Neutral Citation No: [2025] NICh 12 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **HUD12640** ***ICOS No:*** **16/29700/03** ***Delivered:*** **10/01/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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DAVID MOORE, DONALD MOORE AND ERIC MOORE

Plaintiffs

and

NIGEL CUSHLEY AND CIARAN McCREESH
PERSONAL REPRESENTATIVES OF THE ESTATE OF MAEVE MULHOLLAND (DECEASED)

Defendants

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Mr Mark McEwen (instructed by Walker McDonald Solicitors) for the Respondent
Mr Conor Maguire KC with Mr Heaney (instructed by Gallery & Campbell Solicitors) for the Applicant

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Huddleston J

Introduction

[1] After some earlier debate at the interlocutory stage around procedural issues, this application came before the court primarily as a strike-out application pursuant to Order 18 rule 19(1)(a) and (b), namely:

(a) that the proceedings disclose no reasonable cause of action; and/or

(b) that they amount to an abuse of process.

[2] There is little debate between the parties as to the legal principles involved in the considerations applicable. Both accept that for an action to be struck out it must be a "clear cut case", or "manifestly bad" as per the guidance in cases such as *McAteer v PSNI* [2018] NI Master 1 and *Lonrho v Al Fayed* [1992] 1 AC 448.

[3] The principles underlying both emanate from the pre-eminent authority of *Three Rivers* and were in this jurisdiction eloquently rehearsed by Gillen J in the case

of *Rush v PSNI* [1997] NI 403. In short, in such applications, it is the function of this court to assess, on the pleadings, whether the cause of action brought by the plaintiffs has a reasonable chance of success.

[4] Core to that issue here is the primary question as to whether or not the plaintiffs in the instant case have sufficient standing to actually bring the proceedings – a question that arises under a consideration of Order 76 rule 2(2) of the Rules of the Court of Judicature (NI) 1980 ("the Rules") which I set out in full:

> "**Requirements in connection with issue of writ**
>
> 2-(1) Probate actions must be begun by writ, issued out of the Office.
>
> (2) Before a writ beginning a probate action is issued, it must be endorsed with the statement of the **nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates**." [emphasis added]

[5] The defendants, who move this application, argue that "interest" in this context must mean financial interest (unless the case is one involving an executor). The plaintiffs, for their part, argue that the word "interest" should be given a "much broader, fact specific consideration" and have largely argued the case on that basis.

[6] I should say that my understanding of the plaintiffs' case has changed since the interim stages of this case. Initially, I did not understand them to be arguing a case that they claimed an interest on an intestacy – their initial case being a challenge to the later (in time) of the Wills of the testatrix. The effect of this would have been to leave the potential of earlier (valid) Wills. At the hearing of this application, however, that position seems to have changed, and, in effect, they now argue for displacement of all of the testatrix's Wills and that, therefore, they have an interest which would arise on intestacy – that obviously then being a financial interest.

[7] The pleadings before this court do not actually go that far. What the plaintiff seeks as regards the 1991 Will and the 1989 Will (ie the very earliest in time of the Wills) is set out in the statement of claim as follows:

> "Further and in the alternative a declaration [that they i.e. the wills] be admitted to probate in solemn form."

[8] The pleadings do not particularise in that specific regard the exact challenge made - either in terms of a lack of capacity and/or knowledge and/or approval of those Wills – certainly not in any event as in the same manner as those vitiating circumstances are levied against the later Wills. They adopt the same approach to her earlier Wills – but not the 1991 or 1989 ones (as set out above at [7]).

Facts

[9] The plaintiffs are nephews of the late Maeve Mulholland ("the testatrix" and/or "the deceased") as is the first-named defendant.

[10] The defendants, together, are the personal representatives of the deceased under a Will made on 27 October 2014 (the "2014 Will") which, as the latest Will, is the Will they seek to propound.

[11] The deceased was born on 24 April 1924 and died on 13 March 2015 in a nursing home, just short of her 91st birthday. She was a spinster without issue. The defendants seek to propound in solemn form the 2014 Will, whereas the plaintiffs seek a declaration that the court pronounce against that Will on the basis that the deceased lacked sound mind, memory and understanding and further and/or in the alternative that the deceased did not know or approve the contents of the Will.

