

A very important decision was handed down by a five man sitting of the Supreme Court on Wednesday 19th October last. This was a case which focused on the meaning of “proper provision” for the purposes of the Family Law (Divorce) Act 1996. Interestingly it related to a case where there had been a significant time difference between the separation and the divorce. The parties had separated in the mid 90’s and a separation had been entered into in 1995 which provided , amongst other things, that the wife was given a house, a lump sum of €70,000.00 and maintenance. The maintenance was relatively low and was renegotiated on a number of occasions and by the time the divorce case came for hearing it had increased to €2,400.00 per month.

At the time of the Divorce proceedings the wife’s health had deteriorated. The High Court made a decision giving her a significant award at a time when the husband’s assets were valued at €21 million. The Court directed that the husband purchase a house to a value of €1 million for the wife, and give her a lump sum of €600,000.00 as well as other orders including increased maintenance. The matter was appealed to the Supreme Court.

In making it’s decision the Supreme Court felt that the High Court had erred in that it had engaged in an exercise of wealth distribution which was excessive and was greater than the requirement of the Court which was to make proper provision.

It said that the Court had to take into account the deterioration in the husband’s financial assets and also the deterioration in the wife’s health. It said that it had erred in directing that the husband would have to purchase a second house for the wife but that it was entitled to take into account the wife’s deteriorating health position and that it was correct to give her more maintenance and to make provision for additional pension provisions.

It referred the matter back to the High Court to make provision in this regard.

The case is significant insofar as it distinguishes between the obligation on the Court to make proper provision as opposed to a redistribution of wealth. A significant factor in the Court’s decision was the fact that most of the wealth generated by the husband was after the parties had entered into a separation and the wife had had no role in relation to this wealth generation. Furthermore the wife had not attempted to generate any additional wealth out of the lump sum of €70,000.00 and had not used this money productively.