

Neutral Citation No: [2019] NICh 15

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: McB11101

Delivered: 7/11/19

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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**BERNADETTE HEANEY AS EXECUTRIX OF THE ESTATE OF
GRACE McEVOY (DECEASED)**

Plaintiff/Respondent;

-and-

**JACQUELINE McEVOY
AND
MICHELLE McCARTNEY**

Appellants/Defendants.

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McBRIDE J

Introduction

[1] This is an appeal against the decision of Master McGivern, Master (Enforcement of Judgments Office) (“EJO” Master”) dated 11 June 2019 whereby she ordered that:-

“the Chief Enforcement Officer do deliver possession of the premises situate and known as 52 Rathfriland Road, Newry (“the premises”) to the applicant Bernadette Heaney as executrix of the estate of Grace McEvoy (Deceased) or her agent.”

Representation

[2] The appellants, who are mother and daughter appeared as litigants in person. The plaintiff/respondent was represented by Mr Hunt QC and Mr Fee of counsel.

Application

[3] The appeal is brought by way of a Notice of Appeal dated 14 June 2019. It is supported by an affidavit sworn by both appellants and an “order to show cause”.

[4] On 16 August 2019 the EJO Master provided a report on case, in accordance with Rule 70 of the Judgment Enforcement Rules (Northern Ireland) 1981.

Chronology of proceedings

[5] The following chronology sets out the proceedings which have taken place in respect of the premises:-

- (a) 28 February 2017 - Horner J made an order that the plaintiff/respondent recover possession of the premises ("possession order").
- (b) 25 January 2018 - Court of Appeal dismissed the appellants' appeal against the possession order made by Horner J.
- (c) 29 November 2018 - Supreme Court refused leave to appeal.
- (d) 8 February 2019 - The plaintiff/respondent's solicitors served Notice of Intent to Enforce a Non-money Judgment on the appellants.
- (e) 15 April 2019 - Application for Enforcement of Judgment made by the appellants.
- (f) 10 May 2019 - Notice of Intention to make an Order for Delivery of Possession of Land was served on the appellants.
- (g) 15 May 2019 - The appellants served a Notice of Objection to the making of an order for the delivery of possession of land.
- (h) 11 June 2019 - The Notice of Objection was listed for hearing The Notice of Objection was dismissed by the Master who made an Order for the Delivery of Possession of the premises.

Background

[6] The plaintiff/respondent is the sole executrix of the estate of Grace McEvoy, deceased ("the deceased"). The deceased died on 3 April 2015. In her Will dated 1 January 2015 she appointed Ms Heaney as her executrix and directed that the premises be sold and the net proceeds of sale divided equally between her 12 children.

[7] The appellants resided in the premises. When they failed to vacate the premises voluntarily, the executrix brought proceedings for possession in the High Court pursuant to Order 113.

[8] The appellants sought legal advice and brought a claim under the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979 ("the 1979 Order"). Their claim under the 1979 Order was compromised by way of a Tomlin Order in which they agreed not to defend the Order 113 application.

[9] When the Order 113 application was listed for hearing before Horner J, the appellants challenged the Tomlin Order they had entered into and further alleged that the Will was procured fraudulently, that Ms Heaney was "a criminal" as she had represented she was a solicitor when she was not. Horner J after hearing the evidence refused to set aside the Tomlin Order and made an order for possession. This decision was upheld on appeal.

Hearing before the EJO Master

[10] When the matter was listed before the EJO Master the appellants set out their reasons for objection as follows:

"We are objecting [this] because Bernadette Heaney is a criminal and should never have been rewarded (sic) possession of my late mother's property for the following reasons:

- She impersonated a solicitor as did her husband who wrote the fraudulent Will and acted as second solicitor witness.
- This couple took advantage of an elderly lady lacking of mental capacity and this has been backed by the Southern Trust/NHS.
- She brought no arguments, defence or evidence in this case and therefore should have resulted in a default judgment.
- Fraud case needs to be brought forward in regards to this criminal and her husband committing serious Will fraud.
- This possession should be stopped until further action is taken."

[11] At the hearing the parties appeared as litigants in person. They referred to the written submissions entitled "order to show cause" and said they had not been given a fair trial and did not want to lose their home to a criminal. They repeated complaints made before Mr Justice Horner and the Court of Appeal and in particular made complaints about the courts, the Law Society and the PSNI failing to take action against Ms Heaney.

