Neutral Citation No: [2025] NICA 20 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **McC12745** *ICOS No:* *Delivered:* **04/04/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

APPEAL No 1

Between:

JOHN ISSAC PATTERSON and JAMES BARCLAY PATTERSON

Appellants:

and

RATHFRILAND FARMERS CO-OPERATIVE SOCIETY LIMITED

Respondent:

APPEAL No 2

Between:

JOHN ISSAC PATTERSON and JAMES BARCLAY PATTERSON

Appellants:

and

MARKETHILL LIVESTOCK AND FARM SALES LIMITED

Respondent:

Appellants: Unrepresented
Michael Tierney (instructed by Fisher and Fisher Solicitors) for the Respondents

---

Judgment No 2: Leave to Appeal and Time Issues

Before: McCloskey LJ and McAlinden J

McCLOSKEY LJ ***(delivering the judgment of the court)***

[1] This judgment is to be read and considered in conjunction with Judgment No.1 of the court which dealt with, and dismissed, a McKenzie Friend application on behalf of the second appellant.

[2] Nomenclature. In this ruling John Isaac Patterson and James Barclay Patterson are described as, respectively, the "first appellant" and the "second appellant." Markethill Livestock and Farm Sales Limited and Rathfriland Farmer's Co-operative Society Limited are described, individually, as "Markethill" and "Rathfriland" respectively and as "the respondents" collectively.

[3] Markethill and Rathfriland brought separate proceedings against both appellants. Markethill claimed that the appellants were indebted to them in the amount of £144,292.96 arising out of sales of sheep to the appellants, who are described as sheep dealers and brothers. Markethill secured judgment in default of appearance against both appellants. A subsequent application to set aside this judgment was dismissed by the Queen's Bench Master. The appellants' ensuing appeal was dismissed by the order and judgment of Colton J, both dated 7 November 2024.

[4] The separate claim brought by Rathfriland against both appellants had the same essential features, with the exception of the amount claimed, which was £79,039.38. The same litigation course and eventual outcome ensued. In both cases, the appellants are purporting to appeal to this court in consequence.

[5] At an early case management stage of these appeals, the court identified four preliminary issues. Judgment No.1 has determined the fourth of these. The remaining three are:

(a) Whether leave to bring the appeals is required;

(b) Whether the appeals are in time; and

(c) Whether the correct parties are before the court.

We shall address each issue *seriatim*, in what we consider to be the appropriate sequence.

Leave to Appeal?

[6] An appeal lies from the High Court to the Court of Appeal only in accordance with section 35 of the Judicature (NI) Act 1978 (the "Judicature Act"), per section 34(2)(c) – and subject to any contention that jurisdiction is conferred by subsection (2)(a). There follows an extensive menu of cases in section 35(2). The effect of this is that (a) no appeal lies against certain orders of the High Court, (b) an appeal against certain orders of the High Court lies to the Court of Appeal without the leave of either court and (c) in specified cases the leave of either court must be secured. Section 35(2)(g) provides that no appeal to the Court of Appeal lies against "any interlocutory order or judgment made or given by a judge of the High Court", subject to five exceptions. None of these exceptions arises in the present cases.

[7] The provisions of Order 13 of the Rules of the Court of Judicature ("RCJ") apply to most of the material milestones in the history of these proceedings. In brief compass:

(i) Rule 1(1) enables a plaintiff to enter final judgment against a defendant who has failed to enter an appearance in response to a Writ indorsed with a claim for a liquidated demand: that is what occurred in both cases before this court, giving rise to the default judgments dated 20 June 2013 and 4 March 2013 noted in Judgment No 1.

(ii) Rule 8 enables the court to "…on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order": this provision was invoked by the appellants on two occasions initially, giving rise to orders of the Queen's Bench Master, dated 10 June 2021 and 9 February 2024 respectively, dismissing their applications.

(iii) Rule 8 was then invoked by the appellants a third time, generating two further dismissal orders of the Queen's Bench Master, each dated 8 March 2024.

[8] The two last mentioned orders were the subject of appeals to the High Court, resulting in the separate orders of Colton J dated 7 November 2024 (reflecting his judgment delivered on the same date) dismissing the appeals. In these circumstances the question which arises is whether the orders of the High Court are interlocutory in nature. If "yes", these appeals are invalid as neither of the two courts has granted leave to appeal (subject of course to any belated attempt by either appellant to take this step).

[9] The written submission on behalf of the respondents, prepared pursuant to the direction of this court, contains, *inter alia,* a contention (by implication) that the orders of the High Court are of the interlocutory species. This contention is undeveloped.

