

THE HIGH COURT

1982 No. 470 Sp.

IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT, 1976.  
AND IN THE MATTER OF THE MARRIED WOMEN'S STATUS ACT, 1957  
AND IN THE MATTER OF THE FAMILY HOME PROTECTION ACT, 1976

BETWEEN:

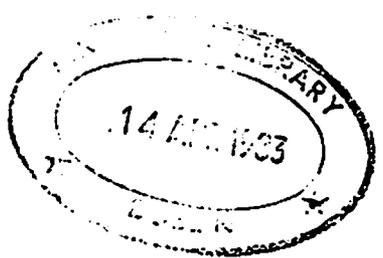
N.D.

PLAINTIFF

AND

A.D.

DEFENDANT



Judgment delivered by O'Hanlon J. the 10th day of December, 1982.

The principal issue arising for determination in this case concerns the beneficial ownership of a number of properties which the Plaintiff and the Defendant have acquired in the course of their life together as husband and wife. As invariably happens in this type of case it becomes necessary to examine the background to many transactions to arrive at a resolution of the problems which have arisen as to the interest to which each spouse is entitled in the family assets.

The Plaintiff was born on the 28th October, 1932, and the Defendant is approximately the same age as the Plaintiff or a little older. They met in or about the year 1951, both being

from the Listowel area, and a few years later they emigrated, first to London, then moving on to Canada where they each succeeded in obtaining employment. In 1955 they moved again, this time to New York, where they were married on the 15th October, 1955. The Plaintiff obtained work as a waitress and the Defendant as a miner, and while they pooled their earnings from that time forward, it would appear that the Defendant was at that time taking in substantially more than the Plaintiff as weekly income.

The next development was that the Defendant's father died, and the Defendant inherited the small family holding near Listowel. As a result the parties returned home to Ireland in 1956, bringing with them their savings of about £3,000, and remained living on the Defendant's farm until 1958 when it was sold for about £2,000 in order to purchase a somewhat larger holding at Ballyduhig for about £5,000. This latter holding is still retained, and is one of the properties referred to in these proceedings. These are the lands comprising 64 acres three roods and 29 perches, and registered on Folio 8211 of the

Register of Freeholders, County of Kerry.

It would appear that the purchase price for these lands was provided to a large extent out of the proceeds of sale of the Defendant's farm at Ballinruddery and out of moneys advanced by way of loan by the National Bank, Listowel. I think the position regarding any contribution derived from the wife's earlier assistance in building up a joint savings funds is too obscure to support a claim to a share or interest in these lands and I propose, accordingly, to declare that the Defendant, who is the registered owner, is also entitled to the full beneficial ownership in the said lands.

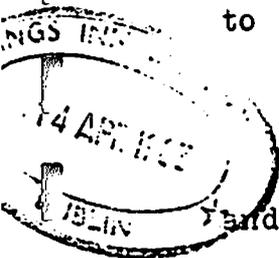
After a further period of about seven years the family fortunes began to decline; they suffered heavy losses due to brucellosis, and a decision was taken to let the lands of Ballyduhig and to emigrate again, this time to London. Before leaving Ireland they sold off stock and farm machinery and this realised about £3,500. In London they bought a house in Cricklewood in the husband's name only, for about £6,500, using such money as they were able to bring over from Ireland and

raising about £4,000 by way of mortgage to make up the balance. They remained in London for about four years. The wife claimed that she held two part-time jobs concurrently and that her earnings were sufficient to meet the mortgage repayments and were used for this purpose. Lettings were made of part of the house and she also claimed to have contributed significantly to the income derived from this source by the work she did in relation to same. The house was eventually sold in or about the year 1969 for about £8,500, and a balance of about £4,000 remained after paying off the outstanding mortgage.

In the previous year - 1968 - No. 19 Church Street, Listowel, (a licensed premises with residential accommodation overhead), was purchased, once again in the sole name of the Defendant, for a sum of about £4,380 but it was necessary to spend a good deal of money and to carry out a good deal of work on the premises before it could be re-opened for business and used as a family home.

There was a good deal of dispute as to the part played by the different members of the family in carrying out the works

of repair, extension, and redecoration which were necessary in relation to No. 19 Church Street, but I am satisfied that the Plaintiff, the Defendant, their son, John, and the Plaintiff's brother all took part in this work which continued over a long period of time. Eventually the public-house was ready for re-opening in August, 1970, and from that time forward the Defendant was content to leave the running of the licensed trade to his wife, while he devoted his time to farming activities.

 A further extension was made to the public-house in 1974, and in 1975 the adjoining premises, No. 17 Church Street, were purchased - this time in the sole name of the Plaintiff. Once again it was necessary to expend a good deal more than the actual purchase price of £6,500 in making the house fit for habitation, and a very considerable amount of work was carried out personally by the Plaintiff; by her son, John, and by her brother, Tim. The Defendant also claims to have carried out a considerable amount of this work, but this is disputed by the Plaintiff and by her son.

In 1978 another farm was bought at Kilmorna, Co. Kerry, comprising 71 acres or thereabouts, and this farm was purchased in the name of John, for about £53,000. Most of the money was raised by way of loan from Allied Irish Banks; the debt was later brought down to about £33,000 by repayments made, but has since risen again and is now in the region of £48,000. I have had evidence from an auctioneer that the value of the lands of Kilmorna would not be much in excess of the amount now due on the mortgage, and the beneficial interest in this holding would not appear to be of great moment at the present time. Having regard to the fact that the parties purchased the lands in the name of their son, John, and that the Term Loan was made by the Bank in favour of John and his father, the Defendant herein, I have no difficulty in finding that the Plaintiff was not intended to acquire any beneficial interest in the said lands, and I need not delay further in relation to that part of the claim; nor was it pressed to any extent by Counsel on behalf of the Plaintiff.

