# THE HIGH COURT

[2023] IEHC 375

**[Record No: 2017 26 M]**

**IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996**

**BETWEEN**

**A**

**APPLICANT**

**– AND –**

**A**

**RESPONDENT**

**JUDGMENT of Mr Justice Max Barrett delivered on 12th January, 2023.**

## PART A

**1.** Ms A was married to Mr A in the 1980s. They have had a number of children, all of whom are now young adults. Although, when these proceedings were commenced, two of the children were dependent children that situation no longer pertains. These divorce proceedings were commenced by Ms A in 2017, though the marriage seems to have broken down irrevocably

some years before that, and the marriage, unfortunately, seems to have been marred for some years by unhappiness. The affidavit evidence of each of the parties is replete with allegations and recriminations about the behaviour and faithfulness of each of the parties which I do not propose to consider in any detail: a lot of what is averred to is 'he said, she said' evidence, much of it went untested when each of the parties was in the witness-box – counsel wisely focused on the key issues presenting in the proceedings – and I simply do not know where the truth lies as regards various of the said allegations as made by each of the parties.

**2.** Ms A has worked from time to time at a family business ([Stated Business A][*]) that the couple established at the turn of the century. They went into the business as a couple and own a quarter-share of it between them and other family members. That business was referred to at times in the hearings as the 'golden goose' because it has yielded an income to the parties sufficient to enable them to make a number of business and other investments over the years. There was some dispute at the hearing as to whether the idea for [Stated Business A] emanated from Ms A or from an accountant to Mr A. I do not think it greatly matters who had the original idea for [Stated Business A]: it is there and it has been a success because of the combined efforts of Ms A (largely but not exclusively as homemaker) and Mr A (as a farmer and businessperson).

**3.** I will describe the various other business ventures in which Mr A is involved later below. I will just mention for now that Mr A also has his own farming property which, at present, I understand, is largely farmed by one of the couple's children who has invested money in the farming business even though he does not own the underlying land. I do not understand it to be disputed that at times Ms A has helped on the farm also – for example, she refers in her evidence to how at one point she was out milking cows and she refers elsewhere to feeding calves and working around the farm generally.

**4.** I understood the evidence at the hearing to be that Mr A inherited the family home and farm. However in his latest statement of means Mr A states that as of an unstated date in May 2022 Ms A (as applicant) is the sole owner of the family home and farm in [Stated Place A]. Yet the asset valuation provided by Devaney & Durkin indicates that Mr A is the 100% owner of the family home and farm. As mentioned my own understanding of the evidence was that the

[*] Defined in Appendix 1.

family home and farm were inherited by Mr A; however, he knows his own affairs best. Given how I propose to proceed in this case, I do not consider that a great deal turns on this point in any event.

**5.** I was a little unclear following the affidavit and oral evidence of Mr A as to what exactly he thinks his wife *has* been doing for the last few decades. His evidence, in essence, was that his accountant came up with the idea for [Stated Business A] (one of several ideas that the accountant floated), that the other business successes in which Mr A has become involved were essentially attributable to Mr A (and he certainly gives the impression of being a canny business-person), that his wife has not been of tremendous assistance with [Stated Business A] or otherwise, and that (because she had "*household help*", as Mr A describes it) not a lot of credit falls to be given to her as a homemaker either.

**6.** Though Mr A clearly is the architect of much of the family's *financial* success (in terms of what he has done with the profits from [Stated Business A] and otherwise), his evidence seemed to me, with all respect, to be a little ungracious when it comes to the woman who has mothered his children, helped to create and manage a family home, and also done some work in the operation of [Stated Business A] (a key contributor to the money/property that the parties have accrued over the years). I accept that Ms A's ongoing role in [Stated Business A] was not critical – she herself avers in her affidavit of 23rd March 2017, para.8, that "*I say that my primary duties are providing general assistance to the running of the* [business]*…such as transporting* [clients]*…and such like*". But if it was not critical it was clear from her evidence that this was because she was busy with a relatively large family. And I note that she continues to draw an income from [Stated Business A] (testament to her having been actively involved in its start-up).

**7.** I must admit to having found it somewhat unusual that, after more than three decades of marriage, when I would expect that each party's life history would be well known to the other, Mr A (in the witness-box) purported not to know of his wife's experience of working with a nationally known employer in the years before she married. His evidence in this regard was, with all respect, not credible – though at one with the thrust of all of his evidence, which was that his wife has never done very much. In her affidavit of 17th November 2021, Ms A avers, amongst other matters, that "*The Respondent…demeans me at every opportunity. He is constantly making derogatory comments….He is constantly belittling me. The Respondent has*

*also spat at me*". I must admit that I find such assertions to be the more credible when I have regard to what seem to me to have been consistent attempts by Mr A across the entirety of his evidence to diminish his wife into something of a nothing who has never done anything. (I hasten to add that I view her as a decent woman who has worked hard to make a homelife for her family in marriage that, regrettably, appears to have been marred by unhappiness).

**8.** As should be clear by now, it seems to me from all the evidence that I have read and heard that I consider this to have been a marriage of two equal parties with differing strengths, Mr A as a businessperson, Ms A as a homemaker. It was an unhappy (even greatly unhappy) marriage at times and I suspect that there have sometimes been harsh words on both sides. Even so, it is a marriage that has subsisted for over three decades and produced children of whom (if I might respectfully observe) both parties can rightly be proud. But those children did not raise themselves, they did not cook their meals and wash their clothes themselves, they did not get to and from school and after-school and do a myriad of other things by themselves. Ms A may have had "*household help*" but I do not doubt from her evidence that the primary task of making a home for her family and rearing the children fell to her. It was striking too that one of the reasons for her seeking to be adequately looked after from a financial perspective following on the divorce was that so she could visit a child here in Dublin and another couple of children who live abroad. That kind of mother-child relationship does not, if I might use a colloquialism 'grow on trees'. It comes about through the hard work of good mothering.

**9.** There is suggestion in Mr A's affidavit evidence that after the children were born Ms A "*would often stay in bed for most of the day*". I do not know if it is meant by this that (i) Ms A, after each of her children were born would sometimes take to bed, or (ii) whether the suggestion is that after all of her children were born Ms A has been in the habit of spending all day in bed. As to (i), I find it not at all surprising and thoroughly understandable that a mother who had recently given birth and who was nursing a child (and with other children running about in later years) would sometimes be so completely exhausted that she would take to bed to relax and sleep for a time. As to (ii), I just do not believe that Ms A has spent the better part of her married life in bed. Her children did not rear and feed and clothe themselves.

