

Neutral Citation No: [2024] NICH 9

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

Delivered: 27/06/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE MATTER OF THE ESTATE OF TERENCE BENEDICT McQUAID  
(DECEASED)

AND IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY  
AND DEPENDANTS) (NORTHERN IRELAND) ORDER 1979

Between:

CONRAD McQUAID

Plaintiff

and

BRIEGE McQUAID AND PATRICK MALLON AS EXECUTORS OF THE  
ESTATE OF TERENCE BENEDICT McQUAID DECEASED

Defendants

(No. 2)

Anthony Brennan (instructed by McHugh Lynam) for the Plaintiff  
Patrick Lytle KC and Rory McNamee (instructed by Mallon & Mallon) for the  
Defendants

**HUMPHREYS J**

*Introduction*

[1] On 23 November 2022 I dismissed the plaintiff's challenge to the validity of the Will dated 17 July 2018 made by his late father, Terence McQuaid ('the deceased'), and admitted this Will to proof in solemn form.

[2] The plaintiff's appeal against this decision was dismissed by the Court of Appeal on 15 June 2023.

[3] This judgment relates to the plaintiff's remaining pleaded claim, by which he seeks reasonable financial provision from his late father's estate, pursuant to Article 3 of the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979 ('the 1979 Order').

[4] The deceased's Will provided simply:

"I leave, devise and bequeath everything that I own real as well as personal and wheresoever situate to my dear wife Briega absolutely."

[5] The estate has been valued for inheritance tax purposes at £2,946,349. The plaintiff disputes this valuation and claims that the estate is considerably more valuable.

### *The legislative provisions*

[6] Article 3 of the 1979 Order states:

"Where after the commencement of this Order a person dies domiciled in Northern Ireland and is survived by any of the following persons:

- (c) A child of the deceased ... that person may apply to the court for an order under Article 4 on the grounds that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant."

[7] Reasonable financial provision is defined in Article 2(2)(b) in respect of an adult child applicant as being:

"such financial provision as it would be reasonable in all the circumstance of the case for the applicant to receive for his maintenance"

[8] If this threshold test is met then, by Article 4, there is a variety of orders which the court may make. These are as follows:

- (a) an order for periodical payments;
- (b) an order for a lump sum;
- (c) an order for the transfer of property;

- (d) an order for the settlement of property for the benefit of the applicant;
- (e) an order for the acquisition out of property in the estate and transfer of the property to the applicant;
- (f) an order varying any ante-nuptial or post-nuptial settlement; and
- (g) an order varying any settlement made during the subsistence of or in anticipation of a civil partnership.

[9] There are two separate questions to ask:

- (i) has there been a failure to make reasonable financial provision? and, if so
- (ii) what order ought to be made?

[10] In determining each of these, the court must have regard to the following matters set out in Article 5:

- “(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under Article 4 has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under Article 4 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased and the likely effect on any business undertaking included in the estate of an order resulting in the division of property;
- (f) any physical or mental disability of any applicant for an order under Article 4 or any beneficiary or the estate of the deceased;

- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.”

[11] Article 5(6) requires the court, when considering the question of financial resources, to take into account earning capacity and to take into account financial obligations and responsibilities when considering financial need.

[12] In *Ilott v The Blue Cross* [2017] UKSC 17 the Supreme Court considered an application by an adult child who found herself in financial difficulties. Lord Hughes identified the key features of the equivalent legislation in England & Wales as follows:

- (i) The will applies unless and until the court makes an order for financial provision;
- (ii) Save for spouses and civil partners, applicants can claim only what is needed for their maintenance;
- (iii) They cannot claim on the general basis that it was unfair that they did not receive any, or a larger, slice of the estate;
- (iv) The test of reasonable financial provision is objective.

[13] In considering the meaning of “maintenance”, Lord Hughes stated:

“The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) shows that it cannot extend to any or everything which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living...the word ‘maintenance’ connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature.” (para [14])

[14] He further stated at para [15]:

“The level at which maintenance may be provided for is clearly flexible and falls to be assessed on the facts of each case. It is not limited to subsistence level. Nor, although maintenance is by definition the provision of income rather

than capital, need it necessarily be provided for by way of periodical payments, for example under a trust.”

[15] Lord Hughes approved the test set out by Oliver J in *In Re Coventry* [1980] Ch 461:

“It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court’s powers under the Act and to fiscal demands, an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases or, if he chooses to do so, to leave that disposition to be regulated by the laws of intestate succession. In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant - and that means, in the case of an applicant other than a spouse for that applicant’s maintenance. It clearly cannot be enough to say that the circumstances are such that if the deceased had made a particular provision for the applicant, that would not have been an unreasonable thing for him to do and therefore it now ought to be done. The court has no carte blanche to reform the deceased’s dispositions or those which statute makes of his estate to accord with what the court itself might have thought would be sensible if it had been in the deceased’s position.” (at 474-475)

[16] Lord Hughes held that, in the case of an adult claimant, well capable of living independently, something more than the qualifying relationship is needed to found a claim. In some cases that additional something could be a ‘moral claim’. The approach of the Supreme Court was followed in this jurisdiction by McBride J in *Noble v Morrison* [2019] NICH 8.

