

# Legal Aid Board Annual Family Law Conference – 12<sup>th</sup> June 2012

“Addressing the needs of families in crisis,  
psychological impact on children and  
negotiating with parents before cases get to  
Court.”

Dr. Anne Egan, School of Law, NUI Galway.



# Overview

## ▶ Needs:

- Financial
- Accommodation

## Psychological:

- Maintaining contact
- Utilising Access
- Frustrating of access
  
- Negotiation
- Better solution?

# Financial Needs

- ▶ Family Law (Maintenance of Spouses and Children) Act 1976
  - Dependent children
    - Natural, adopted, *loco parentis*

## Civil Partnership and Certain Rights and Obligations Act 2010

Maintenance paid to same-sex couple or those who are qualified cohabitants

# Proper Provision

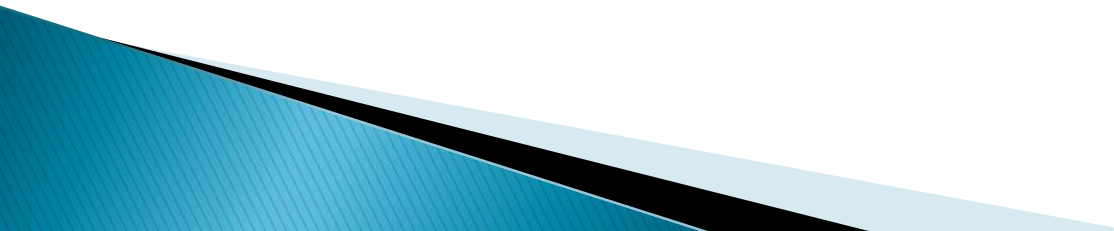
*G v G* [2011] IESC 474

Divorce 2009 – husband to buy home for wife – value of €1 million & pay €600,000 for her benefit.

Denham CJ – remit to High Court to examine proper provision

“the quantum of provision was in excess of proper provision”

- ▶ *McK v L* [2010] IESC 51 – payment from the Residential Institutions Address Board considered income

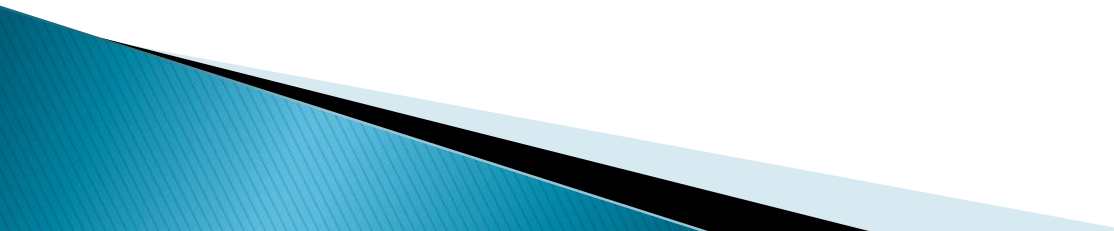
- ▶ Civil Law (Miscellaneous Provisions) Act 2011 s.31
  - ▶ “it shall be a contempt of court for a maintenance debtor to fail to make a payment due under an antecedent order.”
- 

- ▶ *S v S* [2010] IEHC 474
  - *“Marriage did not come up to his [husband] ideal of a romantic marriage”.*
  - Husband should not reduce maintenance for 2 years
- ▶ “so that the wife may have some incentive to re-train for and return to work.”

# Accommodation needs

- ▶ Abbott J. in *S v S* – to purchase a house in a poorer location would be “so disruptive as to introduce an intolerable level of instability” which would be “very harmful to the adult parties and children.”
- ▶ “both children should not spend an overnight in one bedroom” (boy and girl).

# Custody

- ▶ Guardianship of Infants Act 1964 – s.10(2)(a) parents as guardians shall be entitled to custody.
  - ▶ Joint Custody
  - ▶ Tucker describes shared parenting as a “suitcase phenomenon”
  - ▶ “a child has sufficient parenting time with each parent, in a family environment that supports all of their developmental needs.”
- 



# Access

- ▶ *MD v GD*, High Court, unreported, July 1992
- ▶ “it is the right of the child with which the court is concerned, not the right of the adult.”
- ▶ Section 25 GIA 1964 – wishes of child can be taken into account.
- ▶ *McC v McC*, Circuit Family Court, unreported, April 2007 McMahan J.
- ▶ “less hesitant to revisit access arrangements”

