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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 23/35100/03
	Delivered: 14/05/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE MATTER OF THE PARTITION ACTS 1868 AND 1876

BETWEEN:

PETER McGORREY

and

JAMES McGORREY

**Ms Maguire (instructed by Faloon & Co Solicitors) for the Appellant
Mr Hayward (instructed by Millar Shearer & Black Solicitors) for the Respondent**

KINNEY J

Introduction

[1] This is an appeal from an order made by Master Hardstaff on 6 February 2025 ordering the partition of lands situated on the Killycolpy Road Dungannon. The lands in question were owned by the father of the appellant and respondent and transferred to them in 2019. The relationship between the parties has broken down and partition was sought by the respondent.

[2] The Master determined that the lands were capable of partition and the order he made divided the land in accordance with the schedule attached to the order. The appellant has appealed that order but the appeal has been lodged out of time and he now seeks leave to bring his appeal out of time and to then defend the partition proceedings brought by the respondent.

[3] There is no dispute between the parties that the appellant's appeal is out of time and he requires the court to exercise its discretion to extend time if his appeal is to continue. The chronology is not in dispute between the parties. The Master made his order on 6 February 2025, but for reasons which were explained at the hearing of

this application the order was not issued until 8 April 2025. The notice of appeal was then lodged on 14 May 2025.

The law

[4] Order 58 rule 1 provides that an appeal shall lie to the High Court from any judgment, order or decision of a master. Order 58 rule 1(3) provides:

“Unless the court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.”

[5] Order 3, rule 5 (1) provides:

“The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.”

[6] The principal authority in this jurisdiction for the principles governing applications for an extension of time is *Davis v Northern Ireland Carriers* [1979] NI 19. The court said:

“Where a time limit is imposed by rules of court which embody a dispensing power the court must exercise its discretion in each case and the relevant principles are:

1. Whether the time is already spent: a court will look more favourably on an application made before the time is up;
2. When the time limit has expired, the extent to which the party applying is in default;
3. The effect on the opposite party of granting the application and in particular whether he can be compensated by costs;
4. Whether a hearing on the merits has taken place or would be denied by refusing an extension;
5. Whether there is a point of substance to be made which could not otherwise be put forward;

6. Whether the point is of general, and not merely particular significance; and
7. The rules of court are there to be observed.”

[7] This list is not exhaustive and the context of an individual case is of course of paramount importance.

Background

[8] The respondent first instructed solicitors in or around 2 August 2022 in relation to the lands and how they should be divided. The appellant gave evidence in relation to his actions or indeed lack of action since that time. He said that his mental health had not been good over this period. It was his wife who approached solicitors to act on his behalf. The appellant’s solicitors were contacted by the respondent solicitors in August 2022 and September 2022. There was no response to any of this correspondence. A pre-action letter was sent by the respondent’s solicitors to the appellant on 15 March 2023. No response was received to that letter. The respondent then issued proceedings on 5 May 2023. At that point the appellant engaged and entered a memorandum of appearance on 19 May 2023.

[9] The next step taken by the respondent was a grounding affidavit sworn on 17 October 2023 which was followed up with more correspondence on 30 October 2023. There was no response from the appellant. By this stage the appellant had dispensed with the services of his original solicitors and it would appear he had instructed new solicitors who then contacted the respondent solicitors on 9 February 2024 saying they were having difficulty preparing a replying affidavit. This was attributed to the appellant’s mental health. Further email correspondence continued between the solicitors. On 7 March 2024 the new solicitors said they had no instructions from the appellant for approximately four months.

[10] The respondent decided to proceed with the action. A notice of appointment for hearing before the Master was given for hearing on 17 September 2024. This notice was served by the respondent’s solicitors on 23 July 2024.

[11] The appellant’s new solicitors then sought an adjournment of the application on the day of the hearing. The next occasion it was before the master was 25 October 2024 when the Master directed that the appellants replying affidavit be served within 21 days. No such affidavit was served and the appellant’s solicitors indicated their intention to apply to come off record on 3 December 2024. The Master then relisted the hearing for 9 January 2025.

[12] On the morning of the hearing the appellant emailed the court office. The email again recounted a history of mental health problems and the fact that the appellant had had a heart attack in November 2024. He asked for further time to

allow him to source new legal representation and the hearing was adjourned until 6 February 2025.

