

THE HIGH COURT

**[2026] IEHC 581
Circuit Court Record No. 01838/2021
High Court Record No. 2024/14 CAF**

CIRCUIT COURT APPEAL

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996 (AS AMENDED)

BETWEEN/

A.C.

Applicant/Appellant

-and-

E.R.

Respondent

JUDGMENT of Ms Justice Nessa Cahill delivered on 4 August 2026

OVERVIEW

1. This is a decision on an appeal against an order made by the Circuit Court (Judge Maguire) on 19 February 2024 in respect of the payment of maintenance and expenses for the parties' two dependent children.
2. The Respondent (Mr R) gave oral evidence during the hearing of the appeal which was problematic in several respects. Issues of very serious concern were identified during that evidence. Most notably, Mr R repeatedly said on oath that he had no employment, salary or earned income of any form from 31 March 2023 to the date of this appeal. For reasons which will be explained in more detail in this judgment, I am satisfied that this evidence was untrue. I am also satisfied, based on the evidence presented, that Mr R doctored a letter issued by the Department of Social Protection on 2 February 2026 to conceal a reference to his income of €145,767.41 in the period between December 2024 and December 2025. A copy of that letter, as manipulated by Mr R, was provided by him to the Appellant (Ms C) and to this Court. I am satisfied that this was done deliberately with the object of misleading Ms C, the solicitors and counsel acting for both parties, and the Court. Regrettably, I do not believe this is the only instance of fraudulent manipulation of documentation by Mr R in these proceedings, but the manipulation of a document issued by a Government department for the purpose of concealing income from the Court, while giving repeated evidence that no such income was earned, is a grave

matter and manifestly constitutes litigation misconduct by Mr R.

3. Having weighed the evidence as a whole, including the fundamental unreliability of Mr R's evidence as to his means and the gravity of my findings of false evidence and litigation misconduct, I allow the appeal and grant orders varying the maintenance obligations of Mr R to require the payment of lump sums as specified later in the judgment and reinstating his original obligation to pay 70% of the children's expenses.

Background

4. The parties were married on 31 May 2005. Ms C is an Irish national and Mr R is a non-national. There were two children of the marriage: a daughter, who will turn 18 in October 2026, and a son, who will turn 17 in October 2026. It is happily apparent from the evidence given by both parties that Mr R has maintained a strong bond and relationship with each of the children and has direct contact with both of them on a regular basis. This is not in question. The sole issue in this appeal is proper financial provision for the children.
5. Ms C was diagnosed with breast cancer in 2017 and has subsequently been given a diagnosis of Stage IV metastatic breast cancer which is incurable and for which she will receive chemotherapy and various additional treatments for the rest of her life. Ms C's life expectancy is significantly reduced as a result of her diagnosis and she has been hospitalised several times as a consequence of the ongoing chemotherapy treatment regime.
6. The parties were granted a decree of divorce on 29 October 2021. Ancillary orders were made on consent which reflected the terms of an agreement reached by the parties. The terms agreed include a maintenance payment of €100 per child per month to be made by Mr R to Ms C and further a provision that the parties would share certain expenses in respect of the children such as back to school, educational, routine and non-routine medical expenses, and extra-curricular expenses ("*the Expenses*") on a 70% (Mr R): 30% (Ms C) basis, with the contribution of the party who has paid for the expense being remitted by the other party within 14 days of receipt of vouching ("*the Consent Order*").
7. Three motions were issued in the Circuit Court in 2023:
 - a) Ms C issued a motion on 31 July 2023 seeking to re-enter the divorce proceedings for the purposes of seeking the attachment of Mr R's earnings and assets. She also sought the reimbursement of maintenance arrears and associated costs related to the children; an order to vary maintenance; and vouching documentation relating to a property situate in another EU state, without which she claims she cannot realise her entitlement to a share of the equity in the property.
 - b) Mr R issued a motion on 2 November 2023 seeking orders discharging, suspending or varying

the maintenance downwards and an order directing an equal division of the Expenses (among other orders).

- c) Ms C filed a motion on 18 September 2023 seeking additional lump sum payments in relation to the children for school and holiday costs.

8. All three motions were heard by Judge Maguire on 19 February 2024. The Circuit Court refused the application by Ms C to vary the maintenance being paid by Mr R and granted an order sought by Mr R to reduce the contribution he had agreed to make towards the children's expenses in the earlier proceedings (such as medical, extra-curricular, and back to school expenses) from 70% to 50%. Mr R was directed to discharge the sum of €2,000 in respect of arrears within a period of eight weeks from the date of the order. The sum in fact vouched by Ms C was € 5,037.00 for the period from 22 June 2023 to January 2024 and her position is that a further sum of €1,786.48 has now accrued from March 2024 to February 2026.

The Appeal

9. The appeal against the Circuit Court order was heard by me on 18 February 2026 and on 12 March 2026. Both parties were present on those dates and represented by solicitors and counsel and both gave oral evidence. No oral evidence had been given in the Circuit Court.

10. After the conclusion of the second day of the hearing on 12 March 2026 (which concluded with the evidence of Mr R), the matter was listed before me for mention on 26 March, 20 April, 4 June, 26 June and finally closing oral submissions were made on behalf of Ms C on 20 July 2026 (very helpful written submissions having previously been furnished on behalf of Ms C). These adjournments were for the purpose of hearing oral submissions and also to give Mr R the full opportunity to address certain issues that emerged in the course of – and particularly close to the conclusion of - his oral evidence. The engagement (or more accurately, the lack of engagement) by Mr R since the conclusion of his oral evidence is addressed later in this judgment.

11. In this judgment, I will address the following topics:

- A. Relevant legislation
- B. Applicable caselaw
- C. Relevant factors
 - a. The residence of the children
 - b. The Appellant's means
 - c. The Respondent's means
 - d. Ownership of properties
 - e. Events since the hearing
- D. Conclusions

E. Orders

A. RELEVANT LEGISLATION

12. Ms C seeks an order varying the current periodical maintenance payment pursuant to Section 22(1)(b) of the Family Law (Divorce) Act 1996 (as amended) (“*the 1996 Act*”). Section 22 applies to various orders including, in section 22(1)(b), a periodical payments order. The power to make a periodic payment order is governed by section 13(1) of the 1996 Act and arises whenever a court is granting a decree of divorce “*or at any time thereafter*”. It is important to note the breadth of the power conferred by section 13:

“(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse, or, as the case may be, the spouse concerned, make one or more of the following orders, that is to say—

(a) a periodical payments order, that is to say—

(i) an order that either of the spouses shall make to the other spouse such periodical payments of such amount, during such period and at such times as may be specified in the order, or

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amount, during such period and at such times as may be so specified,

(b) a secured periodical payments order, that is to say—

(i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts, during such period and at such times as may be so specified, or

(ii) an order that either of the spouses shall secure, to the satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified,

(c) (i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified, or

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified.

