

THE HIGH COURT

PROBATE

IN THE ESTATE OF CATHERINE (KATHLEEN) TAYLOR

(TESTATE, 16 SEPTEMBER 2019)

[2023] IEHC 406

2022 No. 9368

BETWEEN

VENETIA TAYLOR

APPLICANT

AND

SERENA TAYLOR

RESPONDENT

THE HIGH COURT

PROBATE

IN THE ESTATE OF GILBERT TAYLOR

(INTESTATE, 21 AUGUST 1995)

2022 No. 9369

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APPLICANT

AND

SERENA TAYLOR

RESPONDENT

JUDGMENT of Ms. Justice Eileen Roberts delivered on 12 July 2023

Introduction

1. This application relates to the estates of two deceased persons, Gilbert Taylor and his mother, Kathleen Taylor. The applicant and respondent in this case are sisters. Kathleen Taylor was their grandmother and Gilbert Taylor was their uncle. This judgment deals with both estates.
2. The respondent is the executrix of Kathleen Taylor and the person thus entitled to extract a grant of probate in her estate. Furthermore, as the executrix of Kathleen Taylor, the respondent is the person best entitled to apply for the administration intestate *de bonis non* in Gilbert Taylor's estate.
3. The applicant complains of delay on the respondent's part in applying for the respective grants in the estates of both Kathleen Taylor and Gilbert Taylor.
4. The applicant seeks Orders pursuant to s. 27(2) of the Succession Act 1965 (the "**1965 Act**") revoking, cancelling or recalling the grant of administration issued to the respondent in Kathleen Taylor's estate on 28 September 2021. She also seeks an order pursuant to ss. 27(1) and 27(4) of the 1965 Act granting the applicant administration of Kathleen Taylor's estate by reason of special circumstances and that it is necessary and expedient to do so. The applicant also seeks an order pursuant to s. 27(5) of the 1965 Act, if administration be granted to her in Kathleen Taylor's estate, that no person shall be or become entitled without a grant to administer that estate.
5. The applicant also seeks orders in the estate of Gilbert Taylor. She seeks an order pursuant to ss. 27(1) and 27(4) of the 1965 Act granting the applicant administration of Gilbert Taylor's estate by reason of special circumstances and that it is necessary and expedient so to do. If administration be granted to her in respect of Gilbert Taylor's

estate, the applicant seeks an order pursuant to s. 27(5) of the 1965 Act that no person shall be entitled without a grant to administer any part of Gilbert Taylor's estate. In the alternative, the applicant seeks an order pursuant to s. 27(2) of the 1965 Act revoking, cancelling or recalling the grant issued to the respondent on 28 September 2021 in the estate of Kathleen Taylor, if necessary.

6. In summary therefore, the applicant wishes to be substituted for the respondent as the administrator of Kathleen Taylor's estate. The applicant also wishes to be allowed to apply for the *de bonis non* grant in Gilbert Taylor's estate in priority to the respondent.
7. The applicant previously sought to cross-examine the respondent on her "*bald denial of the factual assertions*" contained in the applicant's affidavit. She claimed that this bald denial amounts to a conflict of fact which the applicant maintains may result in this court being unable to establish the facts for the purpose of determining whether it should grant the applicant the reliefs she seeks. This court refused the application to cross examine the respondent on the affidavits and will accordingly determine this application on the basis of the affidavits and the legal submissions of the parties advanced at the hearing.
8. As the legal issues involved in both estates are largely the same, I propose to firstly outline the factual background to each estate and the allegations made by the applicant. I will then consider the applicable legal principles for applications of this nature and apply them to the facts in each case.

Kathleen Taylor's estate

9. Kathleen Taylor died on 16 September 2019, a widow. She was the grandmother of the applicant and the respondent. Their mother Dolores was Kathleen Taylor's daughter who predeceased her. Dolores Taylor died on 8 May 2011.