**10.** When it came to who was the more involved in the day-to-day detail of the children's upbringing, I found the evidence as to the unpaid school fees to be rather telling. At one time there was a 'hiccup' in the payment of school fees for one of the children. In her evidence Ms

A was completely *au fait* with how the issue had arisen, how embarrassing it had been for her when one of the nuns at the school took her aside to indicate that fees had not been paid, and how the matter had been resolved. By contrast, Mr A, in his oral evidence, seemed to want to take the credit for having sorted matters out but seemed very much less certain of the detail of what had occurred. What this suggested to me was that Ms A was completely *au fait* with the relevant detail because she had been directly and intimately involved in what had occurred whereas Mr A had not.

**11.** As I said at the close of the hearings, it seemed to me from the evidence that was proffered before me that this was very much a 'traditional-style' marriage. As I explained on the day, what I meant by this was that it seemed to me that the parties were joint partners in a marriage in which (save for [Stated Business A] in which Ms A was directly involved in its start-up and has provided some level of ongoing assistance) Mr A was the party who 'went out into the world' and deployed the family income and assets to make the family fortune what it is today. But of course Mr A was freed to do so, and not tied down into looking after his children and doing or helping in all the myriad of often quite exhausting tasks that go with child-rearing, by the fact that he had a wife who did, if not all, then certainly the lion's share of the hard work that goes with raising children. And he was of course married to his wife: one would almost imagine from the thrust of Mr A's evidence that Ms A was some lady who just drifted around in the background for the last three decades or so whereas in truth she was Mr A's wife, the mother to his children, and a homemaker doing the hard work that homemaking entails. I do not mean in this to diminish Mr A's years of hard work (and he has worked hard) but his wife has done her fair and equal share of hard work as well.

**12.** Ms A indicated in her affidavit evidence that certain prize bonds which she held were pledged as security to help start up [Stated Business A]. This has not been established on the evidence before me to be true. However, in his own affidavit evidence, Mr A indicates that "[Ms A] *was to pay the sum of* [redacted]" and also that when [Stated Business A] started up it was all four of the principals (Mr A, Ms A and two other individuals) who borrowed an initial [redacted] each. So again, despite his efforts to portray Ms A as having done little or nothing for the last 30+ years it turns out that there was some thought of Ms A using [redacted] that she possessed (which I suspect was the prize bond money) to kick-start [Stated Business A]; and it is clear that Ms A was also directly involved in the initial borrowings that, to use a colloquialism, 'got the ball rolling' in terms of establishing [Stated Business A]. So when one

gets down to the 'nitty gritty' of past financial details the evidence points to Ms A as being a truth-teller and to Mr A as consistently keen to constantly diminish her role in their marriage.

**13.** At this point I should perhaps mention the family home. This, I understand, was inherited by Mr A but it has been his wife's home (and she has made a family home of it for Mr A and the couple's children) for over three decades. For both parties, therefore, it is a property that has great sentimental value. Ms A does not want to leave the home where all her married life has been lived, where her children grew up, and where she has been a long-time resident. For Mr A the family home and the associated farmland possess that natural sentimental value and attachment which we all attach to family property.

**14.** There is an open offer before the court, the essence of which is that Mr A would transfer to Ms A his share in [Stated Business A], not quite now but whenever his litigation with certain business partners is resolved.[1] So to use a colloquialism, at this time it would be more a 'bird in the bush' than a 'bird in the hand'. The logic is that following this transfer Ms A would then have an asset worth about [redacted] and a likely income of about [redacted]. There is an element in the offer of staking all of Ms A's future on one single asset which has done well in the past; however, business is business and always comes with at least some risk that what did well in the past may not perform so well in the future. Ms A also mentioned in her evidence that the property that is at the heart of [Stated Business A] needs renovation. So, to go back to my colloquialism, even in the hand, [Stated Business A] may not continue to be quite the gilded 'bird' that it now appears to be and to have been.

**15.** There is another respect in which this offer is in any event unfair. Mr A's total assets, by his accountant's estimate, are now worth many millions of euro: they have been acquired over the course of a marriage in which he was freed to go out into the world by a wife who provided a home for him and his children, was involved in the start-up of, and has helped out with [Stated Business A], as well as doing some work around the farm. There is simply no reason why Ms A should not now take an equal share in the family assets after all she has done over more than three decades of marriage. In this regard I found the questioning of Ms A on the open offer to be somewhat unexpected: she was repeatedly asked whether an asset of circa.

[1] I am told that the husband is in dispute with some of his business partners and (separately) with his brother regarding a property that the two brothers own; however, there is no real detail as to how it is expected that these disputes will 'pan out', save that the business dispute may yet go to litigation.

[redacted] plus an income of about [redacted] per month (assuming [Stated Business A] continues as is) would not be enough for her by way of proper provision. But Ms A, I thought, got it completely right when she answered this line of questioning, repeatedly stating in effect that she did not see why, after all she has done, she should settle for a fraction of the totality rather than a half of the whole. In truth (and I emphasise that I make absolutely no criticism – none at all – of any of the lawyers or other professionals involved in this case) I thought the offer to be reflective of an antiquated worldview which does not place appropriate value on the role and work of a homemaker wife. Of course, looked at in isolation, an asset worth [redacted] and a potential monthly income of about [redacted] is an attractive proposition. But I am tasked with looking at things in the round, in the context of the overall (and here abundant) assets available in any one case and here it would not be fair and just, and it would not be proper provision, for me simply to order the terms of the open offer and, at the end of a 30+ year marriage, in which both parties have acted as I have described and to which they have brought their respective strengths, send Mr A out the courtroom door with many millions of euro of assets to his name, leaving Ms A with a [redacted] asset and whatever income it yields.

**16.** When it came to how to resolve the future accommodation arrangements between the parties Mr A's proposed solution also seemed to me to be, with all respect, unrealistic. [redacted] I do not myself see that this is a reasonable proposition. In truth, it has, I regretfully observe, a whiff about it of a husband who is satisfied for (i) an active and able wife who devoted the best years of her life to her marriage and to her children now to be consigned to (one might almost say 'abandoned to') [redacted], while (ii) he continues to live in a spacious family home looking out on extensive farmland, enjoying the ownership of, and earnings from, the great bulk of the present family assets in all the circumstances that I have described. Counsel for Ms A caught matters best when he asked of Mr A, when he was under cross-examination, whether he truly thought such an arrangement would be fair in all the circumstances. I can answer that question: it would not.

**17.** At the end of the hearing of this matter, I indicated to the parties that I saw this as a marriage in which (for the reasons stated above) it would be appropriate to make a 50/50 split

of the family assets and that if there was no agreement on who would occupy the family home it might be necessary to sell the family home. I gave the parties a couple of weeks to see whether they could come to some sort of resolution of the financial side of matters between themselves. In that two week period the solicitor for Ms A reached out to the solicitor for Mr A and, it seems, got no reply from Mr A's solicitor (doubtless acting on his client's instructions).