The Plaintiff appears to have been very successful in carrying on the public-house business in Listowel. The turnover

rose from a figure in the region of £30,000 in the early years to about £80,000 per annum a few years later, and the parties estimated that the profit on sales was at least 15%/20% and perhaps, according to the Defendant, ranging as high as 33%. The farm income fluctuated considerably - at first the farming activities were quite profitable but from the mid-seventies onwards the Defendant suffered some heavy losses in the cattle business and in recent years he estimated that his income from the two farms was only yielding a sum in the region of £6,000 per annum. Thus it is apparent that the main source of income of the parties during the 1970's was derived from the wife's efforts in managing and running the licensed business in Listowel.

I am satisfied, from the evidence given by both parties that a very substantial income was made as a result of long hours of work and considerable business acumen on her part, and that the money earned in this way enabled the parties first to extend the public-house itself; to pay off the mortgage on it; to buy and refurbish the adjoining premises, No. 17 Church Street, and to clear off any loan on that premises also.

In these circumstances it is not surprising that No. 17 Church Street was purchased in the sole name of the wife. I am satisfied that it was recognised by the Defendant at the time that she was the major contributor to the family's new-found prosperity and that he was quite willing to let the house go into her name without asserting any claim to a beneficial interest on his own part. It seems that the parties were also interested in not having too great a concentration of property in the Defendant's name, having regard to possible tax repercussions. The Defendant also drew heavily on the profits built up by the public-house trade to buy stock and machinery for his lands and otherwise to help out in the purchase of Kilmorna and other farming activities.

Taking the over-all picture created by the evidence given on both sides, I have no hesitation in holding that the entire beneficial interest in No. 17 Church Street, and the furniture and other contents of the said premises is vested in the Plaintiff.

With regard to the premises No. 19 Church Street, and the business carried on therein, and all furniture and fittings

therein, I find the Plaintiff entitled to a 60% interest therein, having regard to her initial contribution through her earnings to the original purchase of the premises, and the later express or implied agreement between the parties whereunder it was left to the Plaintiff to create and develop the business in the premises by her own unaided efforts and business expertise. By these means any remaining incumbrances on the premises were paid off; finance was provided for considerable additional works of maintenance and development, as well as for the needs of the family and the acquisition of other property.

I would hold that the Defendant is entitled to the full beneficial interest in the lands of Ballyduhig and all stock, farm machinery and equipment thereon; as between the Plaintiff and the Defendant I hold that the Plaintiff has no claim to any share or interest in the lands of Kilmorna or to any stock, farm machinery or equipment thereon.

Unfortunately, the material progress made by the Plaintiff and the Defendant was matched by a corresponding decline in their matrimonial relations, commencing, according to the

Plaintiff, in or about the year 1970, when the Defendant commenced drinking heavily. The Plaintiff complains that the Defendant was always a man of violent temper, and that she and the children were at times terrified by his outbursts of rage. The actual evidence of violence exercised by the Defendant against the Plaintiff was not very compelling, but the Plaintiff claimed that she had eventually to leave the family home on or about the 4th April, 1980, taking her daughter, Marie with her. John, her son, had left home the week previously. Shortly afterwards she moved to London, where she has lived ever since.

A maintenance order was made against the Defendant under the provisions of the Family Law (Maintenance of Spouses and Children) Act, 1976, in or about the month of October, 1980, under which the Defendant was required to pay a sum of £50 per week, (later reduced to £40 per week) for the wife's maintenance, and he has complied with that Order ever since.

As the proceedings include a claim under the Partition Acts for partition and sale of properties in which both parties are found to have a beneficial interest, I propose to make an order

at this stage for the sale of the premises No. 19 Church Street, Listowel, and of the goodwill of the business carried on therein, and the benefit of the licence now held in connection therewith, and all furniture, fittings and equipment therein, and to direct that the net proceeds after payment of costs of the sale and the legal costs of both parties of these proceedings, be divided between the Plaintiff and the Defendant in the shares indicated, that is to say, the Plaintiff to receive 60% of the net proceeds and the Defendant 40%. It may well be in the interest of both parties to agree that the premises should be re-opened and that there should be a resumption of business therein before the premises are put on the market as a going concern. Initially, however, I propose to leave it to the parties to make their own arrangements about the sale, and if they are unable to agree the matter can be re-entered for further directions to be given. The Plaintiff and the Defendant should jointly have carriage of sale.

I propose to adjourn the application for an order for the

sale of the premises No. 17 Church Street, Listowel, to give the parties an opportunity to see if they can reach agreement as to the manner in which the Plaintiff can realise the interest which she has in the said premises.

I will direct that payment of maintenance by the Defendant to the Plaintiff at the current rate of £40 per week is to continue until she receives her share of the proceeds of sale of No. 19 Church Street, Listowel, or until further Order, at which stage the claim for maintenance can again be reviewed.

I declare both parties entitled to their costs of the proceedings to be paid out of the proceeds of sale of No. 19 Church Street, Listowel, as already indicated in this judgment.

I give liberty to all parties to apply, should they be advised to do so, in relation to any other matters arising out of the claims made in the Special Summons herein, or in relation to the findings and orders now made.

*R. J. O'Hanlon,*

R.J. O'Hanlon. —

10-12-'82.

*Approved,*  
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