..

(3) An order under this section for the payment of a lump sum may provide for the payment

of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.”

13. This provision confers the power on a court to order the payment of lump-sum payments of such amounts and at such times as the court may specify.

14. According to section 22(2), the court may, on application by a spouse (among other potential applicants) *“if it considers it proper to do so having regard to any change in the circumstances of the case and to any new evidence, by order vary or discharge an order to which this section applies...”*.

15. Section 20(1) of the 1996 Act provides that,

“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.”

16. This is then supplemented by section 20(2) which provides,

“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,

(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),

(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,

(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,

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

(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,

(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,

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

(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,

(j) the accommodation needs of either of the spouses,

(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,

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

17. Section 20(4) is also relevant here:

“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.”

18. Senior Counsel for Ms C emphasises that the overarching role of the court is to ensure proper provision is made and that the factors listed in sections 20(2) and 20(4) are non-exhaustive. It is said that all of the circumstances of the case must be considered by the Court.

B. APPLICABLE CASE LAW

19. There were two cases cited in Ms C’s legal submissions. The first is *A.A. v B.A.* [2014] IESC 49 in which the Supreme Court considered the court’s jurisdiction to revisit the financial provision that was made in divorce proceedings in the context of a motion (as opposed to a full plenary hearing) when

there had been deliberate failure by one of the parties to disclose assets in those proceedings. In that case, the wife maintained that the husband had engaged in such deliberate non-disclosure of his assets and resources prior to the decree of divorce.

20. This analysis centred on Article 41.3. 2° of the Constitution:

“A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

i there is no reasonable prospect of a reconciliation between the spouses,

ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and

iii any further conditions prescribed by law are complied with.”

21. The Court (Clarke J.) identified the test which was applied by the High Court in that case as the correct test:

“(a) An identification of whether there was, as a matter of fact, a failure to disclose information which was required to be disclosed;

(b) If so, a consideration of whether any such failure was conscious and deliberate as opposed to accidental and explicable;

(c) If so, whether the failure to disclose was sufficiently material to the overall picture of the resources available so as to have materially affected the question of proper provision.”

22. The Supreme Court continued,

“7.2... Precisely because the Court has an obligation, under the Constitution, to ensure that there is proper provision, then the duty to disclose resources in divorce proceedings has a constitutional dimension. The disclosure obligations of parties need to be viewed against that backdrop and, in particular, the need that the court itself should have sufficient information to form its constitutionally mandated judgment on the adequacy of any provision proposed or ordered. That is not to say that, in cases involving complex assets and resources such as this, it will not be necessary to place parameters on the type of disclosure required by, for example, specifying the types of documents which need to be the subject of a discovery obligation...”

23. The Court further examined the question of complex cases in which the non-disclosure cannot be inferred to be a deliberate understatement. As against this, the Court noted that, *“where the failure to disclose is significant, it may well be that the onus will rest on the party guilty of that failure to put forward evidence, at least in many cases, to establish an innocent explanation for the relevant non-*

disclosure. Given the weighty obligation on a party in divorce proceedings to make full disclosure, it is all the more important that any failure be adequately explained” (at [7.3]). As will be seen, this question is an important one in this case, as Senior Counsel for Ms C argued that this burden rests on Mr R and was not discharged by him.

24. The Supreme Court also underlined:

“that any failure must truly be significant and material in the context of the case. The mere fact that some tangential documentation or largely worthless asset or resource was omitted which would not have been likely to have had a significant effect on the overall assessment by the court of the provision to be directed could not justify the re-opening of a final order or, perhaps, what might, in the matrimonial context, and in the light of the possibility always present of further variation, be described as a ‘quasi final order’” (at [7.4]).

25. One particular topic of relevance here is the possibility of drawing inferences as to the means of a party to family law proceedings. In *A.A. v. B.A.*, Irvine J. had made certain inferences that the husband had further undisclosed resources, based on the non-disclosure that had already occurred. This approach was unsuccessfully challenged on appeal:

“9.2 Someone who is prepared to go to those lengths to deprive their spouse of the proper provision which the Constitution requires must be open to the risk that a court will properly conclude that not all of their covert actions have been uncovered. Given the scale and nature of the non-disclosure established, it was reasonable for the trial judge to infer that there must have been more. In the circumstances, I am satisfied that the trial judge was entitled to come to the conclusions which she did both as a matter of law and on the facts of this case.”

26. The motion that was brought in *A.A. v. B.A.* specifically sought to set aside the earlier order and to have provision made on the basis of the original non-disclosure. As recorded in the judgment of Irvine J. (in the High Court) and repeated in the judgment of Clarke J., the hearing of the application in that case resembled a plenary hearing, with copious evidence and cross-examination on the affidavits directed to the alleged fraud and non-disclosure in the original proceedings. The orders ultimately made sought to make proper provision dating back to when the original order was made, with a view to putting the parties in the position they would have been in had the non-disclosure at that time not occurred (with one question of bond valuation being remitted to the High Court).

27. This is not quite the same situation here, as, in this case, the remedies sought in the motions and the orders made by Judge Maguire are forward-looking. There was no motion seeking to unwind the original terms of agreement or the Consent Order (other than the Respondent’s motion seeking to vary downwards the maintenance payment of €200 monthly and to reduce the proportion of his liability to

contribute to the children's pre-agreed expenses). This distinction was very fairly raised and acknowledged by counsel for Ms C. Nonetheless, the overarching point remains that, in seeking to ensure the constitutional imperative of proper provision is met, regard must be had to any material and deliberate non-disclosure of resources. *A.A. v. B.A.* demonstrates the importance of the court's role under the Constitution in that respect.

28. The other judgment cited in Ms C's legal submissions was *C.C.K. v. S.L.K.* [2024] IEHC 491. That case, like this one, came to the High Court on appeal from the Circuit Family Court. The husband challenged the sufficiency of the provision that had been made in the Circuit Court, alleging non-disclosure of resources and litigation misconduct. Jackson J. in the High Court addressed this topic as follows:

"16. The integrity of the process whereby a court is constitutionally obligated to make proper provision is very significantly impacted upon if there is non-disclosure or litigation misconduct. The latter can take many forms but as arises in this case, it is my view that non-disclosure is a serious form of litigation misconduct primarily due to the negative impact which it has upon the carrying out by a court of its constitutional obligations."