[12] It is fair to say that the deceased was a serial Will maker. Rather than rehearse the text of the various Wills which are now at issue, I have attached a schedule (which I have copied from the defendant's position paper) which sets out all of the relevant Wills which (except as set out above) are now under challenge – largely on the same basis, ie lack of capacity and/or want of approval. The series of Wills, as can plainly be seen from the attached schedule, go back to the earliest in that series – ie as far back as a Will which was dated 24 November 1989 ("the 1989 Will").

[13] In respect of both the two earlier Wills (ie the 1989 and the next in sequence a 1991 one ("the 1991 Will"), of the personal representatives named therein, James Mulholland is now deceased, and Mr Ian Hardstaff, formerly a practicing solicitor and the author of the Will, is now a master of this court. It is also clear from the papers that he has renounced his rights of executorship in respect of any Will in which he is mentioned.

[14] In each of the more recent Wills, ie from and including the 2008 Will forwards, it is the defendants who are named as the personal representatives.

[15] I should say that the Parish of Aghagallon which features as a charitable beneficiary in all of the Wills (albeit with differing levels of entitlement) had at an earlier stage, been invited to participate in these proceedings but has elected not to do so.

[16] It is accepted as between the parties that the plaintiffs are within a class of statutory next of kin of the deceased should it be established that she died intestate. That is the only circumstances in which they would have a "financial interest" in her estate. They are not mentioned in any other capacity in any of the Wills.

[17] The plaintiffs, in their statement of claim, however, seek to argue that all of the Wills of the testatrix, ie the 2014 Will, that made on 4 June 2010 ("the 2010 Will"), that made on 25 June 2008 ("the 2008 Will"), that made on 21 April 2005 ("the 2005 Will") and, most latterly that created on 21 October 1991 ("the 1991 Will") and, finally, that created on 24 November 1989 are, in effect, pronounced against by this court resulting, therefore, in an intestacy. As I have said, in relation to the 1991 Will and the 1989 Will they seek to arrive at that position through a declaration that those Wills be proved in solemn form but do not actually advance in their pleadings any particular or specific vitiating circumstances.

[18] Medical evidence has been provided by both Dr Barbara English and Professor Passmore as to the testamentary capacity of the testatrix, but as the court is not trying that issue in the context of these proceedings I do not take that into account in any particular sense.

[19] The defendants' principal case is that, consistent with the overriding objective set out in Order 1 rule 1A of the Rules, the plaintiffs' case should be struck out on the basis that the plaintiffs have no financial interest and, therefore, are incurring costs which will impact negatively upon the beneficiaries of the estate of the deceased.

[20] As I have said, at the earlier stages of this case, the pleadings suggested that the plaintiffs' direct claim related only to the 2005 Will onwards. Although not formally amended, it now appears that a much wider case is being made that in the absence of the 1989 and 1991 Wills being proved in solemn form that, in fact, they do assert an interest on intestacy (by necessity in that case a financial one) so that there is at least an arguable case to be taken to trial (ie one that is not capable of being dealt with through this strike-out application).

[21] They deny that it is a case of an abuse of the court's process. They say that the plaintiffs are not (to use their words) "mere busy bodies" and that they have a real interest in challenging the validity of the series of Wills to ensure that their aunt's wishes are fulfilled.

[22] They say that for the court to strike out the case at this stage means that there are no other routes by which the medical evidence which has been discussed between Dr English and Professor Passmore could be brought to the court for determination and/or tested.

Consideration

[23] The reason that this case was not capable of being dealt with on an ex-tempore basis was that the question of what amounts to the nature of an "interest" for the purposes of Order 76 rule 2(2) of the Rules is something on which there is very little authority. The defendants argue that "it is unprecedented for someone who has absolutely no financial interest whatsoever in the outcome of a Will challenge to take

the financial risk of pursuing same and insist that the court makes a determination [upon it]."

[24] I raised this very point with Mr McEwen, on behalf of the plaintiffs, at an earlier stage, namely that if their challenge is ultimately unsuccessful they do face a cost risk and was assured that those risks had been explained to his clients in detail and that they were minded to proceed.

[25] The case which was relied upon in support of the argument that the term "interest" in this context must mean a financial interest is the Court of Appeal decision in *Randall v Randall* [2016] EWCA Civ 494, in which it was held, broadly, that the creditor of a beneficiary who would obtain a financial interest under the estate (if the probate claim was successful) had a sufficient "interest" to confer standing. That interest, although remote, it is argued was nonetheless financial in nature.