**18.** In all of the circumstances presenting I see no realistic alternative in terms of achieving proper provision (and a just and fair conclusion to matters) but, on the evidence before me and subject to the caveats that follow, to order that Mr A pay to Ms A one half of the value of the family assets, as arrived at by Mr Durkin, the financial advisor to Mr A (subject to the correction he made in his oral evidence), the amount of such payment to be calculated ***after*** the below caveats are taken into account:

Caveat (1): I will make no orders at all as regards the parties' respective shares in [Stated Business A]. In other words I will ring-fence [Stated Business A] so that it is *not* counted in calculating the payment that Mr A will need to make to Ms A. My intention is that the parties' involvement in [Stated Business A], unless either of them decides to change that involvement, will proceed as is, thus enabling them each to continue to collect the solid, though not very large income that comes their respective ways from [Stated Business A].

Caveat (2): Where assets are jointly owned with a third party (such as the farmland owned by Mr A and his brother) and so perhaps cannot readily be sold, I will order that Ms A be given a one-half share in Mr A's holding). So the amount of family assets to be taken into account when settling on the one-half payment to be made by Mr A to Ms A needs to be reduced by the value of any shared ownership that Ms A is now to be given in any such jointly owned property.

Caveat (3): I had hoped that the parties might come to some agreement as to accommodation in the time I gave to them after the hearing but they have not. My sense is that the family house should go to Ms A. My impression is that she has made that house a home for herself, her children and indeed Mr A for more than 30 years and I do not see that her sentimental attachment to the family home is somehow worth less than that of Mr A. In fact because Mr A is a commercial 'man of the world' well used to turning an income my sense is that in the longer run and despite his age he will find it easier than Ms A to make his way in the world, including sourcing alternative accommodation. Ms A essentially has no career prospects thanks

to her long years as a homemaker and the home, as a consequence of Ms A's years as a homemaker, appears to be at the centre of her world. So the amount of family assets to be taken into account when settling on the one-half payment to be made by Mr A to Ms A needs to be reduced by one-half of the value assigned to the family home by Mr Durkin. That I would effectively consign Ms A to live out her years in [redacted] does not seem to me to be fair or just. (Of course if Mr A continues to be of the view that [redacted] is suitable there is nothing in the evidence to suggest that he would not be able to move to [redacted] himself, if so minded, when he leaves the family home). I of course appreciate that by giving the family home to Ms A there is a risk that she could remarry and the house could pass out of Mr A's family. However, even if the family home were to go to Mr A there would also be a risk that he would remarry and bequeath the house to someone other than his children. So it seems to me that there is an equal chance that the family home will eventually be bequeathed to one or more of the couple's children. Another alternative would be to order the sale of the family home and divide the proceeds but that could see the home go quite quickly to an outsider. Again my sense is that what I propose is the fairest and most just approach and will likely see the house inherited by one or more of the couple's children.

**19.** I will also order that Mr A immediately leave the family home even before it is transferred into Ms A's name. This is because I am concerned by the allegations of mental and physical violence and intimidation that Ms A has made as regards Mr A in her evidence. Though I do not see that I can determine on the 'he says/she says' evidence that is before me as to where the truth of matters lies in this regard, I cannot pretend that these allegations have not been made and I am concerned that, *if* Mr A has been mentally and/or physically violent and/or intimidatory in the past this judgment may impassion him to perpetrate further cruelty and/or violence and/or intimidation on or of Ms A.

**20.** I see the orders that I intend to make to represent a clean break between the parties with no entitlement on the part of Ms A to be paid any maintenance thereafter. Ordering a clean break sum facilitates both of them in enjoying financial comfort into an old age when the only pension of any mention appears to be the imminent payment to each of them of the old age pension.

**21.** One reason why I have elected to order a direct payment from Mr A to Ms A (subject to the caveats mentioned above) is that I do not see that it is possible for me to make an otherwise

just division of assets based on the limited information available to me. For example, I have no information as to whether the farmland as a whole continues to be a viable concern if parts of it are sold off, whether the parties are minded to do any sort of a deal with the child who farms part of the land, whether (and if so, how much) land is needed for Mr A's equine business, the quality of different parts of the land, and what might be needed to sustain the existing agricultural business, including the equine business. And I am conscious of the natural desire of all farming families to keep as much of their farmland as they can. By ordering a cash payment from Mr A to Ms A, that maximises the ability of Mr A to continue with his equine, farming, and other businesses (businesses in which, apart from [Stated Business A] and, to a limited extent, the farming business, Ms A has not historically had direct involvement), while also ensuring that Ms A is properly provided for.

**22.** In terms of making proper provision for the parties, in *M* v. *S* [2020] IEHC 562, I considered the applicable authorities in some detail. Since that judgment was delivered, the Court of Appeal gave judgment in *N.O.* v. *P.Q.* [2021] IECA 177, which undertakes a helpful analysis of previous authorities. The making of financial provision in this case has largely, though not entirely, been decided by reference to those two cases, which themselves refer to a plethora of useful cases. I do not consider it helpful or necessary to detail the applicable law yet again in this judgment when it has been so carefully considered in those judgments and is simply being applied here. As will be seen, I bring the applicable case-law to bear later below and also go through the *ad seriatim* consideration of the various factors to which I am required to have regard under s.20 of the Family Law (Divorce) Act 1996.

**23.** In terms of the asset values on which I have proceeded (and on which counsel should proceed when drafting an order to reflect this judgment – something that I will request of them), Mr Durkin, a partner in Devaney & Durkin, Accountants, was called to give evidence for Mr A. His evidence was helpful and essentially went unchallenged by counsel for Ms A. Thus the judgment proceeds essentially on the basis of the financial evidence proffered by Mr A. I accept Mr A to own the assets as described and to hold them in the manner described by Mr Durkin. I have also of course had regard to the latest statements of means prepared by the parties, neither of which contain any surprises in terms of expenditure, neither of which occasioned the recriminatory contentions that statements of means can sometimes provoke, and both of which indicate each of the parties to be drawing relatively modest incomes from [Stated Business A] – enough to live on but not at all extravagant. In truth, it is a curious feature of this case that

there is very great agreement as to the assets and monies available to the parties but zero agreement as to how best to proceed.

## PART B

**24.** Turning to the law and drawing, as mentioned, on *M* v. *S* [2020] IEHC 562 and *N.O.* v. *P.Q.* [2021] IECA 177 which between them also refer to, *e.g.*, the decisions of the Supreme Court in *D.T.* v. *C.T.* [2002] 3 I.R. 334 and *Y.G.* v. *N.G.* [2011] 3 I.R. 717 and the High Court in *M.K.* v. *J.K.* (No 2) [2003] 1 I.R. 326, it seems to me that the following propositions arise. (References to page numbers are to the page numbers indicated on the Lexis database). The propositions are stated in Bold text; my observations appear in plain text immediately after each block of Bold text. I have proceeded in accordance with all the propositions stated.