[12] The Master explained that she had no power to "go behind" the court order for possession and that it was duty of the Enforcement of Judgments Office ("EJO")

to enforce that order. She stated she had considered the appellants' written objections and listened to their oral submissions. She held that no grounds had been made out to allow her to stay the enforcement of the order of possession. She accordingly dismissed the objection and made the order for delivery of possession of the premises.

Relevant legal framework

Appeals from the EJO

[13] An appeal lies from the EJO to the High Court under Article 140(1) of the Judgment Enforcement (Northern Ireland) Order 1981 ("1981 Order") in respect of an order for delivery of possession of land under Article 53(1).

[14] The hearing is by way of a rehearing but it is not a full oral rehearing although evidence may be given by affidavit.

[15] The High Court can freely review the EJO's findings of fact but will obviously give great weight to them. The court has all the powers of the EJO and can confirm, reverse or vary its decisions or remit the appeal with directions.

Discretion of the EJO

[16] Article 53(1) of the 1981 Order provides that the EJO *may* make an order for delivery of possession. Under Article 13(f) it *may* stay enforcement of any judgment either absolutely or in such terms and conditions as it considers proper. In addition under Rule 103(1)(a) of the Judgment Enforcement Rules (Northern Ireland) 1981 the Master is permitted to grant a stay of enforcement when he is satisfied that there are special conditions which render it inexpedient to enforce the judgment.

Submission of the parties

[17] The appellants relied on their affidavit, "order to show cause" and skeleton argument in support of their appeal. In oral submissions they submitted that:

- (a) The possession order should never have been made.
- (b) The Master did not make an order.
- (c) The Master failed to consider the fact the Will was fraudulently made.

[18] Mr Hunt on behalf of the plaintiff/respondent submitted that the court had no power to look behind the possession order. The discretion of the EJO Master and this court was limited to enforcing that possession order as per *Halifax Plc v Seawright and Seawright* [2000] NIJB 71.

Consideration

[19] The appellants' affidavit, "order to show cause" and skeleton argument repeats arguments and submissions made before Horner J and the Court of Appeal. In particular it sets out a number of reasons why a possession order should not be made and makes allegations that the Will was procured by fraud; that the testator lacks capacity; that there was conspiracy by the lawyers against the appellants; and that there was improper conduct by the judiciary including the Lord Chief Justice.

[20] I am satisfied that this court cannot "look behind" the possession order made by Horner J. That possession order was made by the High Court after a contested hearing in which the appellants made the same arguments which they are making today. The decision of Horner J was affirmed on appeal. I therefore find that the attempts by the appellants today to relitigate matters which have already been before the court is barred by reason of the doctrine of *res judicata*.

[21] The question for this court is whether the Master erred in dismissing the appellants' objections and in making an order for delivery of possession of the premises. The question of what discretion the EJO may have in the enforcement of judgments for possession of land was considered by Girvan J in *Halifax Plc v Seawright and Seawright*. The issue before that court was whether the EJO was correct in refusing to make an immediate order for the delivery of the possession of the property in circumstances where the Chancery Master had given the creditor liberty to enforce the possession order. Girvan J held that an immediate order for possession should have been made. He held that the EJO had no power to exercise the discretion given by the Administration of Justice Acts based on jurisdictional and policy grounds. He held that the jurisdiction given under the Administration of Justice Acts was limited to the High Court and was not available to the EJO Master. He further held on policy grounds that it was wrong to permit the EJO Master to act as a further Appellate Court from a final decision of the High Court.

[22] Capper, "The Enforcement of Judgments in Northern Ireland" at paragraph 5.14 sets out the position as a result of the decision in *Seawright*. He states:

"Once the court has determined to grant possession of a property to the creditor the EJO's duty is to enforce that order without delay. So the EJO should make an immediate order for the delivery of possession and any person aggrieved by that decision can appeal to the High Court or go back to the court which granted the original possession order and seek a stay of enforcement."

[23] I am satisfied that the EJO had no power to act as an Appellate Court in respect of the order for possession made by Horner J and affirmed by the Court of

Appeal. The role of the EJO Master was to enforce that order. Accordingly I find the EJO Master did not err in making the order for delivery of possession.

[24] If a party wishes to seek a stay of enforcement of a possession order it is necessary for him/her to apply to the court for a stay.

[25] The appellants made an oral application for a stay. They failed to set out any grounds for the application or details of any change in circumstances. This matter has now been going on for many years. In all the circumstances I am satisfied that there is no basis for a stay to be granted.

[26] Accordingly, I dismiss the appeal.

[27] Having heard the parties and their submissions in respect of costs I make an order condemning the appellants in respect of the costs of this appeal.