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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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

AND IN THE MATTER OF THE ESTATE OF ANTANAS GRIGATIS

DENIS GRIGATIS (A MINOR) BY HIS MOTHER AND NEXT FRIEND, ANSRA AUGUSTINE

Plaintiff

and

[1] THE ESTATE OF ANTANAS GRIGATIS
[2] KRISTINA PAVLOVA

Defendants

Lisa Moran (instructed by Paul Campbell Solicitors) for the Plaintiff
Michael Sheil (instructed by Elliott Trainor Partnership, Solicitors) for the Defendants

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SIMPSON J

Introduction

[1] The deceased in this case, Antanas Grigatis, is the father of the plaintiff. The deceased died intestate in May 2023. The plaintiff was born on 31 January 2008, so is no longer a minor. He is described as a vulnerable young man with longstanding mental health difficulties. He has not attended school for many years. His parents are Lithuanian. They never married. The plaintiff was born in Lithuania. The plaintiff's mother moved to Northern Ireland in 2009 for employment purposes, and the deceased followed sometime later. Difficulties developed in their relationship, and the plaintiff's mother and the deceased separated in 2010. The deceased only made intermittent contribution by way of maintenance for the plaintiff.

[2] Sometime in or about 2018 the deceased formed a relationship with the second defendant. They did not marry. There are two children of that relationship. They are beneficiaries under the estate of the deceased.

[3] The deceased left his employment with M&M Refrigeration in October 2021 and set up his own company, GP Services Ireland Ltd. He was a refrigeration and air-cooling gas engineer. He borrowed money in connection with this venture. At the date of his death loans were outstanding, as set out below.

[4] The deceased and the second defendant bought a house in early 2020 for £171,754. They were joint tenants. At the date of the death of the deceased his 50% share of the property passed to the second defendant by right of survivorship. As the property was bought utilising the co-ownership scheme, the NI Co-Ownership Association has a 40% interest. There is also a mortgage in favour of Danske Bank of some £90,000. There was a professional valuation of the property, carried out by Digney Boyd, Chartered Surveyors and Estate Agents, not agreed by the second defendant, of £230,000 as of May 2025. That valuation, which has now been superseded, meant that the equity available was around £48,000, so the deceased's 50% share was £24,000.

[5] It is the plaintiff's case that there are other assets of the deceased; (1) a BMW car; (2) the contents of three bank accounts; and (3) a modest pension fund. The second defendant says that there are no assets in the estate.

[6] It is also part of the plaintiff's claim that the court make a declaration that the 50% interest of the deceased in the property at his death be considered as part of the deceased's net estate. This claim is made pursuant to Article 11 of the 1979 Order.

[7] The parties in this case have exchanged affidavits. Counsel for both parties agreed that the case could be decided on the basis of those affidavits — without the necessity of either deponent to give evidence — supplemented by the submissions of counsel. Both counsel also provided detailed, informative and helpful skeleton arguments.

The 1979 Order

[8] The provisions of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, where material, are:

> "**Interpretation**
>
> 2.—(1) …
>
> (2) In this Order—
>
> 'reasonable financial provision'

…

(b) in the case of any other application made by virtue of Article 3(1), means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance;

Application for financial provision from deceased's estate

3.—(1) 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 ground 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.

Powers of court to make orders

4.—(1) Subject to the provisions of this Order, where an application is made for an order under this Article, the court may, if it is satisfied 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, make any one or more of the following orders:—

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

…

Matters to which court is to have regard in exercising powers under Article 4

5.—(1) Where an application is made for an order under Article 4, the court shall, in determining whether 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 such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that Article, have regard to the following matters:—

(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."

[9] Article 11, where material, provides —

"**Property held on a joint tenancy**

11.—(1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if, before the end of the period of six months from the date on which representation with respect to the estate of the deceased was first taken out or 18 months from the date of the death (whichever first occurs), an application is made for an order under Article 4, the court for the purpose of facilitating the making of financial provision for the applicant under this Order may order that the deceased's severable share of that property, at the value thereof immediately before his death, shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Order as part of the net estate of the deceased.