[10] "Interlocutory order" is not defined in the Judicature Act. The long-established dichotomy of interlocutory orders and final orders is a familiar one. The principles, or tests, for distinguishing between the two have been expressed in a variety of ways. One example is provided by the decision of the Northern Ireland High Court in *Deman v Sunday News Papers* [2019] NIQB 91 which is of some purchase in the present context as it concerned a default judgment procured by the plaintiff, an ensuing order of the Queen's Bench Master setting aside the judgment and, thereafter, an order of the High Court dismissing the plaintiff's appeal against the last-mentioned order. The plaintiff then sought to appeal to the Court of Appeal against the order of the High Court. The question determined by Horner J was whether, having regard to section 35(2)(g) of the Judicature Act, the leave of either the High Court or this court to pursue such an appeal was required.

[11] The governing principles are rehearsed at paras [3]–[5] of the judgment, which we gratefully reproduce:

> "Section 35(1)(g) of the Judicature Act provides at Section 35(2)(g):
>
> > 'No appeal to the Court of Appeal shall lie –
> >
> > (g) without the leave of the judge or of the Court of Appeal, from any interlocutory order or judgment made or given by a judge of the High Court…'"

Accordingly, if the order made by Master Bell and affirmed by me is an interlocutory order, leave to appeal to the Court of Appeal is required either from me or from the Court of Appeal. If it is a final order, then leave is not required and the plaintiff can appeal as of right.

Valentine's commentary on Section 35(2)(g) states:

> "An order is only final if made on an application which must determine the action however it is decided. Thus, an order is interlocutory if the application has been or could have been decided in such a way that the action continues: *R(Curry) v National Insurance Commissioners* (1974) NI 102 CA*; Re Darley* (1997) NI 384 CA*; White v Brunton* (1984) QB 570*; Re McNamee & McDonnell (Leave Stage)* (2011) NICA 40…
>
> Accordingly, in relation to interlocutory orders which are not orders as to costs only, both this Court and the Court of Appeal can grant leave to appeal. A final order is one made on such application or proceeding that, for whichever side the decision is given, it will, if it stands, finally determine the matter in litigation."

In *Salter R & Co v Ghosh* [1971] 2 QB 597 Lord Denning said at 60(g):

> "There is a note in the Supreme Court Practice 1970 under RSC Order 59, r4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In *Standard Discount Co v Lagrange* and *Salaman v Warner* [1891] 1 QB 734 and 735 Lord Esher MR said the test was the nature of the *application* to the court; and not the nature of the *order* which the Court eventually made. But in *Bozson v*

> *Altrincham Urban District Council* [1903] 1 KB 547 the Court said that the test was the nature of the *order* as made. Lord Alverstone CJ said that …the test is whether the judgment or order *as made* finally disposed of the rights of the parties.' Lord Alverstone CJ was right in logic but Lord Esher MR was right in experience. Lord Esher's test has always been applied in practice. For instance, an appeal from a judgment under Order 14 (even apart from the new rule) has always been regarded as interlocutory: and Notice of Appeal has to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause action, or dismissing it for want of prosecution - every such order is regarded as interlocutory: see *Hunt v Allied Bakeries Ltd* [1956] 1 WLR 1326."

[12] The application of these principles in any given case requires the court to consider the hypothesis that the application to the court concerned gave rise to an order essentially the opposite of the order actually made. In the present context, the "opposite" order of both the Queen's Bench Master and Colton J would have been one acceding to the appellants' applications, thereby setting aside the judgments which had been obtained against them. An order of this kind would, self-evidently, not have finally determined the proceedings. Quite the contrary: such an order would have revived and perpetuated the proceedings which, in both cases, had previously generated a final order in favour of the respondents against the appellants.

[13] Our ruling, therefore, is that the orders of the High Court which the appellants are purporting to challenge by appeal to this court are interlocutory in nature, with the result that their appeals are invalid as the appellants have neither sought nor obtained the leave of either the High Court or this court to pursue them.

The time issue

[14] The effect of the preceding conclusion is that there are no valid appeals before this court. We shall nonetheless address briefly the other two issues formulated in this court's first case management order. The first of these raises the question: have these purported appeals been brought in accordance with the governing time requirements?

