoped to give up full-time paid employment to work full-time on the farm.

[19] The husband also gave evidence that he was an active farmer and produced various documents showing that he was the registered owner of sheep. For example he produced documentation to show that he had received payments from the British Wool Marketing Board; that he had hired agricultural equipment; that he had repairs carried out to his tractor and that the Foods Standards Agency had written to him to arrange inspections. He further stated, without producing documentary proof, that he had a farm ID number, he filed tax and VAT returns for his self-employment as a farmer and he was in receipt of single farm payments. When asked how he had time to farm he said that he availed of flexible workings hours which meant he had time to work on the farm in the morning, the evening and at weekends. He completely denied the assertion that he was not a farmer.

[20] Under cross-examination he denied that he lived in Saintfield with his girlfriend. He further denied that he rented out the green lands to other farmers and stated that he continued to be a farmer and to keep sheep. He further denied that he tended sheep as an excuse to intimidate his wife and her sister.

[21] When cross-examined about his emotional attachment to the lands he denied the assertion that he had now moved on and stated that the red lands were of sentimental value to him particularly because he had purchased these lands and they represented him "branching out" on his own. For this reason he wished to retain them. He also wished to retain the red lands because he stated he needed both the red and the green lands to have a viable farm on which he wished to work full-time. He denied that his wife had any attachment to the lands and stated that she loathes farming. He further stated that she no longer lived in the matrimonial home and now lived 8 miles away with her parents.

Evidence of the wife

[22] The wife gave evidence that she purchased the matrimonial home in 1988. It was an old stone building which required extensive renovations. Due to an IRA ambush she was unable to carry out the renovations at that time as it was not safe for her and the husband to be in the area. As a result renovations were delayed and the parties were only able to reside at the premises from in or around 1993. Since that date the wife stated that she had lived permanently at the premises. She described how she had made this her home and had carried out all the works to the home. She stated that she had carried out works on the lands also. She treated the matrimonial home as her "forever" home and she had made friends in the locality and had attended the local church. Her sister had also come to live close by. This was now where she had her social networks and was now settled. She informed the court that no amount of money would lead her to voluntarily leave the house as she had "come through an IRA ambush ... the house is more than bricks and mortar". She further gave evidence that she would not want to move to live in a local town or

village as she wanted to live in a rural setting and there were no other available properties on the market in this area where she could live. She denied that she resided at her parent's home some miles away.

[23] The wife stated that she wanted to retain the red lands because they acted as a buffer. She accepted that the husband did come to the lands to tend to his sheep but she felt he did so as a means to intimidate her. She outlined to the court that the red lands were accessed by a lane which went through the yard attached to the matrimonial home. She said that the husband in the past had made her life impossible and there had been a number of reports made to the police as a result of his behaviour and she had to get a non-molestation order against him because he had hidden in a shed and then jumped out at her causing her to be alarmed and frightened. She stated that if the red lands remained in the husband's name that he would use this as a means to continue a course of intimidation against her and as a result she would be unable to lead a peaceful life as she would be concerned about his behaviour.

[24] Under cross-examination she accepted that she could not give direct evidence that the husband lived in Saintfield. She further accepted that the husband did farm the lands but stated he did so in a limited way. She also accepted that she had been engaged to another man for two years but this relationship ended two years previously.

Submissions of the parties

[25] After hearing oral evidence the parties made further submissions. In particular the husband filed a lengthy written submission. This contained a number of inappropriate and irrelevant comments but he also in his written submission reinforced the evidence he had given and in particular stressed the need for a clean break and indicated that the transfer of the red lands to the wife caused ongoing acrimony which would be contrary to the need for a clean break. He again repeated that he required the land so that he would have a viable farm and indicated that he wished to leave the lands to his family. In contrast, he stated the wife had no attachment to the lands and was not, unlike him a farmer.

Consideration

[26] The central question in this appeal is whether the court should award the wife a lump sum representing the value of the house and lands instead of a physical transfer of the house and lands. This is a matter which all the parties agreed falls within the discretion of the court. In the exercise of this discretion I consider that the following matters are relevant considerations.