## CLEAN BREAK?

**25. (1) When, following the 15th Amendment, the Oireachtas came to introduce divorce legislation, it was modelled to some extent on modern English divorce law. There is, however, an important difference. English legislation embodies the 'clean break' principle laid down by the House of Lords in *Minton* v. *Minton* [1979] A.C. 593 (*D.T.* v. *C.T.*, Keane C.J., at p. 384).**

**26. (2) Irish law does not establish a right to a 'clean break'. However, it is a legitimate aspiration (*Y.G.* v. *N.G.*, Denham C.J., at p. 729).**

**27. (3) The absence of specific statutory machinery for the making of 'clean break' provision should not preclude the court from seeking to do so in appropriate cases. In the case where the amplitude of resources makes it possible, the desire of the parties for financial finality should not be frustrated (*D.T.* v. *C.T.*, Fennelly J., at p. 440; see also *Y.G.* v. *N.G.*, Denham C.J., at p. 729).**

**28.** This is a case in which the amplitude of resources makes such a clean break largely possible (subject to Caveat (2) as mentioned above).

## CERTAINTY AND FINALITY

**29. (4) Keane C.J. did not believe that the Oireachtas, in declining to adopt the 'clean break' approach to the extent favoured in England, intended that the courts should be obliged to abandon any possibility of achieving certainty and finality and of encouraging the avoidance of further litigation between the parties (*D.T.* v. *C.T.*, Keane C.J., at p. 385).**

**30.** This is a case in which it seems to be that it is possible to achieve a considerable degree of certainty and finality by making the orders that I have indicated for the reasons I have indicated.

**31. (5) The principles of certainty apply to family law as to other areas of the law. Certainty is important in all litigation. Certainty and consistency are at the core of the legal system. However, the concepts of certainty and consistency are subject to the necessity of fairness. Consequently, each case must be considered on its own facts, in light of the principles set out in the law, so as to achieve a just result. Thus while the underlying constitutional principle is one of making proper provision for the spouses and children, this is to be administered with justice to achieve fairness (*D.T.* v. *C.T.*, Denham J., at p. 403).**

**32.** Noted.

**33. (6) A court may, in the appropriate circumstances, seek to achieve certainty and finality in the continuing obligations of the divorced spouses to one another. This is not to say that legal finality can be achieved in all cases and any provision made may be subject to review pursuant to s.22 of the Act of 1996, where that provision applies. However, the objective of seeking to achieve certainty and stability in the obligations between the parties is a desirable one where the circumstances of the case permit (*D.T.* v. *C.T.*, Murray J., at p. 432).**

**34.** Noted. This is a case in which it seems to be that it is possible to achieve a considerable degree of finality by making the orders that I have indicated for the reasons I have indicated.

## BROAD DISCRETION

**35. (7) While s.20(2) of the Act of 1996 lists in detail the factors to which the court is required to have regard in making the various financial orders provided for in Part III of the said Act, it is obvious that the circumstances of individual cases will vary so widely that, ultimately, where the parties are unable to agree, the trial judge must be regarded as having a relatively broad discretion in reaching what she or he considers a just resolution in all the circumstances (*D.T.* v. *C.T.*, Keane C.J., at p. 386; see also Murray J., at p. 422).**

**36. (8) Normally, even in cases where the parties might be considered to enjoy a substantial decree of financial comfort, the finite resources of the parties will be an underlying prescriptive factor in the exercise of a discretion as to how those resources can be applied in making proper or fair provision for both spouses (*D.T.* v. *C.T.*, Murray J., at p. 423).**

**37. (9) The Oireachtas, in choosing the approach it enshrined in s.20, made a considered decision to confer upon the court a duty of a particularly broad discretionary character. This requires the court to pass judgment on the presence and, where they are present, the weight it attributes to an extremely wide range of specified considerations (*D.T.* v. *C.T.*, Fennelly J., at p. 435).**

**38.** Noted.

**39. (10) The matters listed in s.20(2) of the Act of 1996, are designed to ensure that the court will have regard to all the wide variety of circumstances which should, in the interests of justice, be weighed in the balance when considering what is proper provision. The starting point in that regard must be, on the one hand, to the resources and on the other to the needs, obligations and responsibilities of the parties. There is no stated limitation on the financial resources or on the "*financial needs, obligations and responsibilities...*" to be considered by the court and which may be available for the purpose of making provision. They may extend to resources or to needs, obligations or responsibilities which either spouse "*is likely to have in the future*" (*D.T.* v. *C.T.*, Fennelly J., at p. 437).**

**40.** Noted.

## FINANCIAL NEEDS

**41. (11) The standard of living of a dependent spouse should be commensurate with that enjoyed when the marriage ended. The Act of 1996 specifically refers to matters to which the court shall have regard and these include the standard of living enjoyed by the family before the proceedings were instituted or before the spouses commenced to live apart, as the case may be (Y.G. v. N.G., Denham C.J., at p. 731).**

**42.** Ms A was especially concerned that Mr A was seeking to reduce her to a state of comparative poverty (or, if not poverty, then certainly a want of resources) such that, *e.g.*, she would not be able to enjoy life to the full and would have difficulty in visiting her children and paying for expenses that may not be foreseen at this time. She is also, with respect, not getting any younger and thus likely to find that there is greater need for recourse to doctors in a future in which old age beckons – and where even the most comprehensive health insurance will not cover all the health expenses that may yet present (a point touched upon by Ms A in her evidence).

**43. (12) If a party has new needs, for example a debilitating illness, that will be a factor to be considered by a court in all the circumstances of the case (Y.G. v. N.G., Denham C.J., at p. 731).**

**44.** No such need presents here.

**45. (13) "*Assets which are inherited will not be treated as assets obtained by both parties in a marriage. The distinction in the event of separation or divorce will all depend on the circumstances. In one case, where a couple had worked a farm together, which the husband had inherited, the wife on separation sought 50%, however, the order given by a court was 75% to the husband and 25% to the wife. This is a precedent to illustrate an approach, but the circumstances of each case should be considered specifically.*" (*Y.G.* v. *N.G.*, Denham C.J., at p. 732).**

**46.** I note the need to consider each case specifically. Given the complete absence of agreement between the parties as to who should live in the family home (and indeed otherwise), and given the competing sentimental interests in a house inherited by Mr A which has also for 30+ years been a family home to Ms A, my own sense is that the fairest way to proceed is as indicated in Part A for the reasons there stated.