(2) In determining the extent to which any severable share is to be treated as part of the net estate of the deceased by virtue of an order under paragraph (1), the court shall have regard to any capital transfer tax payable in respect of that severable share.

(3) Where an order is made under paragraph (1), the provisions of this Article shall not render any person (other than a surviving joint tenant) liable for anything done by him before the order was made."

[10] No letters of administration have been taken out in this case. Accordingly, the limitation period for an application pursuant to Article 11 is 18 months from the date of death. The deceased died in May 2023; the summons was issued in October 2024, just inside the limitation period.

[11] If the court was to make an order pursuant to Article 11, and because the deceased's share of the property passed to the second defendant on the death of the deceased, Article 4(4)(a) of the order is relevant:

"(4) An order under this Article may contain such consequential and supplementary provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this paragraph—

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;…"

[12] Article 2 of the Order contains a definition of net estate. Where material it provides:

"net estate", in relation to a deceased person, means—

(a) all property of which the deceased had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax payable out of his estate on his death;

…

(d) any property which is treated for the purposes of this Order as part of the net estate of the deceased by virtue of an order made under Article 11…"

[13] It is common case that if an order is made pursuant to Article 11, the value of the severable interest is not to be reduced by any liabilities which the deceased had at his death.

Legal principles

[14] In *Illott v Blue Cross* [2017] UKSC 17 Lord Hughes discussed the concept of maintenance:

"14. 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. …. The summary of Browne-Wilkinson J in *In re Dennis, deceased* [1981] 2 All ER 140 at 145-146 is helpful and has often been cited with approval:

'The applicant has to show that the will fails to make provision for his maintenance: see *In re Coventry (deceased)* … [1980] Ch 461. In that case

> both Oliver J at first instance and Goff LJ in the Court of Appeal disapproved of the decision in *In re Christie (deceased)* … [1979] Ch 168, in which the judge had treated maintenance as being equivalent to providing for the well-being or benefit of the applicant. The word 'maintenance' is not as wide as that. The court has, up until now, declined to define the exact meaning of the word 'maintenance' and I am certainly not going to depart from that approach. But in my judgment 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. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable a him to continue to carry on a profit-making business or profession may well be for his maintenance.'

…

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. It will very often be more appropriate, as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years…"

[15] In *Re Coventry* [1979] 3 All ER 815, Goff LJ said (page 818j to 819a)

> "What is proper maintenance must in all cases depend on all the facts and circumstances of the particular case…but I think it is clear that one must not put too limited a meaning on it; it does not mean just enough to enable a person to get by; on the other hand it does not mean anything which may be reasonably desirable for his general benefit or welfare."

Later, at page 822f and g he said:

> "The question is not whether it might have been reasonable for the deceased to assist his son … but whether in all the circumstances, looked at objectively, it is unreasonable that the effective provisions governing the estate did not do so.
>
> …the problem must be exactly the same whether one is dealing with a will or intestacy…"

[16] In relation to the claim under Article 11 of the Order, I note the decision of the Court of Appeal in England & Wales in *Jessop v Jessop* [1992] FLR 591. The facts of that case were that the deceased was a man with two families, one in Cleveland and the other in Portsmouth. Until his death his wife (Greta) and three children in Cleveland knew nothing of the woman (Dorothy) with whom he had lived in Portsmouth for many years, nor of their grown up daughter. The daughter knew nothing of the family in Cleveland. Her mother, although she knew of the wife, knew nothing of the three children and was deceived by the deceased in other important respects. The deceased and Dorothy took out a mortgage and were joint beneficial tenants of a property in Portsmouth ("the property"). The deceased died intestate, leaving Greta as the sole beneficiary of his estate, amounting to £2,500. The deceased's share of the property passed to Dorothy by survivorship. Greta's income was £4,686, while Dorothy's was £4,392, but the latter had capital of about £14,000 and a house worth about £42,000.

[17] Greta commenced proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, s.2, for reasonable financial provision. The Registrar ordered that the deceased's severable share of the house should be treated as part of his estate and ordered the payment of £10,000 to Greta. Dorothy appealed to the judge, who decided that no further payment was due to Greta.