29. Jackson J. decided that it was appropriate to have regard to the litigation misconduct of the wife in determining how to make proper provision in that case. In doing so, she had regard to guidance given by Irvine J. in *Q.R. v S. T.* [2016] IECA 421. In *Q.R. v. S.T.*, a wife sought to vary the lump sum payment ordered to be paid by her husband in judicial separation proceedings. The main question in the appeal to the Court of Appeal was whether the High Court judge made proper provision for the parties having regard to the terms of section 16(2)(a) of the then-in-force Family Law Act 1995 (now section 20(2)(i) of the 1996 Act) and whether the husband's conduct in this case should have resulted in the award of a greater lump sum.

30. The Court (Irvine J., with Ryan P. and Hogan J. in agreement) made important observations about the relevance of litigation misconduct, noting that:

"Efforts on the part of a spouse to hide money or dispose of assets to frustrate the court's ability to make proper provision are but a few examples of the types of conduct it might be unjust to ignore" (at [60]).

31. As to the question of whether and when litigation misconduct reaches the threshold that it would be unjust for it to be ignored under section 16(2)(i), Irvine J. noted that *"that is a matter for the discretion of the trial judge having regard to all of the circumstances of the case"* (at [61]).

32. In terms of how this discretion should be exercised, I am guided heavily by the judgment of Ryan P. in

K.C. v. T.C. Unreported, Court of Appeal, 12 February 2016 (as indeed was the Court in *Q.R. v. S.T.*). The decision of Ryan P. was that, when deciding whether conduct constituted litigation misconduct,

“I think there had to be clear evidence to establish it and anything tended to demonstrate the innocence of the party has to be carefully weighed up by the court. One can have a situation where somebody makes a mistake—as opposed to telling lies or seeking to mislead — and the court must be alive to that possibility. It can also be the case that a person is reluctant at first and then comes forward with the relevant information so that he or she is open to legitimate criticism in respect of previous behaviour, but may not now be engaging in similar conduct. The short point is that before a party is condemned for failure to co-operate, and even more so, before somebody is declared to be guilty of litigation misconduct by actively trying to mislead the court, the trial court must be careful about its findings”.

33. Irvine J. in *QR v. ST* read this passage as suggesting that:

“when determining the manner and amount of the provision to be made for the parties it would be unjust to rely upon litigation misconduct, unless, having considered carefully all of the evidence which might favour a finding of mistake or innocence, the court was convinced that the party concerned had deliberately told lies, had sought to mislead the court and/or had still not made full disclosure” (at [64]).

34. This imposes a rigorous standard of proof for a finding of relevant, reckonable litigation misconduct. In *Q.R. v. S.T.* itself, the Court of Appeal refused to disturb the decision of the High Court judge that, while there was non-disclosure, he could not be satisfied that the husband had deliberately set out to mislead the Court or his wife, which findings were based on an assessment of the husband’s credibility having observed his evidence over many days. The High Court was also satisfied in that case that he ultimately had a complete picture of the husband’s assets.

35. One important point made by Irvine J. in assessing how the court’s broad discretion should be exercised is that *“the objective to be achieved, in the making of proper provision is a fair and just result, in all of the circumstances”* (at [78], citing *Y.G. v. N.G* [2011] IESC 40 *per* Denham CJ: *“proper provision means that the provision is reasonable in all the circumstances.”*).

36. Applying the guidance from *Q.R. v. S.T.*, Jackson J. in *C.C.K. v. S.L.K.* decided that it was appropriate to have regard to litigation misconduct in the form of non-disclosure in the making of proper provision. In particular, the respondent (wife) had received an award of damages in a personal injuries case which was not disclosed prior to the Circuit Court proceedings. This did emerge during the hearing in the Circuit Court and the court was aware of it, but the respondent then gave untruthful information about the expenditure of those monies. As Jackson J. recorded, it took the prosecution of the appeal to achieve

“*honest disclosure*” and the sum involved was significant in light of the total available assets and altered the parties’ respective financial positions. The Court found it was “*clearly relevant*” as a factor under section 20(2) of the 1996 Act.

37. Jackson J. concluded,

“Affidavits of Means are sworn documents. In the context of financial provision cases, they contain fundamental evidence. Care must be taken in their preparation. While a variety of reasons may lead to inaccuracies, these inaccuracies should be corrected and explained at the earliest possible opportunity. In this instance, the omission was not an error. It was not accidental. The Appellant (indeed, the courts) have only had a true picture in the context of the appeal. I am of the view that the fact that full and accurate disclosure was delayed in such a manner must be reflected in proper provision. I believe that such reflection may sometimes most appropriately take place in the context of costs. In the present case, I have done so in the context of the share of the personal injuries award which I have allocated to the Appellant and also in the context of the allocation of joint savings...” (at [19]).

38. The relevant guidance which may be derived from these cases is that:

- (a) The question of proper provision is a matter squarely within the discretion of the court;
- (b) The objective is to arrive at a level of provision that is reasonable in all of the circumstances;
- (c) If there is litigation misconduct it may be unjust not to have regard to this in the determination of proper provision (regard being had to the terms of section 20(2) of the 1996 Act);
- (d) It is a matter within the discretion of the trial judge to decide whether and when litigation misconduct reaches the threshold that it would be unjust for it to be ignored;
- (e) There must be clear evidence of litigation misconduct and the court must be careful before deciding that such misconduct occurred and that there was an active attempt to mislead the court;
- (f) The court should be live to the possibility that a party may have made a mistake or mistakes and, particularly in complex cases, that there can be inadvertent errors in the disclosure process;
- (g) Any evidence that tends to demonstrate the innocence of the allegedly non-disclosing party has to be carefully weighed up by the court;
- (h) A failure must be significant and material in the context of the case; the omission of tangential documentation or worthless assets or resources will not ordinarily suffice to revisit or decide the question of proper provision;

- (i) Where the failure to disclose is significant, the onus may shift onto the non-disclosing party to establish an innocent explanation for the relevant non-disclosure;
- (j) It may be relevant to consider whether the court ultimately obtained a complete picture of the available assets and resources of the non-disclosing party.

