

McG. , M.

Plaintiff

.v.

McG. , D.

Defendant

Judgment of Mr. Justice Barron delivered on the 8th day of February 1985.

This matter was re-entered because the figures upon which I acted in my Order dated the 11th of May, 1984 are said to have been inaccurate. They showed a pool of money available to both parties after tax of some £21,000-00 whereas the pool is in fact now established as being somewhere in the order of £19,300-00 depending upon the amount of the maintenance awarded to the plaintiff. If the same amount is to be awarded to her as was awarded to her on the 11th of May, 1984 then the pool is £19,400-00. In fact, this figure is also inaccurate because it is calculated without giving the husband the benefit of £2,000-00 mortgage interest allowance. This will enable him to have a further £1,300-00 after tax. It is also calculated on the basis of the wife's gross earnings being £8,000-00 instead of £9,300-00. This after tax and P.R.S.I. and levies would leave the wife approximately another £325-00. The effect of these two items will virtually bring the same result as my Order of the 11th of May, 1984.

In that Order, I gave to the wife effectively £13,660-00 out of what I was informed was the pool and to the husband £7,500-00. On the present figures giving the wife £10,000-00 gross and the children £1,260-00, the wife will receive effectively £11,900-00 plus £1,260-00 plus £325-00 or £13,485-00;

some £175-00 less than was thought to be the case in May. On the same basis the husband will receive effectively £6,253-00 plus £1,300-00 or £7,553-00; some £50-00 more than thought to be the case in May.

I must now consider whether I ought to make any change in my Order. The recent Budget has also altered the tax bands. However, both parties will benefit more or less equally so I propose to work on the basis of the figures which I have been given without attempting to make any adjustments for tax changes.

As can be seen, the husband on the correct figures is doing marginally better than his wife as a result of the re-calculation. The basic reason is that he has now become an owner occupier and is entitled to mortgage interest relief. There is one other change, that is, the wife's mortgage repayment have increased by £1,600-00 approximately.

The wife's figures for expenditure suggest £1,450-00 a month or £17,400-00 a year. She has accordingly a shortfall of just under £4,000-00 a year. The husband's figures show an expenditure of £11,862-00. He has accordingly a shortfall of approximately £4,300-00 a year. Accordingly since his income is smaller, the shortfall would be relatively more severe.

I must now test the accuracy of the figures presented. Many of the figures are reasonably similar. For example, telephone, gas and E.S.B. for the wife is approximately £1,700-00 a year and including heating oil - the wife apparent heating either by gas or electricity - the husband's estimate is £1,520-00 of which he pays half. House insurance is roughly the same. Expenditure on food is £4,800-00 for the wife for four and £1,300-00 for the husband excluding business

lunches and expenses for approximately one day a week when out of town. Neither puts in an item of miscellaneous expenditure and the wife's figures include nothing for her own clothes. It seems to me however that I can accept the figures presented as a basis for any Order.

The items on the wife's list seem to me to be reasonable. There are, however, items on the husband's list which are not true current expenditure or have not been established. The following deductions should be made:

£175-00 pension contribution - this is already allowed for;

£250-00 cash for children - the defendant established an expenditure of £250-00 under this head;

£250-00 on household repairs - this is to equate this item to what his wife claims and even then I am allowing twice as much expenditure on his house as that of his wife's; and

£750-00 fees - these relate to the one off house purchase.

This reduces his estimated expenditure by £1,425-00. In addition, he has a profit of £1,800-00 on his car account which he has not credited. The position on the term loan is that he pays £3,600-00 but if all this expenditure is taken into account he has a balance of £1,800-00 in his favour and on the evidence depreciation of his car did not exceed £1,800-00 a year. Accordingly, the true car account is that his real expenditure does not exceed £1,800 and may be less.

His real expenditure is therefore £11,862-00 less £3,225-00 or £8,637-00. I appreciate that the defendant has

a term loan and is still paying £300-00 a month though the car is now paid off or virtually so. I also appreciate that the new term loan is to finance £1,200-00 repairs on his house and excess personal expenditure. However, this does not mean that he should have the entire £3,600-00 disallowed. The present position merely represents a decision not to replace his car. Had he done so, he would have been entitled to up to £1,800-00 expenditure under this heading which in effect is what the item of £3,600-00 claimed was intended to represent.

The figures now show the husband's shortfall at £1,084-00. Each party must provide on the items of expenditure for Building Society repayments and in the wife's case for school and university fees. It is only in the remaining items that economies can be effected if they must. Taking this into account, it leaves the wife £8,000-00 - £13,485-00 less the items for the Building Society mortgage and school fees which amount to £5,487-00 - for an expenditure of £11,913-00, i.e., £17,400-00 less £5,487-00. This means a shortfall of £3,913-00. Similarly it leaves the husband with £5,237-00 being £7,553-00 less £2,316-00 for the Building Society mortgage to meet an estimated expenditure of £6,321-00 being £8,637-00 less the £2,316-00. This makes a shortfall of £1,084-00.

Put into percentage terms, it means that in respect of expenditure where economies can be made, if they have to be, the wife's income is 67 per cent of her desired expenditure, and the husband's income is 83 per cent of his desired expenditure. These percentages should in my view be roughly the same. If the wife's net income was increased by £600-00 a year and the husband's accordingly decreased by the same sum there would be more or less an even balance.

There are two matters which I have not taken into account. The first is that the wife should have the children's allowances which will be £300-00 a year until Penelope is sixteen in June and then £150-00 a year and that the husband will receive an increase of approximately 8 per cent in his salary this year which after tax, P.R.S.I. and levies will leave him with about £500-00. While they do not balance, it seems to me taking all the details I have been given into account that the proposed increase in the maintenance for the three children represents a fair division of the after tax earnings of the two parties.

In the course of the hearing, I asked Counsel to assist me as to the extent, if any, I should take into account that the husband had set up home on a permanent basis with another partner. I am satisfied from the submissions made to me that it is proper that I should do so. I have done so however only upon the basis of what is factual. By virtue of this factual situation, the level of the husband's expenses after tax is less than it might otherwise be. I can see no reason why I should not act upon the basis of that state of affairs.

In the event, I propose to vary my Order made in May by increasing the maintenance to the children to the sum of £12-00 per week per child and to direct that the husband should take all necessary steps, if any, as may be necessary to ensure that the wife obtains the children's allowances.

L. G. Barron
16/4/85