[18] The Court of Appeal allowed Greta's appeal from the decision of the judge. In the course of the judgment Nourse LJ said of section 9(1) of the Act (the English equivalent to Article 11(1) of the 1979 Order):

> "It is that subsection which enables the court, if it thinks fit, to order that the net proceeds of sale of [the deceased's] severable share of [the property] shall be treated as part of

> his net estate, with the result that under the combined effect of section 2(1)(b) and (4)(a) the court can order Dorothy to make a payment of a lump sum to Greta.
>
> So far as counsel are aware, the wording of section 9 (1) has only been considered in two reported cases, the earlier of which is *Kourkgy v. Lusher* [1983] 4 F.R. 65. There, Mr Justice Wood experienced difficulty with the wording of the subsection, in particular with the words 'for the purpose of facilitating the making of financial provision for the applicant under this Act.' However, he expressed the view that those words should not be understood to narrow the broad discretionary power given by the subsection and he proceeded so to interpret it. [Counsel] does not quarrel with that view of section 9(1) provided that the 'broad discretionary power' given by it is no more than a power to facilitate the making of an order under section 2. I agree with [counsel's] view of the subsection, and I approach it on that footing. It follows that for the purposes of arriving at a decision in this case the court may treat [the deceased's] severable half share of [the property], at the value thereof immediately before his death (i.e. at £21,000), as part of his net estate."

[19] In *Dingmar v Dingmar* [2006] EWCA Civ 109, a joint tenancy case, the Court of Appeal was divided on the proper approach. The majority (Ward and Jacob LJJ) held that the 'net estate' for the purpose of provision under the Act included any property treated as part of it by virtue of section 9. No valuation was required for this purpose. The proportionate share of the property which would have belonged to the deceased, had there been severance, is treated as the share which the court was entitled to treat as part of the net estate and the court was, therefore, empowered to order a transfer of that full half share to the claimant. Lloyd LJ dissented, taking the view that the words 'at the value thereof immediately before his death' meant that the judge had been correct to hold that he did not have power to order the full half share of the house to be treated as part of the net estate.

[20] That decision was considered by the Court of Appeal in *Lim (A Child) v Walia* [2014] EWCA Civ 1076, the issue being resolved in favour of the approach of the majority in *Dingmar,* although the court was divided in relation to another issue which does not affect this case. McCombe LJ said:

> "36. In my judgment, what *Dingmar* shows is that what the court is enabled to do under section 9(1) is to order the 'severable share' to be treated as part of the net estate; it is not the 'value' of that share that becomes part of the net estate, either at the date of the death or at the date of the

hearing. It is the proportionate share of the property, if there had been a severance, which the court is empowered to treat as part of the net estate - Jacob LJ's 'candidate (iii).'

37. As the decision in *Dingmar* shows, it is upon the severable share to which the deceased was entitled immediately before death that focus is directed. The 'value' is a secondary matter. As Ward LJ said, it was merely descriptive of the share."

[21] Arden LJ said:

"49. *Dingmar* also confirms that, contrary to the respondent's submission, the curtain does not come down at death or immediately prior to death so as to exclude any event occurring thereafter. That case concerns a joint tenancy of property. One of the joint tenants died. The property had increased in value prior to the hearing of the claimant's claim under the 1975 Act and the question was whether the court should treat the increased value as part of the estate. The majority (Jacob and Ward LJJ) held that the court should do so on the basis that the effect of section 9(1) was to fix the percentage of the total value which was to be treated as belonging to the estate."

[22] I bear those decisions and that guidance in mind; noting that I am entitled to take into account the increase in the value of the property between the date of death of the deceased and today's date.

The plaintiff's case

[23] In relation to the court's consideration of the issues in the sub-paras of Article 5 the plaintiff says:

"(a) The plaintiff has mental health issues and a diagnosis in relation to potential autism is awaited. He has had no formal education for many years. He lives with his mother, his carer who, herself is in receipt of benefits. They live in rented accommodation. The plaintiff receives a PIP payment of £128.65 per week. He has no capital and it is unlikely that his financial position will improve.