10. Kathleen Taylor's last will and testament is dated 25 October 2006. In her will, Kathleen Taylor appointed the respondent as her substituted executrix in the event that Dolores Taylor predeceased Kathleen Taylor (as came to pass). The respondent is therefore the lawful executrix of Kathleen Taylor.
11. The respondent applied for a grant of probate in the estate of Kathleen Taylor and same issued to her on 28 September 2021 (the "**Grant of Probate**").
12. The applicant complains that the respondent is guilty of serious delay and inaction in relation to the estate of Kathleen Taylor. In her grounding affidavit the applicant complains that the respondent failed to extract the Grant of Probate "*within the Executrix's year*". The respondent argues that the purpose of the executor's year is that a legal personal representative cannot be compelled to distribute an estate within that year – but that failure to extract a grant of probate within that period does not amount to serious delay or inaction such as would justify the applicant bringing this application.
13. The applicant also complains that since the issue of the Grant of Probate on 28 September 2021, the respondent has failed to discharge her duties as the legal personal representative of Kathleen Taylor. In particular, at para 11 of the applicant's affidavit sworn 19 August 2022, the applicant alleges that the respondent has failed to protect the estate of Kathleen Taylor; has failed to take the necessary steps to protect the beneficiaries of Kathleen Taylor's estate (including the applicant); has failed to take a proper account and inventory of Kathleen Taylor's estate; has failed to scrutinise and verify debts/liabilities raised against the estate of Kathleen Taylor before including them in the Revenue Affidavit; has failed to extract the *de bonis non* grant in Gilbert Taylor's estate and has improperly included property belonging to Gilbert Taylor in Kathleen Taylor's estate, thereby artificially inflating the value of the assets in Kathleen Taylor's estate and causing an incorrect valuation of the estate and inheritance tax due.

Furthermore, the applicant complains that the respondent has not had masses said for Kathleen Taylor, has not had any memorial cards printed nor has she put Kathleen Taylor's name on her headstone

14. The applicant alleges that the respondent's failures "*are liable to cause irredeemable prejudice*" to the estate of Kathleen Taylor and the beneficiaries, including the applicant, and that these failures warrant the granting by this court of the relief she seeks.
15. The applicant argues that the respondent has a history of inaction in relation to administration of estates. She says that the respondent and their brother are the legal personal representatives of their late mother's estate (Dolores Taylor). The applicant complains that there was a significant delay in extracting a grant of probate in the estate of Dolores Taylor. While a grant of probate was issued in September 2021, the applicant says that no steps have been taken to distribute the estate of Dolores Taylor and that is the subject of separate legal proceedings.
16. The applicant says that the respondent has refused to accept the assistance of the applicant in relation to the administration of the estates. The applicant is a legal professional and believes her assistance would be of considerable benefit to the respondent. While initially this assistance was accepted by the respondent, the respondent has withdrawn from accepting any further assistance and it appears unlikely that any form of joint arrangement in the administration of the estates would be workable. The applicant believes that the respondent may be "*simply overwhelmed by the task*". The applicant says that she lacks any faith in the respondent's ability to discharge her responsibilities and that the applicant should be appointed by this court so that the estates of Kathleen Taylor and Gilbert Taylor can be properly administered.

17. In her replying affidavit, the respondent denies the allegations made against her and denies in particular that she is guilty of any delay or inaction or that she is causing irredeemable prejudice, as alleged. She says in her affidavit that the applicant initially advised her to apply for probate using the personal applicant procedure, which took some time to complete given that covid restrictions were in play for much of the process. She has since appointed solicitors and counsel. She avers that the allegation that she is guilty of “*indolence and/or incompetence*” is one she believes to be scandalous and without foundation. She confirms that she is continuing the administration of Kathleen Taylor’s estate with the assistance of her solicitor and that she is not guilty of any conduct that would justify this court recalling the Grant of Probate. Furthermore, she states that she is not yet the administrator of the estate of Gilbert Taylor and so she has not been administering his estate but is applying for the *de bonis non* grant to enable her to do so.