**47. (14) Where one or both parties are in receipt of income, but their joint assets are not of such significant value, the first task of the court will almost certainly be to consider what the financial needs of the spouses and the dependent children are. At one end of the spectrum, there will be cases in which, at best, no more than basic subsistence requirements at the most can be met. At the other, there will be both substantial assets and income available and the court will be concerned with the proper distribution, in terms of the section, of the available assets so as to ensure that proper provision is made for the spouses and any dependent children (*D.T.* v. *C.T.*, Keane C.J., at p. 386).**

**48.** Two points might be made. First, Ms A and Mr A have had a number of children, all of whom are now young adults. When these proceedings were commenced, two of the children were dependent children. That situation no longer pertains. Second, this is an ample resources cases albeit not the amplest of ample resources cases. So by making an equal split of the available assets, fair provision can be made for each side.

**49. (15) The Act of 1996 does not require the assets of the spouses to be divided between them and the dependent children in every case. There will be cases in which it would be solely concerned with the appropriate level of the maintenance to be paid by one spouse to the other and as to what is to happen to the family home. But in cases where there are substantial assets brought into being in circumstances where it would be unjust not to effect some form of division, the court will inevitably find itself having to determine, where the parties are unable to agree, how the assets should be divided and whether that division should take the form of a lump sum order or a property adjustment order (*D.T.* v. *C.T.*, Keane C.J., at pp. 386-87).**

**50.** Please see my response to (14).

## NON-DISCRIMINATION

**51. (16) The work of a spouse in the home cannot be a basis for discriminating against her by reason only of the fact that the husband was the major earner or the breadwinner during the course of the marriage (*D.T.* v. *C.T.*, Murray J., at p. 427).**

**52.** Noted. This is an observation that has a resonance in this case. Mr A has been the major earner. However, in assets he is the richer of the two parties. But his acquisition of those assets has been financed in part by [Stated Business A] and he has of course been greatly freed in his business pursuits by Ms A's remaining at home as a homemaker. As mentioned previously above, I see this to have been a joint partnership (an often unhappy joint partnership but a joint partnership nonetheless) that has endured across just over three decades, with each party bringing his or own strengths to that partnership.

**53. (17) Lord Nicholls, in *White* v. *White* [2001] 1 A.C. 596, emphasised that the whole tenor of English divorce legislation was the avoidance of a discriminatory approach: the fact that, as often happened, the wife had devoted the greater part of her time to looking after the children and caring for the home generally, was no ground for confining her share of the family assets, in the event of a breakdown of the marriage, to so much of the assets as met her 'reasonable requirements'. That is also the law in Ireland (*D.T.* v. *C.T.*, Keane C.J., at p. 389).**

**54.** Noted. I would reiterate the point made at (16) above.

**55. (18) In *Cowan* v. *Cowan* [2002] Fam. 97, a so-called 'ample resources' case, Thorpe LJ, at pp. 118-19, summarised his understanding of *White* v. *White* [2001] 1 A.C. 596 as follows, "*Disapproved is any discriminatory appraisal of the traditional role of the woman as homemaker and of the man as breadwinner and arbiter of the destination of family assets amongst the next generation. A calculation of what would be the result of equal division is a necessary cross check against such discrimination....Disapproved is any evaluation of outcome solely or even largely by reference to reasonable requirements*." Provided that it is always borne in mind that in 'ample resources' cases an equal division of the assets is emphatically not mandated by the legislation, Keane C.J. considered that there should be**

**no difficulty in adopting a broadly similar approach in this jurisdiction. (*D.T.* v. *C.T.*, Keane C.J., at pp. 389-90).**

**56.** This is an ample resources cases, albeit not the amplest of ample resources cases. By making a roughly equal split of the available assets, proper provision can be made for each side and fairness and justice achieved.

**57. (19) When a court is exercising its discretion in making provision for spouses on an application for divorce, the following should be considered: (i) in making such provision a spouse who has worked principally in the home during the course of the marriage should not be disadvantaged in the making of such provision by reason of that fact; (ii) both spouses are entitled, in principle, to seek that the provision made for them provides them with a measure of independence and security in their lives and there is no reason why, in principle, a non-earning spouse should be confined to periodic payments. The extent to which this can be achieved in practice will depend on the circumstances of the case, the resources available and the exercise of judicial discretion in taking into account all the factors referred to in s.20; (iii) a court has power to direct the payment of lump-sum payments where this is considered an appropriate means of making proper provision for one or other of the spouses; (iv) all the resources, assets and income of the applicant and the respondent) should be taken into account (*D.T.* v. *C.T.*, Murray J., at pp. 431-32).**

**58.** As to (i), Ms A has worked principally as a homemaker and should not be disadvantaged by that fact. As to (ii), I consider that the course of action that I intend to take will provide both spouses with a measure of independence and security in their lives. As to (iii) it seems to me that the payment of a lump sum (subject to the caveats mentioned above) is the appropriate means of making proper provision in the circumstances presenting, As to (iv), I have taken all this income into account (in terms of income and expenditure by reference to the latest affidavits of means sworn by the parties).

## ‘BREADWINNERS’ VERSUS ‘HOMEMAKERS’

**59. (20) The role of the dependent homemaker and child carer, usually the wife, is not to be disadvantaged in the distribution of assets by reason of having a non-economic role (*M.K.* v. *J.K. (No 2)*, O'Neill J., at p. 349).**

**60.** Noted. This is an observation that has a resonance in this case. Mr A has been the major earner. However, in assets he is the richer of the two parties. But his acquisition of those assets has been financed in part by [Stated Business A] and he has of course been greatly freed in his business pursuits by Ms A’s remaining at home as a homemaker. As mentioned previously above, I see this to have been a joint partnership (an often unhappy joint partnership but a joint partnership nonetheless) that has endured across just over three decades, with each party bringing his or her own strengths to that partnership.

**61. (21) In Irish society today, it can no longer be assumed that the husband and wife [in mixed-sex marriages] will occupy their traditional roles in which the husband has been the breadwinner and the wife the home builder and carer. The roles may on occasions even be reversed and, in many instances, both husband and wife will be in receipt of income from work. In those cases where one spouse alone is working and, in the result, a significantly greater responsibility for looking after the home has devolved on the other, it is clear that under s.20(2)(f) of the Act of 1996, the court must have regard to that as a relevant factor (*D.T.* v. C.T., Keane C.J., at p. 387).**

**62.** Noted.

**63. (22) A court is obliged by virtue of s.20(2)(g) to have regard to the financial consequences for either spouse of his or her having relinquished the opportunity of remunerative activity in order to look after the home or care for the family (*D.T.* v. *C.T.*, Keane C.J., at p.387).**

**64.** This is a case in which Ms A has essentially had to do just this. She had a career or the makings of a career in the area in which she worked (for a nationally renowned employer) before marrying Mr A. However, her career opportunities in life have been limited by the fact (which she does not appear to begrudge but it remains a truth) that she devoted the best years

of her life to being a homemaker and to the important task of raising her children well (and, if I might respectfully observe, the evidence points to them as having been well raised).