C. RELEVANT FACTORS

(a) Residence of the children

39. At the time the parties compromised their divorce proceedings, the children were spending equal time with both parties on a “*week-on, week-off*” schedule. The evidence given during the hearing was that this is no longer the case and the children have for some time been residing wholly with their mother. The evidence of Mr R and Ms C was that their daughter has not stayed with Mr R on a regular basis since March 2023 and their son has only stayed with him occasionally, coming and going, since September 2024, although their son did reside with Mr R on a full-time basis from June to September 2024 (while Ms C did not have a home). The children also go on a two-week summer holiday with Mr R.
40. The evidence of Ms C was that the maintenance payments were agreed in 2021 on the basis of the access arrangements at that time, which are no longer applicable. Ms C’s position is that she needs a higher level of maintenance to reflect the fact that the two children reside with her exclusively and there is a higher cost burden as a result. She also gave evidence – which I accept – that the costs of the children’s activities have increased.
41. I accept that this change in the residence of the children since the divorce order was made is relevant to assessing what now constitutes “*proper provision*”.

(b) The Appellant’s means

42. Ms C has sworn an updated affidavit of means in the context of this appeal. There is no reason to doubt the accuracy of same and none was demonstrated at the hearing.
43. Ms C’s situation is that she was previously employed by a large pharmaceutical company but due to her ill health she is no longer capable of working and she is in receipt of income continuance. She is also in receipt of an invalidity pension, along with the State children’s allowance and a maintenance payment from Mr. R.
44. During her evidence, Ms C discussed her income and the inheritance which she has received during the marriage and since its breakdown. She received approximately €270,000 in inheritance prior to the issue of the proceedings in November 2018. She also received €170,000 from the proceeds of the sale of the family home, as agreed between the parties in the context of the divorce proceedings.

45. Due to her medical condition, Ms C is not eligible for a mortgage and her evidence was that she was never in a position to purchase a family home outright. Her evidence was that her inheritances and savings were largely used to pay her rent and associated costs which include, but are not limited to, moving/removal between accommodations; furniture; decoration; and essential household items. Ms C also gave evidence that, for a period during the summer months of 2024, she did not have a home and was living with her sister. It is relevant to observe that her accommodation circumstances have since been regularised and she has been given social housing.
46. Ms C was cross-examined in relation to her expenditure and the use of the inheritance and the proceeds of sale of the house and her evidence did give rise to certain questions as to the prudence of some of the spending and how the inheritance and proceeds of sale of the family home were dissipated. However, the material fact is that Ms C has outgoings related to the needs of the children and her means are limited by her inability to work owing to her terminal illness and related, significant health complications. She has and continues to pay rent and these additional costs for herself and her two children. Her evidence was that she lacks the means to pay for a holiday for her and her two children.

(c) The Respondent's means

47. Mr R's employment history is that he was employed in the IT sector but he was made redundant in 2023 and his evidence is that he then received a statutory redundancy payment. Mr R has a partner who appears to be in good employment, and his evidence was that he lives with her and her children.
48. He swore an affidavit of means in the Circuit Court and then swore an updated affidavit of means on 9 February 2026 in the context of this appeal. His sworn evidence – written and oral – is that he has not worked or received any income or payment from any work of any nature since 31 March 2023. His evidence is that he has been unable to find any work since then and has instead been in receipt of unemployment benefit in another EU state from January to December 2025 and applied for unemployment benefit in Ireland in January 2026, which was then confirmed on 2 February 2026. During the hearing, Mr R repeatedly gave evidence – including by way of a direct answer to questions from me - that his last paid employment was in 2023 and that he had no earnings since then and specifically no earnings whatsoever in 2025. To support this evidence, Mr R outlined his difficulties in securing work at his level in the IT sector. Mr R gave evidence that he was residing in another EU state for most of 2025, he referred to suffering from ill health, and he stated he had not applied for jobs during that period when he was in that other country.
49. In the course of his evidence, Mr R did indicate that he thought an increase in his maintenance payments to €400 per month (from the current level of €200 per month) would be appropriate. His evidence was that he decided this was appropriate in the preceding two weeks and that it was owing to the letter received from the Department of Social Protection on 2 February 2026 informing him that he would be

in receipt of jobseeker's allowance for 39 weeks.

50. I should also mention that Mr R gave evidence – which I accept – that he maintains a good relationship and regular contact with both children and does give money to them directly at their request. That is done at his discretion however and is not a substitute for the making of proper provision by way of maintenance payments.

51. Three specific points about his evidence were emphasised by counsel for Ms C:

- Redundancy payment(s) received by Mr R in 2023;
- Earnings in 2025;
- Earnings in 2021;

Redundancy payments

52. Mr R produced a vouching document in respect of his redundancy in 2023. This letter was issued on 20 March 2023 by his former employer. It confirms that he was employed from 13 August 2018 to 31 March 2023 and that his redundancy resulted from a restructuring of the company's operations. The letter continues:

“Payments received:

Statutory redundancy payment:

- €6,168.00

These payments will be subject to the usual tax, social security deductions and any other deductions required by law.”

53. The letter twice speaks of ‘payments’ – plural - but lists only one: the statutory redundancy payment. It is contended by Senior Counsel for Ms C – and this was put to Mr R in evidence – that there is a notable and visible gap in the letter below the reference to the statutory redundancy payment which gives rise to the possibility that it has been doctored in a manner that conceals a second payment. This suggestion was rejected by Mr R.

54. He did however state for the first time under cross-examination that two payments were in fact made by his former employer on his redundancy. In addition to the statutory redundancy payment, he said in oral evidence that he was paid salary and commissions from November 2022 to April 2023 despite the fact that he was doing no work during that period. When it was put to him that the letter was doctored to remove references to these other payments, his answer was that two payments were made

but that the letter was written by a temporary member of staff, was badly written and omitted the second payment. In response to the suggestion by Senior Counsel for Ms C that he had many chances previously to explain that the letter was incomplete and to disclose the additional payment made from November to April 2023, but never did so, he was not able to give any credible answer. His response that he explained it to his legal team was not, in light of his evidence as a whole, credible and, in any event, not sufficient.

55. On its face, the letter was drafted as if it referred to more than one payment. It used the plural word “*payments*” twice and there was a visible gap in the letter beneath the reference to the statutory redundancy payment. In addition, the use of a bullet would suggest a list rather than a single item. From a review of the document itself, it did seem more likely than not that the document referred to more than one payment and, from its layout, there was a stateable basis to suggest that some text was omitted or removed from the letter. Mr R’s evidence under cross-examination that there was in fact more than one payment lends further support to this conclusion. The most logical inference from the document and Mr R’s evidence is that the letter did in fact refer to two payments. Mr R’s attempted explanation about a temporary staff member having omitted the second payment was not persuasive evidence on its own merit and is further undermined by the appearance of the document itself. Having observed the evidence of Mr R on this point, it was my immediate view that his evidence was untruthful and that, as a matter of probability, the letter had been altered to remove a reference to the second payment.