Gilbert Taylor’s estate

18. Gilbert Taylor died on 21 August 1995, intestate, a bachelor without any issue, leaving surviving him his parents Catherine (Kathleen) and Robert Taylor. Robert Taylor died testate on 23 April 1996. By his will dated 17 November 1975 he gave, devised and bequeathed his entire estate to Kathleen Taylor.
19. Kathleen Taylor was the administrator of Gilbert Taylor’s estate. She applied for and was granted letters of Administration in Gilbert Taylor’s estate on 22 January 1997. She had not, however, fully administered his estate by the time she died in September 2019 due to the development of incapacity on her part.
20. A grant of letters of administration intestate *de bonis non* (i.e., a second grant) is thus required to administer any assets of Gilbert Taylor left unadministered.

21. In her grounding affidavit, the applicant states that the property in Gilbert Taylor's estate consists of a large commercial property comprising two shops, a dormer bungalow containing an apartment, an attic residence, a large yard, and a car park which serves the shops. These unadministered assets of Gilbert Taylor are said by the applicant to be worth at least €1 million.
22. The applicant says that the respondent's failure to apply for the grant in Gilbert Taylor's estate is particularly prejudicial. She notes that Kathleen Taylor had issued ejectment proceedings in the Circuit Court against a third party who occupies the shop and attic dwelling forming part of Gilbert Taylor's estate. Those proceedings could not however be advanced once Kathleen Taylor lost capacity. The applicant says there is an urgency in now advancing those proceedings. She says that the respondent's delay and inaction in attending to these matters gives rise to the grave risk that the property forming part of Gilbert Taylor's estate could be lost to the third parties who currently occupy it rent free.
23. The applicant also complains that the respondent's failure to extract the *de bonis non* grant permits the continued presence of third parties in Gilbert Taylor's property, which adjoins her father's home and which she says is a source of continual upset to him on a day-to-day level.
24. The applicant says that another issue which arises due to the delay on the respondent's part relates to the occupation of the apartment forming part of Gilbert Taylor's property. This apartment is occupied by another sister of the applicant and respondent, along with her partner and child. The applicant fears that these parties "*could soon be able to claim adverse possession of it*". The applicant says that the respondent is failing to preserve the value of the assets in Gilbert Taylor's estate and that the delay gives rise to a grave risk that third party rights will be acquired which will significantly reduce, if

not entirely eliminate, the value of Gilbert Taylor's estate and, by extension, the estate of Kathleen Taylor, of which the applicant is a beneficiary. The applicant is not a direct beneficiary to the estate of Gilbert Taylor.

25. The respondent denies she has been guilty of unreasonable delay and indicates that she intends to apply for the *de bonis non* grant in Gilbert Taylor's estate. In relation to the legal proceedings in place against third parties, she states that she "*fully intends to take all steps to recover such property*" once the *de bonis non* grant issues to her. Although there was no direct affidavit evidence before the court at the hearing of this matter, counsel for the respondent confirmed that this application has now been made by the respondent. This information should have been set out by the respondent in a supplemental affidavit to ensure it was information the court could properly take into account.

The applicable legal principles

26. The relevant legislative provisions governing applications of this nature are as follows:

- (a) Section 26(2) of the 1965 Act provides that

"The High Court shall have power to revoke, cancel or recall any grant of probate".

- (b) Sections 27 (2) and (4) of the 1965 Act provide that:

"(2) The High Court shall have power to revoke, cancel or recall any grant of administration.

(4) Where by reason of any special circumstances it appears to the High Court... to be necessary or expedient to do so, the Court may order that administration be granted to such person as it thinks fit".

27. These provisions were considered by the Supreme Court in its decision in *Dunne v Heffernan* [1997] 3 IR 431. In that case the defendant was the sole surviving executrix of the deceased's estate and in that capacity had extracted the grant of probate. The plaintiff was her brother and he issued proceedings seeking her removal as executor. Complaint was made that the defendant had made an incorrect averment in the revenue affidavit; that she was conflicted as executor and that the plaintiff was concerned that his interests were not being protected by the defendant. There was evidence of ongoing disharmony between the parties and the plaintiff stated that he had lost faith and confidence in the defendant's ability to properly and fairly administer the estate. Many of these complaints echo the applicant's complaints in the present case. The Supreme Court (Lynch J) held as follows (at p. 442):

“An order removing the defendant as executrix (which would be made by virtue of s.26, sub-s. 2 and not s. 27, sub-s. 4 of the Succession Act 1965) and appointing some other person as administrator with the will annexed by virtue of s.27, sub-s. 4, is a very serious step to take. It is not justified because one of the beneficiaries appears to have felt frustrated and excluded from what he considered his legitimate concerns. It would require serious misconduct and/or serious special circumstances on the part of the executrix to justify such a drastic step”.