[26] The court was also referred to contradictory cases under the Inheritance (Provision for Family Dependents) legislation viz the cases of *O'Brien v Seagrave* [2007] 1 WLR 2002 and *Green v Brisco* [2005] EWHC 809.

[27] Neither case, however, is directly in point in terms of the question of whether a member of the class of statutory next of kin is entitled to challenge a Will absent **any** financial interest. It is quite clear, from the series of Wills which are summarised in the schedule annexed, that the plaintiffs cannot be claiming a financial interest under any of those. Nor do they purport to claim as applicants under the Inheritance (Provision for Family Dependents) (NI) Order 1979. The only "interest", therefore, that they can assert is that they fall within the class of next of kin of the deceased and further that in the event that the deceased be found to have died intestate that interest would be financial. That is a position which, as I have explained, has evolved through the course of these proceedings.

[28] Ms Grattan BL, who was involved in the earlier stages of this case, also conducted a review of some Commonwealth authorities which I include simply because of the light which they shed upon the question of what might constitute "an interest" for such purposes.

[29] In her extensive position paper on this point, I was referred to an Australian text "Succession: Families, Property and Death" 5th Edition at para 6.36:

> "It is vital to recognise that a party to the litigation must be a person who has an interest in the outcome of the proceedings, that is a person whose interest would be affected by the making of the grant… A person who would be entitled on intestacy would have the requisite interest: *Re Devoy* [1943] STRQD 137 together with the decision of the Queensland Full Court in *Re Devoy* (supra) where Phillips J suggests that:

> 'a person who has no interest under any testamentary instrument executed by the testator is not entitled either to require that the Will propounded as his last Will shall be proved in a solemn form of law or to oppose the grant of probate thereof… on the basis that these principles were based on deep rooted policy, because it is **contrary to the interests of the state that persons having nothing to gain thereby should be permitted to institute or intervene in litigation and the court are not established to enable parties to litigate matters in which have no interest affecting their liberty, rights or property**.'"
> [emphasis added]

[30] I was also referred to the jurisprudence of Ontario where it seems to be expressly the case under the Rules applicable in that jurisdiction that a party challenging a Will must have a "financial interest." That is reaffirmed in the case of *Jafari v Attar-Jafari* [2008] OJ 2949, where Allen J held:

> "Being an offspring of the testator by itself, I find, is not a sufficient basis to qualify as a person who appears to have a financial interest in the estate or from which to infer an interest might exist…"

[31] *Tristram and Coote's Probate Practice* (Chapter 28) at 28.3 confirms that:

> "The question whether a person has a sufficient *interest* to be permitted to bring a probate claim is a procedural issue and not a matter of substantive law. The nature of an interest adequate to found a probate claim is a matter of practice and procedure [to be] decided on a pragmatic basis from case to case. That proposition is taken directly from the authority of *Randall v Randall* which held that the word "interest" in CPR Rule 57.7(1) [ie the English equivalent] was to be given a broad meaning so as to give effect to the overriding objective in CPR Rule 1.1(1); that the position of the creditor of a beneficiary of an estate whose interest was to ensure that the beneficiary received what was due to her under the Will, was fundamentally different from that of the creditor of an estate, who had no sufficient interest in the estate to bring a probate claim. Whereas, the husband, as a creditor of a beneficiary of the estate, had a real interest … and no route by which he could

> [otherwise] bring his claim before the court and that, accordingly, … justice required the husband to be able to bring his probate claim to set aside the Will."

[32] I also agree that the assessment of whether or not such an "interest" exists, by necessity, has to be fact specific. As it is a question of procedure, it is a question which must also be tailored with an assessment of whether the party alleging the issue has no other way of accessing courts. If they have no other way of doing so then, in the absence of a situation which would "clearly" and/or "obviously" render it subject to strike out and/or an abuse of process of the court, it, on balance, ought to be allowed to proceed.

[33] Personally, I take the view that in the context of Order 76 rule 2(2) "interest" suggests to me a financial interest. That is a factor that should weigh in the mix. The courts do not generally act in vain.