56. I would observe that the concern that this document was doctored by Mr R was put to him (and I formed the view that this was as a matter of probability what happened) before anyone was aware of the existence of two versions of the letter of 2 February 2026 from the Department of Social Protection. My finding in this judgment that Mr R manipulated that document for the specific purpose of concealing information about his income, does lend further credence to the conclusion that the redundancy letter was similarly unilaterally amended by Mr R.

57. In terms of deciding how to make proper provision for the dependent children of Mr R, it is also relevant that Mr R gave evidence under cross-examination of having received an additional payment on his redundancy which was not previously disclosed and which is not in his affidavit of means. I would also observe that there is a clash within Mr R’s evidence as he said he had not worked since November 2022, whereas his evidence at other times was that he has not worked since 31 March 2023. This is not a matter I need to resolve, as he accepts he was paid salary and commission until April 2023.

Earnings in 2024 and 2025

58. Mr R’s evidence was that he has not worked since 31 March 2023. He gave sworn evidence that the

IT industry was in a catastrophic state, that employers were not hiring and that he applied for hundreds of jobs, even non-IT jobs, between March 2023 and leaving for another EU state in 2025. His evidence was that he attended interviews and went to recruiters but did not get any work. He said he did not apply for a job in another EU state or in Ireland in 2025, as his focus then was on his health.

59. Mr R claims in his affidavit of means that he was in receipt of unemployment benefit in another EU state throughout 2025 and has been in Ireland since February 2026. He said the social welfare payments he received in another EU state during that time helped with his medical expenses. He said he experienced ongoing difficulties in finding secure employment since then and still has no employment.
60. During the exchange of documentation vouching as to his income for the purpose of this appeal, Mr R produced a letter from an official in the Department of Social Protection dated 2 February 2026 in relation to his application for jobseeker's pay-related benefit. This is a key document in this case.
61. The letter sets out his entitlement to this benefit for the ensuing 39 weeks. Further, the letter explains the rationale behind the weekly payment. In the next paragraph, the letter advises as to where and when Mr R can collect his first payment. The text of the letter is important:

"Your claim for Jobseeker's Pay-Related Benefit has been awarded and is payable from 02/02/2026.

The standard claim duration is 39 weeks. If you have received a job seeker's payment in the relevant period prior to your Jobseeker's Pay-Related Benefit claim, this is taken into account when deciding your Jobseeker's Pay-Related benefit entitlement.

You are entitled to job seeker's pay related benefit for a total of 39 weeks of the following rates:

€450.00 is payable for 13 weeks.

€375.00 is payable for 13 weeks.

€300.00 is payable for 13 weeks.

Your weekly payment is set as 60% of your gross average weekly earnings subject to a maximum rate of €450 for the 1st 13 weeks. After that the rate will reduce to 55% of earnings subject to a maximum of €375 for the following 13 weeks. A further 13 weeks will be paid at the rate of 50%, up to a maximum of €300 payments. A minimum weekly payment of €125.00 will apply."

62. This letter was put to Mr R in evidence and confirmed by him.
63. Another related document that was put to Mr R was his application for Jobseeker's Allowance. In that

document, there is a reference to his earning an income of €145,767 in 2025. His response to this document was that he did not know where the document came from, as he was outside Ireland throughout 2025. He gave evidence that he did not know where these figures came from and that they must be based on his total contributions to date. He said he was not physically in Ireland in 2025 and, when it was put to him in cross-examination that he could have worked remotely, his answer was that he did not earn that money. When being re-examined by his counsel, Mr R's sworn evidence was that he had misunderstood the question when completing the application for job seeker's allowance and had inserted the figure for his last year of earnings.

64. This evidence was unconvincing. The answer that he was outside Ireland provided no reason to reject or discredit the clear content of a document he relied upon for the purpose of seeking a social welfare entitlement in this jurisdiction. The evidence that the figure that was used to apply for a social welfare benefit did not reflect his earnings for the period in question was not plausible or credible. As Senior Counsel for Ms C astutely pointed out to him, either he was misrepresenting his earnings for the purpose of applying for a social welfare benefit at a level to which he was not entitled, or he was giving untruthful evidence about the document. Mr R nonetheless maintained his sworn evidence that he had no earnings after 31 March 2023.
65. My view that his evidence on this point was not credible was further confirmed at the end of his evidence. After Mr R had concluded his evidence-in-chief, Senior Counsel for Ms C identified that there was a different version of the letter from the Department of Social Protection of 2 February 2026. This was among the papers that had been furnished by Mr R to his legal advisers and forwarded to Ms C and to the Court but a significant difference between this document and another version of the document which was relied upon by Mr R and put to him in evidence had not previously been detected.
66. In this second version, there appears an additional paragraph which is not present in the first version. This new text is underlined and in bold below (emphasis not in the original):

"Your claim for Jobseeker's Pay-Related Benefit has been awarded and is payable from 02/02/2026.

The standard claim duration is 39 weeks. If you have received a job seeker's payment in the relevant period prior to your Jobseeker's Pay-Related Benefit claim, this is taken into account when deciding your Jobseeker's Pay-Related benefit entitlement.

You are entitled to job seeker's pay related benefit for a total of 39 weeks of the following rates:

€450.00 is payable for 13 weeks.

€375.00 is payable for 13 weeks.new paragraph

€300.00 is payable for 13 weeks.

The amount of Jobseeker's Pay-related Benefit you are entitled to is directly linked to your average earnings from work before you became unemployed. For your claim, your earnings of €145767.41 in the period from 05/12/2024 to 05/12/2025 were divided by your total number of 43 PRSI contributions at PRSI class A and/or H in the same period, giving you weekly average earnings of €3389.94.

Your weekly payment is set as 60% of your gross average weekly earnings subject to a maximum rate of €450 for the 1st 13 weeks. After that the rate will reduce to 55% of earnings subject to a maximum of €375 for the following 13 weeks. A further 13 weeks will be paid at the rate of 50%, up to maximum €300 payments. A minimum weekly payment of €125.00 will apply.”

67. It was immediately evident that Mr R was in possession of two “versions” of a letter that had been issued on the same date by an official from a Government department that were identical save for the omission from one of the two “versions” of factual information disclosing the income earned by Mr R between December 2024 and December 2025, which contradicts his repeated sworn evidence to this Court. The income figure in this version of the letter matches the income figure in Mr R’s application for the same social welfare benefit (which Mr R had given sworn evidence was a mistake or a cumulative figure reflecting all of his contributions). There was no cross-reference between the documents and no apparent reason for this factual information to be omitted from one version of the letter. There is no conceivable justification for an official in a Government department with responsibility for communicating entitlements to social welfare benefits to issue two letters on the same date, one of which did not explain the basis of the calculation.