28. He further stated at p. 443 that “[w]hen an executor is appointed and proves the will and thus accepts the duty of administering the testator's estate he or she can be removed...but there must be serious grounds for overruling the wishes of the testator.”
29. Lynch J noted that on an intestacy the right to administration is determined by the Rules of the Superior Courts in O. 79 rule 5. He said at p. 444 that in such a case the person entitled to the grant of administration may be passed over “*more readily*” and someone else appointed pursuant to s. 27(4) than where an executor is appointed and accepts the

appointment by proving the will when “*weighty reasons must be established*” before the grant of probate would be revoked and cancelled pursuant to s. 26(2) and the testator’s chosen representative thereby removed, and someone else not chosen by the testator appointed pursuant to s. 27(4).

30. *Dunne* is authority for the position that the court will endeavour wherever possible, to give effect to a testator’s wishes in their choice of executor. While it may be a less onerous task to replace an administrator (who is not chosen by a testator), nevertheless some rationale would need to be established for their removal. In the present case Kathleen Taylor chose the respondent to be her executor. While Gilbert Taylor died intestate, and so did not choose any executor, the respondent is the person best entitled to administer his estate under O. 79 rule 5. There is very clear overlap between the two estates in circumstances where Gilbert Taylor’s estate devolves to Kathleen Taylor’s estate. There is much to be said for continuity of administration between both estates in those circumstances.
31. The applicant seeks to distinguish *Dunne* on the facts (where the Supreme Court refused to replace the defendant as executor). She submits that the evidence in this case discloses significant failures by the respondent in carrying out her duties and consequent mismanagement of the estate which, if continued, will prejudice its value and impact adversely on the beneficiaries. The respondent denies there has been any mismanagement or failures on her part. She confirms that she is advised by solicitors and is taking all necessary steps to administer both estates.
32. Despite the high bar set out in *Dunne* there have been cases where the courts have intervened to remove an executor. An example can be found in the Supreme Court decision in *In the Estate of Kathleen White* [2015] IESC 84 in which Charlton J stated at para 12 of his judgment:

“While it may cause upset to be removed as an executor, time is one of the primary factors to be looked at by the High Court where an application is made to remove an executor... The law leans against delay in the distribution of estates...In the discharge of its probate jurisdiction, the High Court is bound by the Act of 1965 and will also be cognisant that efficiency in the administration of estates is to be encouraged...”.

He also noted at para 10 that

“Of course, some estates may be more complex than others,...What constitutes a reasonable time for gathering in an estate and distributing it to those entitled under a will therefore depends upon the relevant circumstances”.

- 33.** In *Flood v Flood* [1999] IEHC 232, 2 IR 234, the High Court removed the defendant as executor in circumstances where the plaintiff claimed that the defendant had borrowed monies from the deceased which the defendant was now refusing to pay back to the estate. The defendant denied that money was owed by him to the estate – it was said to have been a gift to him by the deceased. Furthermore, the defendant claimed that if any such money was owing, the plaintiff’s claim was statute barred and no prudent executor would endanger the assets of an estate on litigation which had only a remote prospect of success. Macken J found that this situation created a clear conflict of interest for the defendant between his role as executor and his role as possible debtor to the estate. This conflict of interest justified the appointment of an alternative person as administrator to the estate of the deceased. Macken J noted, applying *Dunne*, at pp. 243-244 of her judgment:

“A court should not remove an executor from his role, unless it is satisfied that it is necessary so to do. It is clear from the decision in [Dunne] that the Supreme

Court considers this should only occur where the court is satisfied it must be done and that Court made it clear that it is a very serious step to take. It is not justified because one of the beneficiaries appears to have felt frustrated and excluded, but requires serious misconduct and/or serious special circumstances on the part of the executor to justify such a drastic step”.