(b) The plaintiff is not aware of the existence of any other applicant under the Order.

(c) There are two minor children of the deceased.

> (d) The deceased had an obligation to maintain the plaintiff and there were arrears of over £6,000 by way of maintenance at the date of his death.
>
> (e) The defendant says there is no value in the estate. However, if the deceased's interest in the property is considered to be part of the estate, then the value enhances by some £24,000.
>
> (f) The plaintiff is a vulnerable young man, with special needs.
>
> (g) The deceased has neglected his obligations to maintain the plaintiff."

[24] The plaintiff says that if the deceased's 50% share of the property is not to be considered as part of his estate, then the plaintiff will end up being treated fundamentally differently from the deceased's two children of the relationship with the second defendant. They will have a home and a future interest in the property, whereas the plaintiff will not. Although the value of the estate is modest, it is such as to make a considerable difference to the plaintiff's circumstances.

[25] As to the court's consideration of maintenance Ms Moran points to the assessment in 2022 by the Child Maintenance Service of the Department for Communities as to what the deceased should have paid by way of maintenance for the plaintiff. That amounted to £71.60 per week. As noted above the deceased did not pay on any regular basis, so that at the date of his death over £6,000 was owing by way of arrears. Since the death of the deceased in May 2023 to the date of the plaintiff's majority on 31 January 2026, at the same weekly rate if it had remained applicable, there would be some further £10,000 of unpaid maintenance.

[26] I was provided with an up to date valuation of the property by Digney Boyd, valuing the house at £250,000. During discussions with counsel, it became clear that, at that up to date valuation, the 40% share of the property held by the Co-Ownership Association would amount to £100,000 in value. With the £90,000 mortgage held by Danske Bank, at a valuation of £250,000, the equity would be some £60,000.

The defendant's case

[27] The defendant says that she and the deceased initially paid £164 per month as their portion of ownership of the property, and £386 per month representing mortgage payments to Danske Bank. That was on an initial five-year fixed term, at the expiry of which the monthly payment rose to £500 in June 2024. During his lifetime, the second defendant and the deceased paid all the household expenses.

[28] The two children of her relationship with the deceased were born, respectively, in February 2020 and December 2021.

[29] She says that the plaintiff's mother did not let the deceased have any contact with him and he did not see the deceased between the date of diagnosis of the deceased's illness and his date of death.

[30] She says that at the date of the deceased's death he had the following debts:

(1) £20,000 business loan;

(2) £6,300 personal loan;

(3) Hire purchase agreement for the work van, which was repossessed after his death;

(4) A loan relating to the purchase of a car, which was repossessed after his death;

(5) £525.00 with Creation Consumer finance;

(6) £1,939 outstanding on a loan with Danske Bank, which had been used for furnishing the house and buying items for the children.

(7) A debt of possibly some £14,000 owed to HMRC after the striking off of the deceased's company.

[31] Following the deceased's death the second defendant set up a 'Go Fund Me' page and raised some £16,330 to help her. The money was used for the deceased's funeral, transportation of his remains to Lithuania and to pay the £1,939 remaining on the Danske Bank loan.

[32] The sum of £5,025 from the modest pension was paid to the deceased's mother who was the named beneficiary.

[33] The second defendant is in receipt of benefits to the tune of some £704 per fortnight. Now that the children are in school for part of the day, she is seeking some form of employment. One of the children has special needs, and both require speech therapy. She says the BMW car is hers and is not relevant to any consideration of the deceased's estate.

[34] She says the valuation of the property is £215,000. In fact, that is a valuation by the Co-Ownership Association and was made about a year ago. On the document which refers to that valuation, it is stated that the valuation is only valid for three months and it expired on 11 May 2025. With the mortgage outstanding being £90,000 and with the Co-Ownership Association being owed some £83,200 (on the valuation of £215,000), there is limited equity, 50% of which amounts only to some £20,500. One

of the second defendant's children has special educational needs, and awaits an autism assessment. He also has other paediatric needs.