[15] Given our ruling that the orders of the High Court are interlocutory in nature, the applicable time limit is that enshrined in Order 59, rule 4(1)(a) RCJ:

> "Subject to the provisions of this rule, every notice of appeal must be served under rule 3(4) within the

> following period (calculated from the date on which the judgment or order of the court below as filed), that is to say…in the case of an appeal from an interlocutory order…21 days…"

In both cases:

(a) The order of the High Court is dated 7 November 2024;

(b) The order was, as recorded on its face, filed on 12 November 2024; and

(c) The notice of appeal in the Markethill case is undated and bears a stamp which indicates that it was filed in this court on 6 December 2024;

(d) In the Rathfriland case the notice of appeal is dated 18 December 2024 and bears a stamp indicating that it was filed in this court on the same date.

(e) There is no evidence of the date of service in either case.

[16] Assuming in the appellants' favour that the notices of appeal were served on the same date as filed (and in the absence of any contrary evidence), the time calculations in both cases are uncomplicated:

(i) In the Markethill case, the purported notice of appeal is out of time by three days.

(ii) In the Rathfriland case, the purported notice of appeal is out of time by 15 days.

[17] Order 59, rule 15 RCJ provides that the "court below" – in this instance the High Court – is empowered to extend the period enshrined in rule 4 "…on application made before the expiration of that period." On the evidence available, no such application was made to the High Court and, *ipso facto*, no order made under this rule exists. Rule 15 also recognises the power of the Court of Appeal under Order 3, rule 5 to extend the period within which any step required by the Rules is to be taken. No application to this court for the exercise of this power has been made.

[18] It follows from the foregoing that the purported appeals before this court are invalid on the further ground that they are out of time.

The Parties Issue

[19] The parties have traded assertion and counter-assertion on this topic. The battleground, which is of the parties' choosing, omits any attempt to trace the multiple orders and other formal litigation documents belonging to this 12-year

litigation saga. Nor has any party sought to adduce any evidence belonging to the forum of any of the underlying hearings. In addition, none of the parties has applied to this court for leave to adduce fresh evidence bearing on this issue.

[20] At para [31] of his judgment Colton J noted the incongruity that the appellants' self-description had altered from "John Patterson and Barry Patterson" to "John Isaac Patterson and James Barclay Patterson", adding at para [34], John Isaac Patterson's suggestion that "…Markethill deliberately sued the father because he was someone who would be a mark for damages." At paras [53]ff and [69]ff the judge noted other issues relating to names and signatures.

[21] We consider that there is no properly and coherently formulated issue relating to the identity of any party before this court. We have drawn attention in the preceding paragraph to the trial judge's treatment of the "John Isaac Patterson issue." This is an appellate court and not a trial court. There is no application to this court to adduce fresh evidence. Nor is there any respondents' Notice under Order 59, rule 6 RCJ in either case. Finally, there is no transcribed evidence before this court in accordance with Order 59, rule 12(b).

Conclusion

[22] We draw attention to the central conclusion of the trial judge, at para [73](c):

> "The evidence does not support the case being made on behalf of the appellants that the plaintiffs/respondents in this application did not have a contractual relationship with the defendants against whom default judgment was obtained."

This was the critical finding impelling to dismissal of the appellants' applications/appeals under Order 13, rule 8 RCJ. By itself it is fatal to the appellants, as regards the merits. The paper blizzard presented to this court by the appellants, consisting of two notices of appeal totaling 111 pages and 322 paragraphs of single-spaced type and other materials, manifestly fails in its evident obfuscatory goal of masking this fundamental reality. These materials were augmented by six bulky lever arch files prepared on behalf of the respondents.

[23] We summarise our conclusions thus:

(i) These appeals are invalid as leave to appeal has not been obtained.

(ii) These appeals are invalid on the further ground that they are out of time.

[24] For the avoidance of any doubt, while the court has been provided with correspondence relating to the bankruptcy of a person described as "Isaac John Patterson" and the associated involvement of the Insolvency Service/Official

Receiver, this has nothing whatsoever to do with these proceedings. This was reflected in the first of three rulings which this court made during the inter-partes hearing on 31 March 2025:

(i) Setting aside two subpoenae ad testificandum directed to The Official Receiver.

(ii) Refusing the first appellant's application for the recusal of McAlinden J, a member of the judicial panel.

(iii) Dismissing the first appellant's attempt to challenge/reopen this court's earlier McKenzie Friend Ruling.

[25] The court will deal separately with the issue of costs on appeal and at first instance.

Addendum

[26] Having considered the parties' written submissions, we consider that the general rule whereby costs will follow the event should apply. The appellants will therefore be responsible for the respondent's reasonable legal costs and outlays, to be taxed in default of agreement, above and below.

UKSC

[27] John Isaac Patterson, the first appellant, has applied for leave to appeal to the United Kingdom Supreme Court. This application is refused as it fails to raise, coherently or at all, any point of law of general public importance.