34. In *Re Martin Glynn Deceased* [1992] 1 IR 361, the circumstances were indeed extraordinary, because the executor had murdered a sister of the deceased and would have thereby benefited prematurely from the will, by reason of its terms. Lynch J in *Dunne* explained the issues in *Glynn* as follows at p. 443: “*The issue was whether or not the gift of the remainder interest would be forfeited and whether the question would have to be determined by proceedings between the estate of the testator and the person nominated to be executor personally*”. On the facts of the present case, no specific conflict of interest has even been alleged by the applicant against the respondent.
35. In *Muckian v Hoey* [2016] IEHC 688, Keane J removed an administratrix of an estate and appointed in her place a firm of professional trustees. A similar order had been made in 2014 by the Northern Ireland High Court in relation to the deceased’s Northern Irish estate. The evidence in that case was that it took the respondent almost 6 years following the deceased’s death to extract letters of administration in the deceased’s estate. Thereafter no further steps were taken by her to administer the estate for four further years. There were lengthy delays in providing court directed information and an inventory. Land had been sold by the administratrix to other respondents for which she had not received payment and substantial cash had simply been paid out to the first respondent without any clear distribution nor had she secured any income for the estate in respect of agricultural and other property holdings for a period of more than 10 years. In light of those facts the court was satisfied that the first respondent had failed

as administratrix to account to the beneficiaries and that she should be replaced by professional trustees. Similar issues arose in relation to the Irish estate and Keane J adopted the same approach. While noting the decision in *Dunne* and the need to show special circumstances to remove an executor, Keane J held at para 36 that

“...while not every mistake or neglect of duty or inaccuracy of conduct will require the replacement of an administrator or administratrix, acts or omissions that endanger the estate property, or show a want of honesty or a want of proper capacity to execute the duties, or a want of reasonable fidelity, may do so. The overriding consideration is, therefore, whether the estate is being properly administered; the main guide must be the welfare of the beneficiaries.”

- 36.** Keane J held at para 37 that *“a pronounced delay on the part of the personal representative in the administration of an estate could, alone or in combination with other factors, amount to a special circumstance warranting the removal and replacement of that person.”* He also stated that a failure by a personal representative to discharge the duty to collect in the estate and administer it, depending on the gravity or extent of that failure, whether alone or in combination with other factors, could also amount to a special circumstance warranting the removal and replacement of that person. He agreed that an administrator may be replaced more readily in such circumstances than an executor.
- 37.** In the present case, the delay in extracting the Grant of Probate in Kathleen Taylor’s estate was approximately two years. Kathleen Taylor died on 16 September 2019. The respondent obtained the Grant of Probate in her estate on 28 September 2021. When one considers the intervening covid restrictions for much of that period, this timing is not in my view so unreasonable as to justify the removal of the respondent as executor. The respondent cannot close out the administration of Kathleen Taylor’s estate until she

gathers in the relevant assets from Gilbert Taylor's estate. This is not an entirely straightforward matter and there is some complexity involved.

- 38.** The respondent's delay in relation to Gilbert Taylor's estate can only arise from the date when the respondent was, by virtue of obtaining a grant of probate in Kathleen's estate, entitled to apply for the *de bonis non* grant in Gilbert's estate (although it was of course possible that this date could have been achieved earlier). That date runs from 28 September 2021. Although the matter is not on affidavit, counsel for the respondent confirmed at the hearing of this matter that the relevant papers have been lodged with the probate office. While fully accepting that there has already been a significant passage of time since Gilbert Taylor's death, the respondent can only fairly be criticised for delay since she was entitled to apply for the grant in his estate. I do not believe that on the basis of delay alone, there are grounds to justify the removal of the respondent as personal representative in either estate.
- 39.** Another ground argued by the applicant for removal of the respondent as executor includes the acceptance of allegedly unvouched claims in the sum of €73,737.12 against Kathleen Taylor's estate although the respondent is alleged to have said that she does not believe these are legitimately owed from Kathleen Taylor's estate. The exhibits to the applicant's affidavit do not appear to correlate with this claim. The figure of €73,737.12 appears to relate to assets held in financial institutions rather than to debts. There is a sum of €147,800 included in the revenue affidavit in respect of "*care and maintenance costs-insurance and local property tax payments to immediate family members/gravestone and maintenance costs*". This may be the figure that is disputed by the applicant. It appears to relate in the main to care provided to Kathleen by another beneficiary. There is no suggestion that monies have been paid out to third-party creditors without adequate proof. It may have been prudent for the respondent to