68. This remarkable circumstance called out for immediate explanation. Mr R had none. He was simply unable to give any reason for there to be two versions of such a letter or any explanation as to how he alleged two such letters came into his possession. He simply said he did not manipulate the letter when it was put to him. My observation of his reaction and response when the second version of the letter was put to him in the final minutes of his evidence was that he was unsettled and alarmed and immediately understood the gravity of the disclosure that had occurred.

69. As his evidence then concluded, the matter was adjourned for two weeks to 26 March 2026 for the specific purpose of hearing closing submissions and allowing the parties to address the discrepancy between the two letters dated 2 February 2026. I underlined the seriousness of the matter. The appeal was adjourned on consent on 26 March 2026 and was listed again on 20 April, 4 June, 26 June and finally closing oral submissions were made on behalf of Ms C on 20 July 2026.

70. If Mr R had any explanation for the very obvious and alarming discrepancy between what appeared to

be two versions of the same letter, he had every opportunity to present it whether at the hearing or on the many occasions when the matter was listed for mention after that date (including the two occasions on which the matter was listed before his solicitors applied to come off record on 4 June 2026).

71. Despite these opportunities having been afforded, Mr R has not adduced any evidence of any form to explain the existence of two apparent versions of the same letter from the Department of Social Protection or to rebut the obvious inference that he deliberately doctored a letter from a Government department. As Senior Counsel for Ms C points out, and as emerges clearly from the judgment in *A.A. v. B.A.*, the burden was on Mr R to explain this situation and he simply failed to do this, or to make any attempt to explain the state of the evidence. Consequently, I am satisfied that there is convincing evidence that Mr R has given false evidence as to his earnings in the year 2025 and that he manipulated a letter issued by a Government department for the purpose of concealing those earnings from Ms C and from the Court. I believe this meets the threshold for a finding of material, serious non-disclosure.

Earnings in 2021

72. Before the Consent Order was made in 2021, Mr R swore an affidavit of means in October 2021 which stated that his salary in that year was €85,310. In the context of this appeal, an employment detail summary for Mr R for 2021 came to light which records that he earned the gross sum of €321,892.77 in 2021. There is a direct clash between the disclosure made in 2021 and this document. The attempt by Mr R to explain it in evidence was not persuasive. He asserted that the discrepancy was a bonus which was only paid at the end of 2021, although he accepted in evidence that it accrued on a more regular (quarterly) basis. The disclosure of the figure of €85,310 as reflecting the income for 2021 appears now not to have been complete and his answer in evidence that it was one year's earnings and could not be the basis for predicting future earnings is no answer to the failure to disclose any part of the bonus payments accrued in 2021, whether they were paid at the end of that year or not.
73. However, Senior Counsel acting for Ms C. very helpfully confirmed that the appeal is not concerned with varying or discharging the Consent Order that was made in 2021 on the basis of prior non-disclosure. Unlike in *A.A. v. B.A.*, this was not a relief sought in any of the motions and was not part of the order of the Circuit Court or among the grounds of appeal. While the Court clearly does have the power to set aside an order that was obtained on the basis of materially fraudulent testimony by one of the parties (as confirmed, should such be necessary, in *Kelly v. National University of Ireland* [2009] 4 IR 163 at [21]), this was not the case that was presented in the Circuit Court in this case or on this appeal. I accordingly make no adjudication on that question in this judgment. Rather, the real question for this court is how to ensure proper provision is made now in light of the information as it is currently available, applying the factors enumerated in the 1996 Act and any other considerations of relevance to that decision.

(d) Ownership of properties

74. Questions were raised during the hearing of the appeal about the ownership of certain properties, particularly two apartments in Lanzarote. Ms C's position and belief is that Mr R is the sole owner of these properties and that his evidence that 50% of the interest in one of the apartments is owned by a friend and that he holds the other property in trust for his mother is untrue.
75. As helpfully acknowledged in legal submissions by Senior Counsel for Ms C, I cannot make a finding regarding the ownership of real property situate in another jurisdiction and, in any event, the question of the ownership of these properties was not part of the motions issued, it did not form part of the substantive proceedings or the order in the Circuit Court and it does not properly form part of this appeal. I do not therefore address this topic further.

(e) Events since the hearing

76. After the conclusion of the second day of the hearing on 12 March 2026, the matter was listed before me for mention on 26 March, 20 April, 4 June, 26 June and finally closing oral submissions were made on behalf of Ms C on 20 July 2026.
77. The matter was adjourned on 26 March 2026 to 20 April 2026 on the basis this was necessary to facilitate talks between the parties. Mr R submitted a letter dated 24 March 2026 on the letterhead of a psychiatry and neurosciences institution located in another European city and addressed to his then solicitor. In that letter, it is said that Mr R was in hospital and would be unavailable for three months for medical reasons. The matter was adjourned to 4 June 2026.
78. On 4 June 2026, Mr R's solicitors made an application to come off record, which application was granted by me. The affidavit of Stefan O'Connor, solicitor, grounding that application referred to a breakdown in the solicitor-client relationship and exhibited a letter sent by Dillon Solicitors to Mr R on 7 May 2026. That letter recorded that "*we feel that the instructions that we were given and the communication that we had with you... has caused a complete breakdown in the Solicitor/Client relationship and that unfortunately our trust in your instructions is no longer there.*" Mr R's email in response on 1 June 2026 reads as follows: "*I am still receiving medical treatment in [another EU state] and will not be in court in June and will not be briefing anyone else at this stage.*" I advised that the matter would be listed on 26 June 2026 and that Mr R should be informed of that date and furnished with a link to facilitate his remote attendance in court. The date of 26 June 2026 was more than three months from the medical letter of 24 March 2026.
79. On 24 June 2026, an email was sent by Mr R directly to the High Court Registrar with the subject line "*confirming non-attendance due to sick leave at hearing on Friday 26th June*". Mr R states,

“I had previously provided a medical cert to the court through my solicitor who has since come off record for me. I will not be represented on Friday. I will be unable to attend myself as am still in [another EU State] undergoing medical treatment. Copy of my updated medical certificate is attached for the Court’s attention.”