[13] On 17 January 2025, the respondent solicitors wrote to the appellant informing him that if he wished to obtain a further adjournment of the hearing he would need to provide medical evidence of his condition and how it interfered with his ability to participate in the court proceedings. No response was received from the appellant. The appellant did not appear on the adjourned hearing date nor did he make any further contact with court. The Master then proceeded with the hearing and made the order which the appellant now seeks to appeal.

[14] It transpired during the hearing before me that the order did not in fact issue until early April 2025 and it was sent to the respondent on 8 April 2025.

[15] The order in question is dated 6 February 2025. The appellant in his evidence confirmed that he was aware of the order and its general terms within days of that order being made on 6 February. There is a moot question about the date from which time should run in this case but it was not argued before me by the parties and there was a general agreement that the court should focus on the period from when the order issued on 8 April 2025 until the notice of appeal was lodged on 16 May 2025. That does not mean that the period from 6 February 2025 to 8 April 2025 is irrelevant to the consideration of the court's discretion in this case.

[16] The appellant said he received a copy of the court order but did not know when that was. He did not know the time limit for appealing. He said he had shown the order to various solicitors and attempted to instruct them but none of them have provided him with any information regarding time limits for appeal. He said he had gone to a lot of solicitors in the local area. He then contradicted this by saying that he was in very poor physical health in April 2025 and that he struggled to get about at all. He was however able to attend medical appointments when required. He was unable to provide any further information on why his physical health interfered with his ability to deal with the court order. The appellant also made it clear that he was aware of the court order in early February. He said he heard about it in a local shop and various people raised it with him. The appellant was asked what steps he took to deal with the order that time. During this passage of his evidence he was particularly evasive and continually avoided answering the questions asked. He told the court that he remembered what fight or flight meant and that he was focused on getting better.

[17] In his oral evidence before me the appellant was an unimpressive witness. He would not answer questions asked directly of him. He was evasive and inconsistent. He made constant references to his mental health issues throughout the period of these matters. He claimed that he was unaware of emails and communications sent to him but could not explain the steps that he did take during the course of these proceedings, not least his communication to the court on 9 January 2025. He was unable to describe any mental health diagnosis and no

medical evidence was provided apart from letters indicating that he had been under the care of a consultant psychiatrist and mental health nurse.

[18] Although the appellant made much of his mental health difficulties to explain the periods when he had not engaged, he also made it clear during this hearing that his mental health condition had not changed since proceedings commenced and that he was no better now than he was then. He was unable to explain how he had been able to engage in these appeal proceedings but not in the proceedings previously. He had no recollection of receiving communications from his solicitors including correspondence which was exhibited for this hearing. He could not explain why it appeared he had not instructed solicitors for some seven weeks before his notice of appeal was eventually lodged. There was some evidence that he may have instructed his solicitors on 2 May 2025 but the appellant was not sure of that date. That was in fact a day when he was attending his heart failure nurse specialist. In any event even if he instructed his solicitor at that time there is no explanation for why it took another 11 days before the notice of appeal was prepared and then subsequently lodged. The appellant cannot recall how he instructed his current solicitors or indeed whether he instructed them himself. It may have been his wife who made a call to them.

[19] The appellant also repeated on several occasions that the court could not make any order without hearing from him. He made reference to a letter which he alleged had been received from the Law Society of Northern Ireland in which he said the Law Society told him that the court could not make any order unless he was present at the hearing and had participated. He did not have a copy of that correspondence. Frankly, I do not accept the Law Society of Northern Ireland would send such a letter. The appellant also had the benefit of legal representation for much of the proceedings, even if he did not engage with them. I doubt this myth was perpetuated by them.

Consideration

[20] I have considered the principles set out in *Davies*. It is clear that the time allowed for appeal had expired and indeed had expired by a considerable period notwithstanding the confusion about the date the Master's order was issued. The appellant was well aware of the nature and substance of the order from conversations in his local community which took place in early February 2025.

[21] I am satisfied in this case that the appellant has failed to engage at all stages including the potential appeal of the decision of the Master. In this case, I am satisfied that this was quite deliberate on the part of the appellant as he apparently laboured under the misapprehension that if he refused to engage then nothing could happen.

