

Neutral Citation No: [2026] NICH 13

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

Ref: HUD12967

ICOS No: 22/74402

Delivered: 06/03/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

**HILARY FRIEL AS EXECUTRIX OF THE ESTATE OF NORAH O'DOHERTY
(DECEASED)**

Plaintiff

and

DONARD ROCHE

Defendant

**Ms Laura King (instructed by John J Roche Solicitors) for the Plaintiff
Mr R Smyth (instructed by Roche McBride Solicitors) for the Defendant**

HUDDLESTON J

Introduction

[1] This case comes to court as a challenge to the last three wills of Norah O'Doherty who died on 25 August 2021 aged 92 years, having lived for the majority of her life at 21 Belmont Crescent, Derry. Norah O'Doherty (the deceased) was unmarried and had no children. She is the defendant's aunt - the defendant's late mother, Mary Roche, being her sister. The defendant also has three siblings, namely Oliver, Marie and Patrick. It is common case that there has been litigation between various family members - creating tensions within it. As additional background, Marie has learning difficulties and post her mother's death in 2013, moved to residential accommodation in a care setting. Donard Roche, the defendant, has accepted that he has had struggles with alcohol over the last 40 years.

[2] Counsel for the plaintiff had helpfully created a family tree and in tabular form a document setting out a comparison of all of Ms O'Doherty's wills from 1974 forward - to include those that are specifically under challenge. Those are appended at Annex A and Annex B respectively, and I thankfully adopt them in this judgment.

[3] The defendant originally challenged the 2018 will of the deceased, but after interlocutory proceedings involving a potential strike-out for lack of standing, the case was widened to include challenges to her wills dated 2015, 2017 and 2018 – clearly on the basis that under the 2013 will, the defendant would have had an entitlement and, therefore, standing to bring the instant challenge. Absent that he would not. The principal focus of the current challenge would appear to the court to be the single bequest in the deceased's will of three thirds of her estate to Patrick Roche subject to the proviso that he is to give one eighth thereof to whichever sibling he sees fit – in effect an attempt to set up within the will a form of discretionary trust. The form or bequest gives him a power that the defendant suggests is open to abuse.

[4] As the case came on for trial the defendant accepted that the challenge he maintained was solely on the ground of the exercise of undue influence – conceding the other earlier pleaded challenge of capacity.

[5] It is also, however, relevant at this stage to set out the transactions which occurred in respect of the deceased's dwelling at 21 Belmont Crescent (folio 217L Co Londonderry) (the Property). Those transactions can be quickly summarised:

- (a) The Property was bought by the deceased in her sole name in June 1972;
- (b) It was transferred to both she and her sister Kathleen O'Doherty (now deceased) in or around October 1980 as joint tenants for natural love and affection;
- (c) After Kathleen O'Doherty's death, the deceased effected a further transfer to herself and her brother, Father Kevin O'Doherty, in or around March 1994 again for natural love and affection;
- (d) Father O'Doherty, after a diagnosis of early onset dementia moved into care and purported to transfer his interest in the Property to the deceased on or about 23 July 2014 – a transaction which the defendant also impugns as will be set out below.
- (e) Finally, the deceased in or around 2015 (the deed of transfer is dated 23 June 2015) purported to transfer her entire interest in the Property as follows:
 - One quarter to Patrick Roche and Kevin Morrison (to be held in trust for Niall O'Doherty) (her brother);
 - An undivided three eighth's share to be divided equally between Aileen Morrison, Niall Morrison, Hilary Friel and Kevin Morrison; and
 - An undivided three eighth's share to Briège Roche (wife of Patrick Roche).

[6] Correspondence was adduced whereby both deeds of transfer (albeit separately dated a year apart) were submitted to Land Registry on 26 June 2015. After several interactions with the Land Registry, the registrations were not completed until a year later i.e. in July 2016. This sequence is set out, however, only because it has resonance with the contemporaneous changes in the sequence of Wills – including those under challenge.

[7] At this point, although the question of capacity was abandoned prior to commencement of the trial, the court did have the benefit of medical notes and records and a report prepared by Professor McGuinness as to the capacity of the deceased and, indeed, Father O’Doherty. In summary, they provided the court with the following information:

- (a) That the deceased was old – being 86 (in 2015) and 89 (in 2018);
- (b) That she suffered from decreasing mobility and sustained a number of falls;
- (c) That she had poor hearing; and
- (d) That she had poor vision.