**65. (23) In assessing the "*proper provision*" under Article 41.3.2°, the court must look at both aspects of a spouse's role in the family, *i.e.* the two sides of the coin. Thus the court must have regard to the role of the spouses in relation to the welfare of the family, to their contribution in looking after the home or caring for the family: s.20(2)(f). On the other side of the coin, the court must have regard to the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each, and the degree to which the future earning capacity of a spouse was impaired by reason of the spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family: s.20(2)(g). By this total approach to the family role of a spouse and its effect, formal recognition is given to the role of caring for the family (D.T. v. C.T., Denham J., at p. 402).**

**66.** Please see my observations at (22).

**67. (24) Article 41.3.2° of the Constitution and the Act of 1996 clearly require that value be placed on the work of a spouse caring for dependents, the family and the home. A long-lasting marriage, especially in the primary childbearing and rearing years of a woman's life, carries significant weight, especially if the wife has been the major home and family carer (*D.T.* v. *C.T.*, Denham J., at pp. 402-03).**

**68.** The situation described in the last sentence in Bold text above is the situation that confronts me here.

**69. (25) In ensuring that proper provision is made for the spouses of a marriage before a decree of divorce, the courts should, in principle, attribute the same value to the contribution of a spouse who works primarily in the home as it does to that of a spouse who works primarily outside the home as the principal earner. The value to be attached to their respective contributions in those circumstances is, perhaps, underscored by Article 42.1 of the Constitution which refers, *inter alia*, to the " … *duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children*" (*D.T.* v. *C.T.*, Murray J., at p. 428).**

**70.** Noted.

**71. (26) Where substantial assets and income have accrued to one spouse in the course of the marriage, the court should take them into account in determining the proper provision to be made for the other spouse. They are available in order to make a proper provision for the other spouse. In the case of a wife who has worked primarily in the home, she is just as entitled as her husband to have the 'fruits of the marriage', taken into account by the court in determining what provision should be made for each of them (*D.T.* v. *C.T.*, Murray J., at p. 430).**

**72.** Noted. This is very much the basis on which I have approached this case (given that substantial assets have accrued to Mr A in the course of the marriage) and bringing to bear also the factor that Ms A contributed to the success of [Stated Business A] (which appears to a great extent to be the foundation stone on which the family's present fortunes rest).

**73. (27) Section 20(2)(f) obliges the court to give due weight and consideration to the respective roles of the breadwinner and the homemaker, *i.e.* such weight as is appropriate in all the circumstances. It does not erect any automatic or mechanical rule of equality. Nor does it institute any notion of family resources or property to be subjected to division. Several considerations militate against the adoption of such rules of thumb. The children of the marriage have to be considered and their provision by one spouse may mean that property should not be equally divided. One or both of the parties may have entered into new relationships, possibly involving children. The supposed 'breadwinner' or 'homemaker', as the case may be, may not, depending on the circumstances deserve to be placed on an equal footing. It is only with the greatest care, therefore, that one should formulate any general propositions (*D.T.* v. *C.T.*, Fennelly J., at pp. 438-39).**

**74.** Please see my observations at (26).

**75. (28) In *White* v. *White* [2001] 1 A.C. 596, Lord Nicholls observes, at p. 605, that "*If, in their different spheres, each [spouse]contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should***

***be no bias in favour of the money-earner and against the home-maker and the child-carer*". Fennelly J. adopted this language to the extent that he argues for equal recognition of the value of the contributions that may have been made during the marriage, in their respective roles, by the money-earning spouse and the home-making spouse (*D.T.* v. *C.T.*, Fennelly J., at p. 439).**

**76.** Noted. Please see my observations at (26).

## OTHER RELEVANT FACTORS

**77. (29) Other factors to which the court is obliged to have regard is the standard of living enjoyed by both parties before the breakdown of the marriage, their respective ages and the duration of the marriage (*D.T.* v. *C.T.*, Keane C.J., at p. 387).**

**78.** Here the parties have enjoyed a comfortable existence (albeit perhaps a relatively modest one given the scale of commercial success that they have enjoyed during their marriage). Their marriage, even if it has not existed in a meaningful sense over the last decade has spanned several decades. As to their respective ages, both parties are now in their 60s and approaching some level of retirement. I do not see, on the evidence before me, that Ms A has any meaningful prospect of a fresh start in her career at this time. Mr A continues to have, if I might use a colloquialism, many 'pokers in the fire' in terms of his farming, horse-rearing, and commercial experience, and it may be that he will deploy that experience to good end, or he may himself enter into some level of retirement. (Either way, as with Ms A, I consider that my intended division of the present family assets, subject to the caveats that I have mentioned above, makes proper provision for him and achieves an end result that is optimally fair and just in all the circumstances presenting).

**79. (30) A party should not be compensated for their own incompetence or indiscretions to the detriment of the other party (*Y.G.* v. *N.G.*, Denham C.J., at p. 732).**

**80.** Noted but of no practical consequence in this case.

## CONDUCT OF PARTIES

**81. (31) The conduct of the parties will be relevant where, in the opinion of the court, it would be unjust to disregard it (*D.T.* v. *C.T.*, Keane C.J., at p. 387).**

**82.** I do not see that this is relevant. I have said what I have said above about the need for Mr A now to leave the family home.

**83. (32) Ultimately, when all these factors have been assessed by the trial judge, he or she must be satisfied that any financial orders made constitute proper provision for each of the spouses, and the dependent children, within the meaning of the Constitution and the Act of 1996 (*D.T.* v. *C.T.*, Keane C.J., at p. 387).**

**84.** I am so satisfied for the various reasons stated throughout this judgment.

**85. (33) As to when it would be "*unjust*" within the meaning of s.20(2)(i) to disregard the conduct of each of the spouses, in *Wachtel* v. *Wachtel* [1973] Fam. 72, Denning MR said, at p. 90, that: "*There will no doubt be a residue of cases where the conduct of one of the parties is...'both obvious and gross', so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life ... in the financial adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place.*" Keane C.J., in *D.T.*, agreed with the view expressed by Lord Denning in *Wachtel* that the court should not reduce the financial provision which it would otherwise make to one of the parties save in cases where misconduct has been "obvious and gross". (D.T. v. C.T., Keane C.J., at p. 391; see also Denham J., at pp. 408-09).**