[35] As to the weekly maintenance order made by the Child Maintenance Service, that was at a time when the deceased was in employment. Sometime in early 2023 he became unwell. If the assessment had been made then, the weekly maintenance assessment might have been different.

[36] The second defendant submits that the plaintiff's claim should be dismissed.

Discussion

[37] I entirely agree with Mr. Sheil's description that this is a sad case. At the end of the day there are three children who were dependent on the deceased. Both mothers have the deceased's children to look after. Although the plaintiff has now reached his majority, it seems likely that he will never be able to support himself. Neither his mother, nor the mother of the deceased's two younger children has any financial resources. Both have significant financial burdens to cope with. Both are on benefits and while the second defendant is looking for some work, that may well be relatively poorly remunerated in view of the limited hours when she might be able to work due to her family commitments, at least in the short term. It is unlikely that the plaintiff's mother will be in a position to work, as she is acting as carer to the plaintiff.

[38] The estate of the deceased is small. In the textbook, Ross *Inheritance Act Claims* the author (paras 4-006 and 4-007) states that a problem which inevitably arises with small estates "is the insufficiency of assets to satisfy all the competing claims." The author identifies as relevant part of the decision of Ungoed-Thomas J in a case in relation to earlier legislation, but equally applicable to claims under the 1979 Order — *Re Clayton* [1966] 1 WLR 969 — where the court said:

> "Dependants of a dead person … have the right to make a claim against the person's estate, however small it may be… However small the estate, all the relevant circumstances have to be considered before the court's decision is made. Smallness of the estate … is significant in relation to … (ii) the extent to which the estate can effectively contribute towards the claimant's maintenance, and (iii) the costs which are necessarily involved in the application."

[39] Article 11 allows the court the discretion to order that "the deceased's severable share of that property, at the value thereof immediately before his death, shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Order as part of the net estate of the deceased." In all the circumstances of this case I make an order under Article 11 that the entirety of the

deceased's severable share of the property immediately prior to his death be considered to be part of the net estate.

[40] From the most recent expert evidence available to me, I consider that the actual valuation of the property at today's date is £250,000, and as I noted above, the equity is £60,000. The deceased's 50% share immediately prior to his death has a valuation today of £30,000.

[41] Looking at all the circumstances of this case, I am satisfied that the disposition of the deceased's estate effected by the law relating to intestacy is not such as to make reasonable financial provision for the plaintiff.

[42] Having regard to all those circumstances and all the matters which Article 5 requires the court to take into account, I consider that the plaintiff should be entitled to one-third of the present value of the deceased's 50% share in the property, which I fix at a figure of £10,000. I consider that any higher figure would have too detrimental an effect on the remaining beneficiaries to be justifiable. The court has, inter alia, power to order periodical payments or make a lump sum order. In the circumstances of this case, I make a lump sum order in the sum of £10,000.

[43] I did consider whether I should make an order, essentially a declaration, that the plaintiff is entitled to 33% of the deceased's 50% ie a percentage rather than a lump sum amount. However, I am of the view that in the long run this might well prove to be inequitable. It would mean that until that share was paid over to the plaintiff, which might be some years in the future, the second defendant by paying the mortgage and maintaining the property etc. would be the sole contributor to any increase in the value of the property and, therefore, to any increase in the value of the plaintiff's equitable share. I do not think that such an order would be appropriate.

[44] Since there is little likelihood of the second defendant being in a financial position to pay the money in the foreseeable future, it would be wrong to make an order for immediate payment. However, there must be some protection for the plaintiff by way of interest on the principal sum. I consider judgment interest at 8% to be too high in the circumstances. Accordingly, I will order that interest will run on the sum of £10,000 from today measured annually at the rate of the retail price index ("RPI"), currently at 4.2%.

[45] Until the payment of the lump sum, plus the interest then accrued, it will be necessary to protect the plaintiff's position by making a charging order in relation to the property.

[46] I invite counsel to prepare the appropriate order for the court's consideration.

[47] As both parties are legally aided, I make no order as to costs, save that both parties' costs be taxed in accordance with the second Schedule to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.