account for those debts once a claim was made for them albeit that she may intend to resist any request for payment. This will certainly be a matter in respect of which the respondent will have to account to all beneficiaries, including the applicant. How she has dealt with this matter to date however would not appear to be a ground justifying her removal as executor.

40. The applicant also complains that the respondent has not taken steps to protect the commercial/residential property in Gilbert Taylor's estate from being lost to persons occupying it. The respondent will only be in a position to intervene in ongoing legal proceedings in Gilbert Taylor's estate once she has obtained the *de bonis non* grant. This same situation applies to the issue of any new proceedings. Once the *de bonis non* grant issues, the respondent is on notice of the urgency in protecting the assets in Gilbert Taylor's estate for the benefit of all beneficiaries. Were she to unreasonably delay in that regard that would constitute behaviour in respect of which the applicant could justly complain. The respondent is not yet however in a position to take any such steps. She has confirmed on affidavit that she fully intends to do so with the involvement of her legal advisers once the grant is obtained.
41. There is no doubt that a personal representative must perform their duties diligently and that if they fail to do so the beneficiaries may bring an action against them. The duty of diligence is owed to creditors and to beneficiaries. This duty commences from the date of the grant and continues while gathering in and preserving the assets and when administering and distributing the estate amongst the persons entitled to it. A personal representative must preserve the assets of the deceased until they are distributed. Ross J in *Re Gunning* [1918] 1 IR 221 confirmed that "*the executor in managing the trust must take all those precautions which an ordinary prudent man in business would take in managing similar affairs of his own.*"

Conclusion

42. It is clear to this court that there is a difference of opinion between the applicant and respondent regarding the steps taken to date in administering the estates and who is best qualified to carry out this task in the future. Unfortunately, this appears to have created difficulties between the sisters and perhaps their wider family. The court must be satisfied that there are “*weighty reasons*” (as per Lynch J in *Dunne*) to remove an executrix/administratrix and not merely that a beneficiary believes they could do a better job.
43. The essential point of difference between the applicant and respondent appears to relate to the applicant’s view expressed in her affidavit grounding these motions that “*in light of [the respondent’s] delay and inaction to date I do not believe she will discharge her responsibilities properly and competently, even with the benefit of legal advice and representation*”.
44. While there has undoubtedly been some delay on the part of the respondent in applying for the respective grants, I do not believe this delay is of such a character as to require this court to intervene in the manner sought by the applicant. Nor do I find any evidence of wrongdoing on the part of the respondent or a want of honesty or lack of capacity or a conflict of interest on her part. For the reasons set out in this judgment I do not believe that there are sufficient grounds at this point to revoke the Grant of Probate issued to the respondent in Kathleen Taylor’s estate on 28 September 2021. Nor do I believe that there are sufficient grounds at this point to prevent the respondent from extracting a *de bonis non* grant in the estate of Gilbert Taylor and instead entitle the applicant to do so.

- 45.** The respondent is on notice of the complaints voiced by the applicant. The respondent, as a legal personal representative, must discharge her duties to all beneficiaries, including the applicant. If the respondent fails to do so, the applicant will have other remedies available to her. However, at this time I refuse the applicant the reliefs sought in her notice of motion.
- 46.** I will list this matter for mention on 26 July at 10.45am to hear submissions in relation to legal costs and any other issues arising from this judgment.