[27] In relation to the matrimonial home I take into account the emotional attachment each party has to this property. I find that it was purchased by the wife and that subsequently in 2006 the husband, in an underhand way and without the

knowledge of the wife, transferred the matrimonial home to himself. I further find that the wife chose to repair the house she had purchased and make it the matrimonial home despite the fact that she was the subject to an IRA ambush just after she had purchased the property. She settled in the area, made friends, attended the local church and established social networks in the area. Later her sister came to live nearby and the wife now has close contact with her sister and her family. She gave clear and convincing evidence to the court that she considered this her 'forever' home. I therefore accept that she has an emotional attachment to the matrimonial home for all these reasons. I further accept that she wishes to remain living in this rural location and there are few, if any other, suitable properties in the locality which would allow her to maintain her present network of friends and family. There is a dispute whether the husband lives in Saintfield or at 29 Galdanagh Road. What is accepted is that he has not resided in the former matrimonial home since 2006. He did not originally purchase the house and it appears that the renovations and decoration were matters the wife attended to. I therefore find that he has no particular emotional attachment to the matrimonial home. I further do not accept his evidence that the wife lives eight miles away with her parents. In all the circumstances I find that it is appropriate to transfer the former matrimonial home back into the wife's name rather than to award her a lump sum in lieu of the value of the matrimonial home.

[28] In respect of the red lands I consider that there are a number of matters which I should take into account in the exercise of my discretion. I find that the wife, although she may have assisted on the lands, does not have any real emotional attachment to the red lands and is not a farmer. The husband stated that he did have an attachment to the red lands on the basis he purchased them and he wanted to retain them as this is what the former owner would have wanted. In his evidence in chief, however he said that the purchase of these lands was a "cold business decision". I do not therefore accept the husband has any emotional attachment to the red lands. Unlike the green lands the red lands have not been in the family name for many generations.

[29] Secondly, I take into account whether the husband requires the red lands to enable him to continue in his employment as a farmer. I find that the husband is a farmer and farms the lands he owns. I do not find the lands were rented out to Mr Gamble and I accept the affidavit evidence of Mr Gamble that he does not rent the lands in question. The wife under cross examination accepted that the husband did farm. It is clear however, that the husband farms on a part-time rather than a full-time basis. The husband continues to work full-time in the civil service and also works part-time for the Probation Board. Of necessity therefore he can only work part-time as a farmer. I do not accept the husband's evidence that he intended to give up his full time employment as a civil servant so that he could work the red and green lands as a full-time farmer. The red lands were purchased in the 1980s and the loans were repaid shortly thereafter. Despite this the husband has not left his full time employment as a civil servant. In addition he has continued to work on

Saturdays for the Probation Board. I therefore do not find that he requires the red lands to enable him to continue his part time employment as a farmer.

[30] Thirdly, I have considered the question whether the wife requires the lands as a buffer. I accept her evidence that the husband has made a nuisance of himself in the past. As a result she felt so intimidated she was required to obtain a non-molestation order. As appears from the police log there has been a long litany of complaints and counter-complaints made by each of the parties. I have no doubt that if the husband was to retain the red lands which are accessed from the main county road via the lane which lead up to and then goes through the yard of the matrimonial home, there would, in the future continue to be the potential for a number of claims and counter-claims to be made by the respective parties to the police. In such circumstances I am satisfied that the wife would not be able to enjoy peaceable possession of the matrimonial home and she would, understandably, feel uneasy and concerned and perhaps even intimidated if the husband was able to have access up the lane and through the yard of the matrimonial home.

[31] Fourthly, I am required by the Matrimonial Causes Order to consider the need for a clean break. Although the husband and wife will, as a result of the Master's order, have lands which adjoin I consider that the transfer of the matrimonial home and red lands to the wife does constitute a clean break. This is because the parties physically will live several miles apart and the lands, although adjoining, are divided by a natural boundary, namely a river which has no bridges over it linking the red and green lands. I consider the physical division of the lands is also appropriate as each party is left with a marketable lot. I therefore consider that the Master's order transferring the house and lands enables the parties to live free from each other's control and power. In contrast I find that an order permitting the husband to retain the red lands would not fulfil the requirement for a clean break for the reasons set out in paragraph [30] above.

[32] Fifthly, I take into account whether the wife requires the lands as a source of income. I do not consider that this is a decisive feature in ordering the transfer of the red lands to her. This is because income can be derived as rental from the lands or alternatively from investment of the lump sum she would obtain in lieu of the value of the lands.

Conclusion

[33] In all the circumstances I consider that it is necessary and fair that the husband transfers the house and the red lands to the wife as per the Order of Master Redpath dated 22 May 2015. Given that there is some evidence the wife has in the past been engaged to be married and may in the future choose to sell the house and lands and taking into consideration the husband's wish to leave the land to his family I make the transfer subject to the husband having a first option to buy the house and lands, at market value, in the event they are to be sold. Otherwise I affirm the order of Master Redpath and dismiss the appeal.

[34] The appeal against the Master's order condemning the husband in 90% of the wife's costs of the ancillary relief stands adjourned pending presentation of the bill of costs by the wife's solicitors.

[35] I will hear the parties in respect of costs of this appeal.