[22] He has asserted that his mental health prevented him from engaging. His mental condition, on his own evidence, has not changed since 2022 and he has

managed to engage at times that suited him over that period. He also referred to his physical condition and to a heart attack which occurred in November 2024. That evidence is not challenged. However, the appellant has not provided any medical evidence of assistance to the court in terms of how that may have interfered with his ability to engage with and to comply with court orders. Furthermore, he was able to engage when he was clearly aware of the hearing listed on 9 January 2025 and contacted the court seeking an adjournment. He then again simply ignored the court's directions. The appellant provided no evidence that his mental or physical health prevented him from participating in proceedings at crucial stages. Equally, he could not explain his ability to instruct solicitors and continue engagement with them relating to his appeal whilst maintaining that his mental and physical condition, which had previously prevented such interaction, was unchanged.

[23] I am satisfied that allowing leave will have a significant impact on the respondent. This is a matter that the respondent has been endeavouring to conclude since relationships broke down and the partition suit was issued in 2022. I am satisfied that he also has significant ill-health which is aggravated by stress. That fact has not been challenged.

[24] A hearing regarding this case has taken place albeit the appellant decided not to participate. It is correct to say that that was not a contested hearing as the respondent did not attend. However, the master had all the relevant materials and information before him. I am satisfied that the respondent deliberately refused to engage with those proceedings. In these circumstances, I have had regard to the authority of *Bank of Ireland v McFeely* [2016] NICA 34. In that case the court noted that the appellants had chosen not to play any active part in resisting the judgment which was entered against them and that the absence of a hearing on the merits was entirely due to the inaction of the appellant.

[25] I note that the notice of appeal sets out as a ground of appeal that the division of the lands was not equitable. There is no mention of seeking an order for sale. I also consider it relevant that in his affidavit of 28 July 2025 in support of his appeal the appellant stated at para 2:

“I do not dispute that the lands have to be partitioned but it is the manner in which they have been partitioned presently which I regard as unfair.”

[26] This would suggest that the appellant did not consider a sale of the land as a preferred outcome at the time of the hearing before the Master or, indeed, until January 2026 when the position changed in the appellant's skeleton argument.

[27] I have considered the arguments made on behalf of the appellant in relation to the merits. Whilst there are points to be potentially argued, I am satisfied that the Master was entitled to exercise his discretion as he did. The respondent before the Master had provided a grounding affidavit with exhibits which set out clearly the

land in dispute and the condition of the buildings on the land. It identified the particular issue of the location of the appellant's septic tank and how the land on which it is situated would be moved into his sole ownership. A map was provided drawn by an architect showing the division of the land suggested. The affidavit was sworn on 17 October 2023 and the appellant had ample time in which to consider its contents and to file any affidavit evidence of his own.

[28] The appellant then filed an affidavit in these proceedings dated 9 October 2025. He exhibited the report of Mr Maneely, a chartered surveyor, which was completed on 10 September 2025. Mr Maneely considered the lands in question and their location. He noted that the land was held in two distinct portions (which were the result of the partition order made by the Master). He noted that the portion attributed to the respondent had been recently cut for silage and was well fenced and drained. The portion attributed to the appellant had remained uncut for at least a year and possibly longer but it could easily be brought up to a good condition. He concluded that the two portions of land were the same quality. Access to each portion of the land after the split would be self-contained without the need for rights-of-way. Mr Maneely considered that the location and size of the two parcels of land was positive and if competitively priced would sell. He observed that the property was capable of being sold in two separate lots. He assessed the value of the portion attributed to the respondent at the time of the valuation as £92,000 and the portion attributed to the appellant as £104,000. There was therefore nothing to detract from the Master's decisions regarding the partition of the lands in question.

[29] I am satisfied in the circumstances of this case, bearing in mind that the appellant is largely the architect of his own misfortune in refusing to participate in proceedings, that I should not attach significant weight to this point when considering all of the various aspects of the case. The appellant's behaviour is of more significance. I am satisfied that this is a case where the rules of the court have been deliberately broken. The issues in this case are not of general rather than particular significance and rely on their own particular factual matrix.

[30] Having considered the individual aspects of the *Davies* principles, I have then looked at the case holistically to avoid a mechanistic application of those principles. I am satisfied in doing so that there is nothing in this case which persuades me that I should exercise the court's discretionary power to extend time in the appellant's favour.

[31] I therefore dismiss this application.