[17] In the Irish legislation, section 117 of the Succession Act 1965 speaks of a failure by a testator to fulfil his “moral duty to make proper provision for the child in accordance with his means.” The existence or otherwise of such a moral duty is not a sine qua non of a claim under the 1979 Order but this is often the central argument in a claim advanced by an adult child of the deceased.

### *The plaintiff’s case*

[18] The plaintiff is a 55 year old man, the eldest of the six children of the deceased and Briege McQuaid. He is married with two adult children and carries on business

as an amusement arcade proprietor. In addition to his family home in Dungannon, the plaintiff owns the following properties:

- (i) 23 Milltown Street, Dungannon;
- (ii) 28 Springhill Avenue, Belfast;
- (iii) 2 Oakland Heights, Dungannon;
- (iv) 27 The Parade, Donaghadee;
- (v) 38 Market Square, Dungannon;
- (vi) Yard space at Barrack Street, Dungannon;
- (vii) The Ritz, 69-73 Central Promenade, Newcastle;
- (viii) 2 Oakland Heights, Drumkeen, Co Donegal.

[19] The Ritz is the plaintiff's principal place of business, being an amusement arcade and bingo hall. The plaintiff's wife also owns two residential rental properties in Dungannon.

[20] The plaintiff's father owned a poolroom in Thomas Street, Dungannon which has been rented to the plaintiff for the last 10 years.

[21] The plaintiff gave evidence that his father owned the 147 Club in Queen Street, Belfast and he worked there as a teenager. He left school in 1986 and went to Australia. His father acquired The Ritz in Newcastle in 1988 and the plaintiff returned from Australia to work in it. He asserts that he did so in the belief that he would acquire an equitable share in the business. In due course the plaintiff was assigned the lease of the premises and continues to operate the arcade and bingo hall.

[22] In 2002 the company which operated the 147 Club went into liquidation and the plaintiff was assigned the lease of the premises by the liquidator and ran the business until 2009.

[23] In 1992 the deceased purchased the Glengannon Hotel outside Dungannon. The plaintiff states that he was heavily involved in the promotion and running of the night club at the hotel, including the introduction of a DJ named Eddie Ray. Again, he claims that, as a result of this work, he believed he would receive an equitable share in the hotel. The hotel was demolished around 2005 and the land is now rented to a car dealership.

[24] In 1998 the deceased purchased a service station at Clifton Street in Belfast and the plaintiff says he ran the business until a tenant was found. The work carried out by him is again said to be the basis for a claim of an equitable interest.

[25] In the late 1990's the deceased purchased Kelly's Eye bingo hall in Belfast. The plaintiff says that he was heavily involved in this venture and gave advice to his father on the acquisition and management of the business.

[26] On the plaintiff's evidence he derives a net income of £19,000 per annum from the Newcastle business and rental income. He estimated the total rental income from the various properties to be £18,000 per annum whilst the Newcastle business generates about £15,000.

[27] On 20 March 2024 an Order for Possession of his properties at Donaghadee and Market Square, Dungannon was made by Huddleston J on foot of unpaid secured loans. This Order is currently under appeal to the Court of Appeal.

[28] The plaintiff gave evidence that "things are very tight" and he is unable to meet many of his debts. However, he accepted that he was able to lodge a £10,000 cash security in respect of a high profile applicant for bail in October 2023.

[29] The plaintiff's case is that he was a "loyal and loving son", but the evidence reveals that he and the deceased had a difficult and fractured relationship. In 2015 they fell out over litigation between the deceased and his bank and did not speak until shortly before the deceased's death. At this time, the plaintiff dishonestly told his father that he had written a letter to the judge in that case, seeking to influence the outcome

[30] Under cross-examination, the plaintiff accepted that he made an outrageous allegation of criminal conspiracy against members of his family. On 17 May 2020 he sent a text to his mother which read:

"You shall no longer tell lies or keep secrets from me about his death or secrets from me about his death or his estate"

[31] In 2019 the plaintiff "purchased" the burial plot in which his late father's remains are situate from the local parish. It was explained at the time that the payment of this sum of money does not pass any legal or equitable title in the property, it merely secures the use of the plot for the deceased and others in due course. Despite this, when a Mr Murray was erecting a headstone at the grave in July 2020, the plaintiff threatened him with legal action.

[32] It was quite apparent from the plaintiff's evidence that he harbours significant animosity towards his mother. It is hard to escape the conclusion that these proceedings, and the claim in relation to the deceased's lack of capacity, were motivated both by his desire for financial gain and also to harm his mother. Both in

the aftermath of his father's death, and during the course of this legal action, he has been quick to accuse his mother of lies and deceit.

[33] David Allister gave evidence that he worked for the plaintiff at The Ritz for many years. He described how the plaintiff and his father had a "rollercoaster relationship." He was responsible for introducing the DJ Eddie Ray to the plaintiff and knew that this had been a great success.