[34] In the case of *Kipling v Ash* [1845] 1 ROBECC 270 Sir Herbert Jenner-Fust said, by way of elaboration:

> "[at] present … I know not what case may be made out against the Will. I am, therefore, of opinion that they have an interest, and that the **bare possibility of an interest is sufficient**." [emphasis added]

I accept that invites a broad interpretation but in the context of each of those cases to which I have been referred there was, at some level, an interest which was, either directly or indirectly, financial. It further seems to be the case that some Commonwealth jurisdictions have taken it a step further and made that requirement express.

[35] In *O'Brien's* case (supra) it was made clear that there was no decided case which is inconsistent with that broad construction of what constitutes an "interest", but I do distinguish what can constitute a "broad interest" with an underlying financial imperative, with what otherwise could be described as a "busy body." Certainly, it is my view, that the underlying implication in the case law is that, unless one is an executor, absent a financial interest (however remote) one is likely to fall into the category of being a "busy body" in the absence of other circumstances to be taken into account. The plaintiffs in this case have been at pains to argue that they are **not** "mere busy bodies" (to adopt Mr McEwen's phrase, and as referred to in caselaw). Where they otherwise sit on that spectrum I do not have to decide. As now presented they lay challenge against the entire series of Wills and have, through their counsel, advanced an argument that they are only interested in ensuring that their aunt's true and valid wishes are adhered to. They take that position in spite of the neutral position adopted by the Parish who is a named and significant beneficiary (particularly under the earlier Wills). Even though they themselves do not appear as beneficiaries in any of the Wills they now seek to challenge the validity of all of those

Wills – either, as I have said, by a direct challenge or, in the alternative, by seeking they be propounded in solemn form.

[36] In the present case, absent the suggestion (and it is only a suggestion at this stage) that the plaintiffs may have an interest arising on intestacy, I would have been minded to strike out their case. The amended argument being advanced would, however, result in an intestacy. Obviously, I have not considered the medical evidence in support of or against such a challenge as the test for a strike out (as both parties acknowledge) is that their case has to be "unarguable or almost uncontestably bad based on the pleadings." Whilst the pleadings as regards the challenge to the 1991 and 1989 Wills are not couched in positive terms, nonetheless, I find myself in a position where, on the pleadings, I am not in a position to say that the point now made is unarguable without a consideration of the evidence and, therefore, will allow the case to travel to trial. It cannot be an "abuse of process" to do so where there is no other route to court to allow the issues to be ventilated in full.

[37] It is obviously now incumbent upon the plaintiffs, therefore, to make good their case, absent which there may be adverse cost consequences.

Conclusion

[38] In conclusion, therefore, I dismiss the defendants' strike-out application and reserve costs to the trial of the main action.

IN THE MATTER OF THE ESTATE OF MEAVE MULHOLLAND (DECEASED)

Date of Will	Executors	Beneficiaries
21st October 1991	James Mulholland (deceased) and Ian Hardstaff	In the events that have happened (James and Dermott predeceasing) to the Parish to St Patrick, Aghagallon to be used for purpose of discharging parish debts and the surplus to be distributed by priest to charities at his sole discretion
24th November 1989	James Mulholland (deceased) and Ian Hardstaff	In the events that have happened (James and Dermott predeceasing) to the Parish to St Patrick, Aghagallon to be used for purpose of discharging parish debts and the surplus to be distributed by priest to charities at his sole discretion
27th October 2014	Nigel Cushley and Ciaran McCreesch	£10,000 to Pat Hugh Mulholland £100,000 to Parish of Aghagallon £10,000 Craigavon/Lurgan Branch of St Vincent de Paul Residue to Nigel Cushley
4th June 2010	Nigel Cushley and Ciaran McCreesch	£10,000 to Irene McCluskey £10,000 to Pat and May Mulholland £100,000 to parish priest of Aghagallon parish £25,000 to NSPCC in NI £25,000 to Marie Curie £10,000 to Craigavon/Lurgan branch of St Vincent de Paul Residue to Nigel Cushley

25th June 2008	Nigel Cushley and Ciaran McCreesch	£20,000 to Nigel Cushley £2,000 to Craigavon St Vincent de Paul £50,000 to Aghagallon Parish for debt and other purposes 50% Marie Curie 50% NSPCC in Northern Ireland
21st April 2005	Francis Mulholland and Ann Mulholland	£1,000 to St Vincent de Paul One piece silverware to Ann Mulholland and Irene McCluskey Legacy to pay off the parish debt of Aghagallon Parish, Residue to Trocaire Ireland