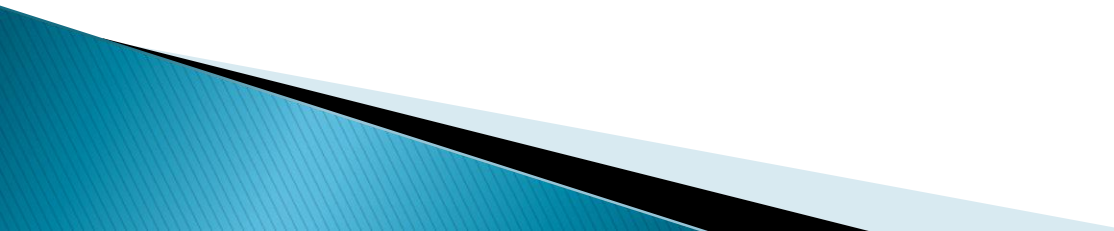
# Supporting access

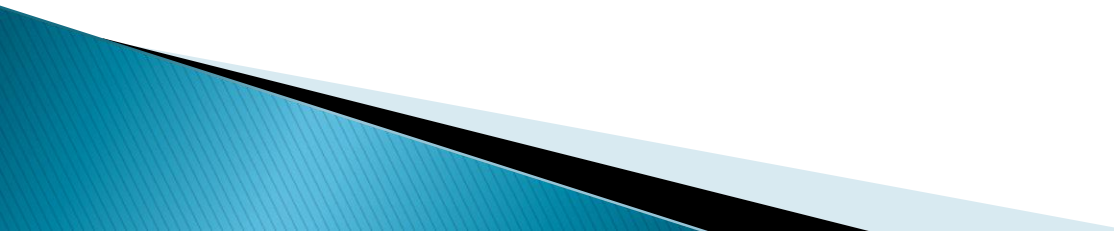
- ▶ A.9(3) UNCRC – direct and regular contact
- ▶ *FN & Anor v C.O. And Others* [2004] 4 I.R. 313, Finlay–Geoghegan J. “it is in the interests of the welfare of the girls that they be encouraged to have increasing contact with their father.”
- ▶ Maintaining contact via technology
- ▶ “used only as a supplement to actual parent time”.

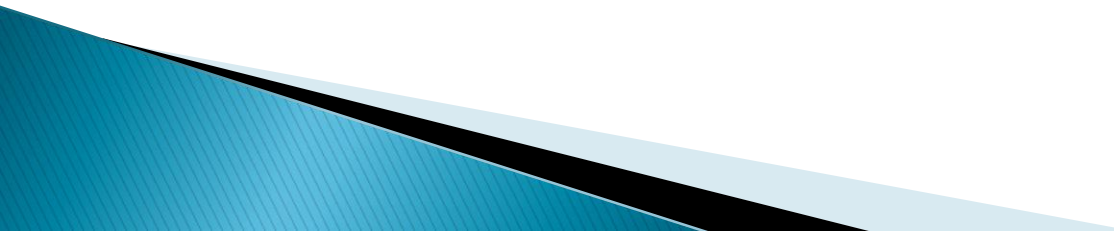
# Frustrating Access

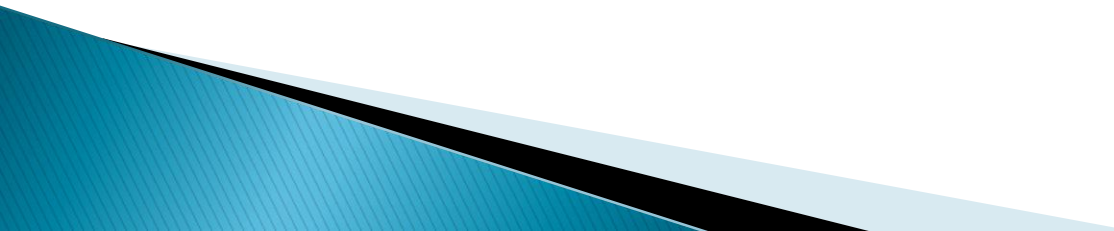
- ▶ Kilkelly “parents with custody can and do frustrate or make access to children difficult for the non-residential parent”.
- ▶ Penalties in Ireland – s.5 Courts Act 1986 – fine or imprisonment

# Remedies in other jurisdictions

- ▶ **New Zealand** – Care of Children Act 2004
  - ▶ Counselling
  - ▶ Varying original order
  - ▶ Imprisonment
  - ▶ Financially reimburse other party to the order
  - ▶ Enter a bond as an assurance
- 

- ▶ **Australia** – Family Law Act 1975 (Cth) as amended
  - ▶ “Less serious”
  - ▶ Post-separation parenting programme
  - ▶ Vary or discharge original order
  - ▶ Enter a bond
  - ▶ Compensatory time
- 

- ▶ “More serious”
  - ▶ Fine
  - ▶ Imprisonment
  - ▶ Community Service
- 

- ▶ *Siemianowski v Poland*
  - ▶ A.6(1) ECHR – right to a fair and public hearing
  - ▶ Child fearful any contact between parents would result in a quarrel
- 

# *Into the future?*

- ▶ Nationwide provision of access centres
- ▶ Models in the United States
  - Multi-Modal Family Intervention
  - Overcoming Barriers Family Camp in Vermont
  - Mediation project at Dolphin House be extended



▶ Thank you for your attention.