[34] Tommy Corrigan is a cousin of the plaintiff's late father and knew him well. He was in touch with the deceased regularly during the last months of his life. About six or eight weeks before he died, he told Tommy that he had everything sorted out and that all the children would be looked after.

[35] Sean Boner is a practising solicitor in Dungloe, Co Donegal. He has been instructed by the plaintiff to bring proceedings under section 117 of the Succession Act 1965 in Ireland although these have yet to be commenced. The only purported asset of the deceased in that jurisdiction is a share in a development of five houses in Gweedore. There is a dispute as to whether this property belonged to the deceased or his son Terry McQuaid junior. In any event, it is apparent that there is a debt to the Ulster Bank which exceeds the likely realisable value of the property.

[36] The plaintiff's sister, Bronwyn O'Donnell, also gave evidence. She described a fractured relationship between the plaintiff and his father. In relation to the various businesses, she testified that the plaintiff played no more part in the 147 Club than any of his siblings and had nothing to do with the Clifton Street service station whatsoever. In November 2017 the plaintiff approached her to see if a reconciliation could be effected with his father. The father did not want to speak to him because he had failed to pay rent at the pool room in Dungannon, had not paid the water charges, failed to pay money to customers when they won and had written to the judge in his case and that was why he lost. It was curious, to say the least, that the plaintiff chose to call a witness who was wholly antithetical to the case being advanced by him.

### *The defendants' evidence*

[37] Briega McQuaid gave evidence to the court that she and her late husband enjoyed a long and happy marriage and that he built up a number of successful businesses.

[38] She agreed with the proposition that the relationship between her late husband and eldest son was "very fractured." They "just disagreed and didn't get on" as a result of regular problems in the running of the pool room in Dungannon. The plaintiff failed to pay the water charges which resulted in the water being turned off and no sanitation facilities for customers. The plaintiff also repeatedly failed to pay his rent.



[39] Mrs McQuaid cited various examples of how this breakdown in the relationship manifested itself including the plaintiff's failure to attend his father's 70<sup>th</sup> birthday party, refusing to speak to his father at other family events and causing his siblings to contact the police as a result of his behaviour during the deceased's illness.

[40] In relation to the other businesses, her evidence was that all the children worked in both the 147 Club and the Glengannon Hotel. The plaintiff never ran the business at the Clifton Street service station.

[41] Since the deceased's passing, she stated that the plaintiff has treated her appallingly, including the various events referred to above.

[42] Prior to his death, the deceased had discussed what he would like to happen to the various assets in his estate and he stated that the plaintiff should get nothing.

[43] I found Mrs McQuaid to be a straightforward, honest and compelling witness who has clearly been caused considerable upset and distress by the conduct of her eldest son and by the litigation which he has initiated and pursued.

### *Consideration*

[44] The burden is on the plaintiff to establish that his father's Will did not make adequate financial provision for him as an adult child of the deceased. In this context reasonable financial provision means what would be reasonable for the plaintiff to receive for his maintenance.

[45] He asserts a 'moral claim', based on the relationship between him and his father, in that he worked with and alongside him from his teenage years. He asserts that he always believed that he would receive an 'equitable share' of the businesses.

[46] In the case relating to the capacity of the deceased, I heard evidence that he determined, after receiving financial and legal advice, that he wished to leave his entire estate to his wife. This was the clearly articulated wishes of an individual of sound mind and had the benefit of avoiding any liability of the estate in inheritance tax.

[47] The plaintiff is himself an individual who is fit and able to work, has run businesses all his adult life and who has been able to acquire a substantial portfolio of properties with a steady rental income. He has recently found himself in a degree of financial difficulty and this has resulted in two of these properties being subjected to an order for possession. This did not, however, prevent him from accessing £10,000 in cash for the purpose of a bail application when required to do so.

[48] The plaintiff was not maintained by his father prior to his death. A proper analysis of the evidence reveals that, in fact, each business in which the plaintiff has

been involved came about as a result of either his connection with his father or an opportunity which his father gave to him.

[49] There is no evidence that the plaintiff requires maintenance in the sense as defined by Lord Hughes in *Ilott* as being the discharge of the cost of daily living. The plaintiff is entirely capable of maintaining himself.

[50] It is also noteworthy that none of the deceased's other five children have brought any claim against the estate in respect of a lack of reasonable financial provision. The only beneficiary of the estate is the plaintiff's mother against whom, as I have already found, he holds a substantial animus.

[51] As the statute makes clear, the court is entitled to take into account the conduct of an applicant under the 1979 Order in determining whether there has been reasonable financial provision. The plaintiff's conduct has been, as his mother outlined, quite appalling. His relationship with his father was non-existent for years and it cannot be that any moral claim therefore exists.

### *Conclusion*

[52] The moral claim advanced by the plaintiff is utterly bereft of merit. There is nothing in this case to justify a claim by an adult son who is entirely capable of earning an independent living.

[53] The plaintiff's claim for relief under the 1979 Order is dismissed and I make an order that the plaintiff pay the defendants' costs to be taxed in default of agreement.