**86.** Please see my observations at (31).

## DATE OF VALUATION OF ASSETS

**87. (34) As to the time at which the assets should be valued, the language of s.20(2)(a), and, in particular, the reference to "*property ... which each of the spouses concerned has or is likely to have in the foreseeable future*" is more consistent with an assessment by the court of the value of those assets as of the date of the hearing. Any other construction would seem to give rise to the possibility of injustice to either party. That was also the view taken by the Court of Appeal in *Cowan* v. *Cowan* [2002] Fam. 97, at p. 122 (*D.T.* v. *C.T.*, Keane C.J., at pp. 390-91).**

**(35) The assessment of assets must be as of the date of trial or appeal. This is consistent with the wording of the statute which refers to "*circumstances exist*", "*the income...which each of the spouses concerned has or is likely to have*", "*the financial needs which each of the spouses has or is likely to have*". However, while the assessment of assets is at the date of the trial or the appeal, there may be important factors relevant to that sum to be taken into consideration in determining the proper provision for the spouses. *E.g.*, the fact that a considerable sum of money was acquired by a spouse after their separation, the basis for such a new acquired sum, or the existence of a deed of separation, may be very relevant (*D.T.* v. *C.T.*, Denham J., at p. 404).**

**88. (36) Assets should be assessed as at the date of trial. However, there may well be circumstances as to their relevance as an asset base in providing proper provision. Thus, if the parties had no joint enterprise (such as a farm or business or professional practice) and one party after separation commenced and achieved success in a wholly new area, that may be a circumstance applicable to the determination of the asset base relevant to proper provision. While the factors set out in s.20(2)(a)-(1) must be applied, it may affect the benchmarking of fairness (*D.T.* v. *C.T.*, Denham J., at p. 405).**

**89.** Noted.

## *AD SERIATIM* CONSIDERATION

**90. (37) In determining proper provision, it is mandatory for the court to have regard, in particular, to the factors set out in s.20(2) of the Act of 1996. The relevance and weight of each factor will depend on the circumstances of each case. Best practice is to consider all the circumstances and each particular factor ad seriatim and give reasons for their relative weight in the case (*D.T.* v. *C.T.*, Denham J., at p. 402).**

**91. (38) What the court of first instance must do is go through the various factors set out in s.20(2) seriatim and deal with the circumstances of the case in the light of these factors insofar as they are relevant to the circumstances of the case, assessing in the light of the evidence, the weight to be attached to each factor. Having completed that exercise, the court must then, in the light of s.20(5) of the Act of 1996, consider in a residual way and on the basis that the court's discretion is not confined solely to the factors set out in s.20(2) but must have regard to whether or not an order which the court might be disposed to make, having weighed up the various factors in s.20(2), should not be made unless it would be in the interests of justice to do so (*M.K.* v. *J.K. (No 2)*, O'Neill J., at p. 350).**

**92.** I have so proceeded.

## LUMP SUM

**93. (39) There is nothing in the Constitution or legislation which prohibits a lump sum as part of a financial ancillary order. In considering whether such an order is applicable, the provisions of the Act of 1996 must be applied (*D.T.* v. *C.T.*, Denham J., at p. 403).**

**94. (40) The Constitution would require that the making of lump sum payments be ordered if, in the particular circumstances of the case, the court considered in its discretion that that was the appropriate manner by which proper provision should be made for the spouse in question (*D.T.* v. *C.T.*, Murray J., at pp. 429-30).**

**95.** Noted.

**PROPER PROVISION (NOT DIVISION)**

**96. (41) Under s.20(1) of the Act of 1996, "*the court shall ensure that such provision as the court considers proper having regard to the circumstances exists*" will be made for the spouses and any dependent children. Thus this duty requires the court to make proper provision, having regard to all the circumstances (Y.G. v. N.G., Denham C.J., at p. 730).**

**97. (42) The Act of 1996 enables the court to make a variety of financial and property orders; the purpose of the making of these orders upon the granting of a divorce decree is to ensure that proper provision is being made for a dependent spouse and children (*M.K.* v. *J.K.* (No 2), O'Neill J., at p. 332).**

**98. (43) In English matrimonial law, the court in divorce proceedings is primarily concerned with dividing assets as fairly as possible between the parties rather than making proper provision for the spouses and their dependent children. Such an approach could not be adopted in this jurisdiction, where the appropriate criterion is the making of proper provision for the parties concerned (*M.K.* v. *J.K. (No 2),* O'Neill J., at p. 348).**

**99. (44) The scheme established under the Act of 1996 is not a division of property. The scheme provides for proper provision. It is not a question of dividing the assets at the trial on a percentage or equal basis. All the circumstances of the family, including the particular factors referred to in s.20(2) are relevant in assessing the matter of provision from the assets (*D.T.* v. *C.T.*, Denham J., at p. 404).**

**100.** Noted.

**101. (45) It is not the case that in making financial provision for spouses their assets should be divided between them. Neither the Constitution nor the Act of 1996 requires that, expressly or implicitly. It is rather that a spouse should not be**

**disadvantaged by reason of the fact that all, or nearly all, of the assets and income in the marriage are those of the other spouse. It also means that in cases where there are very substantial assets belonging to one spouse which greatly exceed any conceivable day-to-day needs of either spouse, whatever their standard of living, those assets should not as a matter of course remain with the spouse who owns them, with the other spouse being confined to depending on periodic payments (*D.T.* v. *C.T.*, Murray J., at p. 428).**

**102.** Noted. It is precisely the type of disadvantage to which Murray J. refers that is at play in this case, *i.e.* Ms A should not be disadvantaged by reason of the fact that nearly all of the assets in the marriage are those of Mr A.

**103. (46) Proper provision should seek to reflect the equal partnership of the spouses. Proper provision for a spouse who falls into the category of a financially dependent spouse should seek, so far as the circumstances of the case permit, to ensure that the spouse is not only in a position to meet his/her financial liabilities and obligations, continue with a standard of living commensurate with his/her standard of living during marriage but to enjoy what may reasonably be regarded as the fruits of the marriage so that he/she can live an independent life and have security in the control of his/her own affairs, with a personal dignity that such autonomy confers, without necessarily being dependant on receiving periodic payments for the rest of her life from his/her former wife/husband. 'In principle' because in many cases the resources or circumstances of the parties will dictate that the only means of making future provision for the spouse in question will be by periodic payments from the other spouse (*D.T.* v. *C.T.*, Murray J., at p. 429).**

**104.** As should by now be clear, the course of action that I intend to take seeks to reflect the equal partnership of the spouses, to ensure that each party is not only in a position to meet his/her financial liabilities and obligations, but also to continue with a standard of living commensurate with his/her standard of living during marriage, and indeed to enjoy what may reasonably be regarded as the fruits of the marriage so that they can each live an independent life and have security in the control of their respective affairs, with a personal dignity that such autonomy confers, without (in Ms A's case) being dependant on receiving periodic payments for the rest of her life from Mr A.