80. The email had two attachments: a letter dated 19 June 2026 in a different European language ostensibly from the medical institution which issued the letter of 24 March 2026 and an uncertified, unofficial English translation of that letter. The translation states:

*“Dear Sir or Madam,
I am writing on behalf of the [psychiatry and neurosciences institution] regarding [Mr R]
We hereby inform you that [Mr R] remains hospitalized in our facility and, for medical reasons, will continue to be unavailable for a further period of three months.”*

81. On 26 June 2026, Senior Counsel for Ms C made the submission that this letter was a forgery, relying on oral evidence given by a legal executive from the office of Ms C’s solicitors which outlined the basis for this view. Several issues were identified with the letter, including that the letterhead and logo appeared to be cut and pasted onto the document (and not part of the original document, unlike the letter of 24 March 2026 which bore the same letterhead and logo). It was pointed out that the metadata of the letter showed that the “original” and the translation were both created at almost exactly the same time (to the minute) by Mr R some days *after* the ostensible date of the original. It was also noted that the letter was unsigned.
82. I was not satisfied that it was appropriate as a matter of fair procedures to rule on the submission that the letter was a forgery without notice of that argument having been furnished to Mr R. The matter was put back again and was ultimately listed on 20 July 2026. In the interim, a detailed letter was sent by Ms C’s solicitors to Mr R (*via* email) describing the challenge to the authenticity of the letter of 19 June 2026 and advising Mr R of the matter being adjourned. The written submissions prepared by Ms C’s legal team were also forwarded *via* email to Mr R on 3 July 2026. There was no response or engagement from Mr R and, again, there was no attendance in Court on 20 July 2026 by or on behalf of Mr R, despite his having been notified of the adjourned date and of the link for remote access.
83. At that final hearing on 20 July 2026, it was again contended by Senior Counsel for Ms C that the letter dated 19 June 2026 is a forgery and it was said that this is a further relevant factor in my assessment of this appeal. I can see a good basis for this view, particularly given the apparent insertion of the letterhead and logo onto the document and the timing of the creation of the document and its translation. I accept that there are good reasons to doubt the authenticity of the letter of 19 June 2026 and I do lean towards the view that it was manipulated by Mr R for the purpose of misleading the Court. Indeed, this view is supported by findings in this judgment that Mr R had manipulated other documents for the

purpose of misleading Ms C and the Court. However, I do not believe it is necessary to determine this point. Even if the letter of 19 June 2026 is authentic, I was (and remain) satisfied that it did not justify deferring the conclusion and determination of this appeal. On 20 July 2026, closing submissions were made on behalf of Ms C and this judgment was reserved. That was the appropriate course of action for several reasons.

84. First, the letter of 19 June 2026 and Mr R's email conveyed only that Mr R was not available to attend court in person. The letter of 19 June 2026 does not state that he was unable to deal with his affairs. Indeed, the documentation shows that he was able to and did communicate with his then-solicitors up until 1 June 2026 (after the date of his alleged admission to the medical institution). There were also references in Court on 26 March 2026 and 20 April 2026 to ongoing settlement talks, which again post-dated his alleged admission for medical care. He was able to deal with his affairs then and there is no evidential basis to believe he could not do so at any time after that.
85. Second, the substantive hearing and the oral evidence were already concluded before Mr R's alleged in-patient admission for unspecified medical care. Insofar as legal submissions were outstanding, he had (but chose not to exercise) the right to instruct a new legal team to appear on his behalf for that purpose.
86. Third, I am satisfied from the evidence presented that Mr R was on notice of the adjourned dates and furnished with links to access the proceedings remotely on each occasion. I am further satisfied that he was made aware when the matter was adjourned on 26 June 2026 that I intended to make final orders on the next occasion.
87. Fourth, a key question that Mr R needed to consider and explain after the conclusion of the hearing on 12 March 2026 was the existence of two letters from the Department of Social Protection bearing the same date and identical, save that one version omitted a paragraph referencing Mr R's income. It fell to Mr R to rebut the obvious inference that he had forged and manipulated a letter from a Government department. I am satisfied that he had ample opportunity to do so, whether or not the letter of 19 June 2026 was authentic. The fact is that Mr R made no attempt to present any evidence or argument to rebut the inference that he manipulated the letter of 2 February 2026.
88. Finally, there were repeated adjournments of the matter since the conclusion of oral evidence, largely at the behest of Mr R. There must be a limit to these delays. Ms C is terminally ill and it is imperative that these proceedings now be concluded and finality brought to bear.
89. In these circumstances, the medical explanations relied upon (even if accepted at their height), provided no justification for further delaying the determination and conclusion of this appeal or the making of final orders.

D. CONCLUSIONS

90. I am satisfied that there is strong evidence that Mr R doctored a letter which he received from the Department of Social Protection 16 days before the commencement of the hearing of this appeal and that he did so for the purpose of concealing his actual earnings of €145,767.41 in the 12 months from December 2024 to December 2025. The earnings disclosed in that letter demonstrate the falsity of Mr R's repeated and highly material sworn evidence to this Court that he had no employment and no earnings whatsoever from 31 March 2023 onwards, despite strenuous efforts to obtain such employment. I am satisfied for the purpose of this appeal that this evidence was untrue.
91. In making these findings, I am mindful of the guidance of Ryan P. in *K.C. v. T.C.* that "*clear evidence*" of litigation misconduct is required. I consider that threshold to be amply met. I am also conscious of the need to consider any possible innocent explanation for non-disclosure, but can see no such possible explanation here. There is no question of inadvertence or complexity of financial affairs leading to a misapprehension or reasonable mistake. On the contrary, Mr R did not - whether at the hearing or since - either admit or rebut the inference that he had doctored and falsified the letter received from the Department of Social Protection.
92. In light of the clear evidence presented and Mr R's inability or unwillingness to seek to explain it, I am satisfied that this manipulation of the document was done deliberately and that it was done with the objective of misleading Ms C and this Court as to a highly material aspect of his evidence. I am further satisfied that the evidence Mr R gave to this Court regarding his income and means was false. As a consequence of this deeply unsatisfactory state of affairs, I have no reliable insight into Mr R's true means. His evidence as to his income simply cannot be trusted.
93. This is not just about the manipulation of the redundancy statement of 2023 or the letter of 2 February 2026. Mr R's evidence as to his means – dating back to 2021 - has been undermined in its entirety. To illustrate: Mr R repeatedly rejected the suggestion put to him in cross-examination that there were undisclosed bank accounts or that he held a joint account with his partner. However, the previously undisclosed income in 2025 is not reflected in the bank statements disclosed by Mr R and this raises significant questions about where his money is in fact held. Serious doubts also arise about his evidence regarding access to funds and bank accounts. To use one illustration, Mr R appeared to take several trips overseas between 2024 and 2025 to several EU countries. He stated in oral evidence to this Court that his partner booked and paid for all flights. The credibility of that evidence is now in doubt in light of the late disclosure of his actual earnings in 2025. Further, he claimed under cross-examination that he funded his time in another EU state in 2025 from the sale of a car for €5,000, a claim that was not included in his affidavit of means or evidence in chief. The credibility of that evidence is entirely undermined by the late discovery of his actual earnings in 2025. The non-disclosure of his actual

income in 2021 in the context of the Consent Order has already been addressed.

94. In summary, the misconduct of Mr R in this litigation has led to precisely the form of negative impacts apprehended by the Supreme Court in *A.A. v. B.A.*:

“The integrity of the process whereby a court is constitutionally obligated to make proper provision is very significantly impacted upon if there is non-disclosure or litigation misconduct. The latter can take many forms but as arises in this case, it is my view that non-disclosure is a serious form of litigation misconduct primarily due to the negative impact which it has upon the carrying out by a court of its constitutional obligations.”

95. In this case, Mr R’s misconduct has hampered my ability to discharge the constitutionally mandated task of determining what constitutes “*proper provision*”. It is simply not possible for me to attach any weight to the means of Mr R in assessing what is proper provision in this case, as he has chosen to provide misleading evidence to which no weight can be attached. One factor that is clearly relevant here, and which I am of the opinion it would be clearly unjust not to weigh within the meaning of section 20(2)(i), is the litigation misconduct of Mr R.

E. ORDERS

96. In light of the evidence presented, I allow the appeal against the order of the Circuit Court Judge which refused to vary maintenance and instead direct the variation of the maintenance to be paid by Mr R as set out below. In making this order, the inescapable fact is that I have no reliable information regarding, and so cannot properly have regard to, the income or resources of Mr R. The factors which are relevant to the exercise of my discretion under section 20 and to which I do have regard are the following:

- (a) the income, earning capacity, property and other financial resources of Ms C, which are sadly limited by her terminal illness and inability to work;
- (b) the financial needs of the children and the obligations and responsibilities which Ms C has or is likely to have for them in the foreseeable future;
- (c) the fact that the children now reside near-exclusively with Ms C;
- (d) the misconduct of Mr R in these proceedings which, in my opinion, it would in all the circumstances of the case be unjust to disregard;
- (e) the anticipated need to fund the future third-level education and extra-curricular activities of the children.

97. In weighing these matters, the starting point is that Mr R volunteered in oral evidence his willingness to increase the maintenance payment from €200 per month to €400 per month. Ms C indicated through her Senior Counsel at the hearing on 20 July 2026 that she considers a sum of €1,500 per month to be

appropriate (with €850 being apportioned towards her daughter's needs, owing to her more costly extra-curricular activities, and €650 being allocated towards her son's needs). In the course of her evidence, she also indicated a preference for a lump sum rather than periodic payments.

98. I have considered the statement of means and evidence presented by Ms C, which disclose that her current monthly outgoings are €5,118.28, whereas her monthly income (including the €200 maintenance payment) is €4,627.73. This leaves a shortfall of €490.55 per month. That figure does not include an allocation for holidays or any entertainment activities such as outings to the cinema or to restaurants. I consider that, in light of all of the relevant factors listed in section 20 which apply here, it is appropriate to order that a lump sum payment be made by Mr R to reflect the reasonable proper provision that is required for the children. I am further satisfied that the maintenance being paid should be increased to cover the current monthly deficit of almost €500 and should also be increased by €300 per month to allow for additional expenses such as cinema, restaurants, and savings for holidays.

99. Consequently, I order that the proper provision in this case requires that payments in the amount of €1,000 per month be paid by Mr R. This equates to the existing €200 per month, €500 to ensure there is no deficit, and an additional €300 to allow for reasonable additional expenses.

100. Given the likelihood that the children will attend third-level education and will continue to participate in extra-curricular activities, I compute the lump sum on the basis that the monthly sum of €1,000 will need to be paid until both children have reached the age of 23. As there is a slightly higher cost attached to some of the extra-curricular activities in which the daughter engages, the sum of €1,000 is to be assigned in the proportion of €600 towards the daughter's costs and €400 towards the son's costs.

101. The relevant period of calculation is from the date on which Ms C's application was filed (31 July 2023) to the date on which the younger child turns 23 (October 2032). This is a period of 9 years and some 3 months or 111 months. I therefore direct the payment of the lump sum of €111,000 by Mr R to Ms C.

102. In the exercise of the discretion conferred by section 13(1)(c), I direct that this lump sum be paid in the following instalments and on the following dates:

- €25,000 to be paid by 31 August 2026, failing which interest at a rate of 4% will accrue on that figure until payment.
- €25,000 to be paid by 30 January 2027, failing which interest at a rate of 4% will accrue on that figure until payment.
- €25,000 to be paid by 31 May 2027, failing which interest at a rate of 4% will accrue

on that figure until payment.

- €36,000 to be paid by 30 November 2027, failing which interest at a rate of 4% will accrue on that figure until payment.

103. I further allow the appeal against the order of the Circuit Court which allocated liability for certain expenses in respect of the children equally as between the parties and substitute that with an order in the form originally agreed and reflected in the Consent Order. This was an order that the parties are liable for expenses which do not recur on a monthly basis, such as back to school costs, medical expenses, exceptional one-off educational costs, orthodontic costs and extra-curricular expenses on a 70% (Mr R): 30% (Ms C) basis, with the contribution of the party who has paid for the expense being remitted by the other party within 14 days of receipt of vouching. The liability to make this contribution is not subject to agreement by the parties to the incurring of the costs in question. The Consent Order is not otherwise disturbed.

104. As regards unpaid arrears, I allow the appeal against the decision of the Circuit Court Judge to award a sum of €2,000 for previously vouched expenses. It was addressed in the course of oral evidence (particularly in the direct evidence of Ms C) and shown to my satisfaction that the sum owing and vouched by Ms C was €5,037.00 for the period from 22 June 2023 to January 2024 and that a further sum of €1,786.48 accrued from March 2024 to February 2026 (reflecting the then-division of 50% as between the parties). Consequently, an additional sum for outstanding expenses in the amount of €4,823.48 is now owing to Ms C and I order that that sum be discharged by 31 August 2026.

105. The final question is the costs of the appeal. This is not a case in which it can be said that the available assets and means of the parties have been fairly distributed in the making of an order for proper provision. As a result of Mr R's non-disclosure and misconduct, I simply have no reliable insight into his means. There is no reason therefore not to apply the default rule under section 169(1) of the Legal Services Regulation Act 2015 that the costs should follow the event and that is the order I make. Accordingly, Mr R must discharge the legal costs incurred by Ms C. Even if that were not the presumptive rule, I would regard it as the correct order to mark my disapproval of the grave misconduct by Mr R in these proceedings.