**105. (47) The court must do what is "*proper*" in the sense of 'appropriate'. This is synonymous with what is "fair" or "just". In the moral sense, this is a clearly stated objective. In practice, it requires the court to weigh in the balance the infinite variety and complexity of the elements of human affairs and relationships and to arrive at a just result (*D.T.* v. *C.T.*, Fennelly J., at p. 434).**

**106.** Noted.

**107. (48) Any property, whenever acquired, of either spouse and whenever and no matter how acquired, is, in principle, available for the purposes of the provision. Thus, property acquired by inheritance, by chance, or the exclusive labours of one spouse does not necessarily escape the net. On the other hand, not all such property is automatically available either (*D.T.* v. *C.T.*, Fennelly J., at p. 437).**

**108.** Noted. Please see my observations at (13).

## CONTINUING OBLIGATION

**109. (49) Each spouse has a continuing obligation to make proper provision for the other and the resources which are available to each of them may be taken into account, so far as is necessary, to achieve that objective. Each case will necessarily depend on its own particular circumstances (D.T. v. C.T., Murray J., at p. 430).**

**110.** Noted. I have so proceeded.

## AGREEMENT BETWEEN SPOUSES

**111. (50) It is evident that parties may well be able to compose their material and financial differences by agreement. Agreement is, in its nature, to be encouraged, a matter which is recognised in the legislation, in particular, by requiring the court to have regard to the terms of any existing separation agreement (*D.T.* v. *C.T.*, Fennelly J., at pp. 433-34).**

**112.** There is no agreement here.

## SECTION 20

**113.** Section 20 of the Act of 1996 provides as set out in the Bold text that follows; my comments appear in plain text.

**114. 20.— (1) In deciding whether to make an order under section 12, 13, 14, 15 (1) (a), 16, 17, 18 or 22 and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.**

**115.** I have treated with this aspect of matters above.

**116. (2) Without prejudice to the generality of subsection (1), in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters: (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,**

**117.** I have treated with this aspect of matters above.

**118. (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage or registration in a civil partnership of the spouse or otherwise),**

**119.** I have treated with this aspect of matters above.

**120. (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,**

**121.** I have treated with this aspect of matters above.

**122. (d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,**

**123.** I have treated with this aspect of matters above. The parties appear to have lived together throughout their marriage and continue to do so at this time.

**124. (e) any physical or mental disability of either of the spouses,**

**125.** Neither spouse suffers from any such disability.

**126. (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,**

**127.** I have treated with this aspect of matters above.

**128. (g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,**

**129.** I have treated with this aspect of matters above.

**130. (h) any income or benefits to which either of the spouses is entitled by or under statute,**

**131.** Each of the parties will at some point come into receipt of the old age pension. However, given the scale of the private assets available in this case, I do not see that this is an especially relevant factor. (It is of course *a* factor but not an especially significant one in all the circumstances presenting.) There is mention in Mr A's affidavit evidence that Ms A might be in receipt of a disability pension but this has not been established on the evidence before me.

**132. (i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,**

**133.** I have treated with this aspect of matters above.

**134. (j) the accommodation needs of either of the spouses,**

**135.** I have treated with this aspect of matters above.

**136. (k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,**

**137.** It does not appear from the evidence that there is any such benefit.

**138. (l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.**

**139.** No other such rights have been raised as an issue. I have sympathy for the child who is farming certain parts of the family land and may yet be affected by the orders that I will make. However, he has no rights in relation to any such land.

**140. (3) In deciding whether to make an order under a provision referred to in subsection (1) and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.**

**141.** There is no such agreement.

**142. (4) Without prejudice to the generality of subsection (1), in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters: (a) the financial needs of the**

**member, (b) the income, earning capacity (if any), property and other financial resources of the member, (c) any physical or mental disability of the member, (d) any income or benefits to which the member is entitled by or under statute, (e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained, (f) the matters specified in paragraphs (a), (b) and (c) of subsection (2) and in subsection (3), (g) the accommodation needs of the member.**

**143.** Noted. I am not making any order in respect of a dependent family member.

**144. (5) The court shall not make an order under a provision referred to in subsection (1) unless it would be in the interests of justice to do so.**

**145.** Noted. I am satisfied that it is in the interests of justice to make the orders I intend to make.

## CONCLUSION

**146.** I will make the orders indicated above for the reasons stated above. I would ask that counsel prepare a draft order between them having regard to the terms of this judgment which I will then consider. I would be grateful if counsel would make submissions to me within four weeks of the date of this judgment as to the timing of the order, *i.e.* when payment should be made and whether it should be payable all at once or in stages. I am conscious that if monies need to be borrowed or properties or other assets sold this will take some time and am keen not to see a so-called 'fire sale' of family assets; however, I am also conscious of the need not to leave Ms A waiting endlessly for payment. I will hear the parties as to costs.

***TO MR A/MS A:***

***WHAT DOES THIS JUDGMENT MEAN FOR YOU?***

*Dear Ms A, Mr A*

*I have just written a detailed judgment about the application brought by Ms A. The judgment contains a lot of legal language which can be hard (even boring) to read. In a bid to make my judgments easier to understand by those who receive them I often now attach a note in 'plain English' briefly summarising what I have decided. I thought it might assist for me to add such a note in this case.*

*In a bid to ensure that people do not know who you are, I refer to you in my judgment and in this note as Mr A and Ms A. This may seem a bit artificial. However, I think it is for the best.*

*This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is written to help you understand what I have decided. Any lawyers that you have engaged or may engage will explain the rest of my judgment in more detail.*

*I am granting the divorce decree sought. As regards the financial arrangements, I will order that Mr A – subject to various important caveats – pay one half of the total value of the total assets available in this case to Ms A. (The important caveats are set out in detail in the judgment and your lawyers will discuss them with you). I will also order that the family home be placed in the name of Ms A. And I will order that Mr A leave the family home immediately. I see my orders to represent a 'clean break' between you both and will not make orders as to maintenance.*

*I have asked your respective counsel to make submissions to me within four weeks of the date of my judgment as to the timing of the order,* i.e. *when payment should be made and whether it should be payable all at once or in stages. I am conscious that if monies need to be borrowed or properties or other assets sold this will take some time and am keen not to see a so-called 'fire sale' of family assets; however, I am also conscious of the need not to leave Ms A waiting endlessly for payment.*

*In the unlikely event that there is a conflict between the text of this letter and the text of the main body of my judgment, the text of the main body of my judgment shall prevail.*

*I wish you both the very best.*

*Yours sincerely*

*Max Barrett (Judge)*

*Date: 12th January 2023.*