[8] It is accepted, however, on the defendant’s own case, that “there was no evidence of cognitive impairment.” I say this because in the trajectory of this case considerable time – and doubtless money (in terms of legal and consultants fees) – was incurred in attempting to secure medical evidence, but as matters transpired, and as I have commented on before, the case proceeded solely on the question of whether undue influence was exerted upon the deceased.

[9] In terms of that question, and as counsel for the plaintiff made clear throughout the (not inconsiderable number of) interlocutory proceedings and case reviews, if Donard Roche fails in his challenge to the 2015 will (as is now his pleaded case) then his claim in its entirety inevitably falls.

[10] In addition to the medical evidence referred to above, the court heard oral testimony from the following witnesses:

- (i) Donard Roche, the defendant;
- (ii) Dr David John Mitchell (Nephew-in-law);
- (iii) Maria Jayne Mitchell (Niece); and
- (iv) Patrick John Roche.

[11] What became apparent very quickly is that there is a history of disputes within the Roche family as regards (inter alia):

- (a) the administration of their parents' estates;
- (b) as between Oliver and Patrick (both practicing solicitors);
- (c) the administration of Neil Roche's estate; and
- (d) this case ultimately being the latest in a significant train of litigation.

In my opinion a good deal of that history masked the real question for the court, which in itself is quite simple, ie whether the deceased's will was overborne by undue influence or not.

[12] From the oral and medical evidence it was quite clear and I find:

- (a) that the deceased was someone who knew her own mind and was variously described in the oral testimony of the witnesses as "bossy";
- (b) that the defendant, on his evidence, had little involvement with the deceased following his mother's death in 2013 and was never, in fact, in the room with Patrick Roche and the deceased at the same time or observed them together;
- (c) that she had capacity although suffered from physical ailments consistent with her age; and
- (d) but most significantly, that there is no actual evidence of direct undue influence or that she failed to approve any of her wills.

Undue influence

[13] The guiding authority in the context of probate disputes as to the definition of what constitutes "undue influence" is to be found in the case of *Hall v Hall* [1868] LR 1 P&D 481 at 482 which describes it as "pressure of whatever character ... if so exercised as to overpower the volition without convincing the judgment." It is, in essence, something which overbears the will of the testatrix/testator such as her/his testamentary wishes are overborne.

[14] Contrary to cases in equity there is no presumption of undue influence, either **actual** undue influence in a probate case is proven on the facts or it is not. Simply put there either is proof of actual undue influence on a balance of probabilities or there is not. There must be something which, in effect, amounts to coercion - the "overbearing" of the testator's will.

[15] The defendant, to establish that, cites in the particulars what amounts in my view to circumstantial evidence:

- (a) as to the characteristics of the deceased he says:
 - (i) that she was elderly;
 - (ii) that she was hard of hearing; and
 - (iii) that she suffered from neck postural difficulties and was immobile without help.
- (b) In terms of the relationship between Patrick Roche and the deceased, the defendant cites:
 - (i) That notwithstanding the lack of any presumption that Patrick Roche was the deceased's solicitor and that she reposed trust and confidence in him;
 - (ii) that she did not have independent legal advice;
 - (iii) by reference to the various changes within the sequence of wills, the defendant highlights that the three eighths share which was mentioned in the 2013 will for the Roche siblings was removed entirely in the later wills, ie 2015, 2017 and 2018.

[16] At best this is all circumstantial evidence and, more importantly, arguably also applied to the earlier 2013 will – which was also prepared by Mr Patrick Roche – when the deceased was 84 years of age and also suffering to a varying degree from the same vicissitudes as was highlighted. Notably, that will is not subject to challenge.

[17] In the absence of any direct evidence of undue influence, however, the court was nonetheless invited by counsel for the defendant to look at:

- (a) The perceived rationale the deceased may have had for changing the bequests – particularly the exclusion of the Roche siblings as a distinct class of beneficiaries from 2015 onwards;
- (b) The lack of independent legal advice – which course Patrick Roche in his evidence said he had advised but which advice he said was countermanded by the deceased;
- (c) What the court could “read into” the 2015 will and the transfer of the Property and subsequent bequest to Patrick's wife (Briege) in the context of the defendant's evidence that she was not someone who was

particularly liked by the deceased and which the evidence suggested was done entirely at Patrick's suggestion (because he was at that stage suffering from ill-health with potential terminal consequences) - suggestive of the influence he enjoyed and exercised;

- (d) The (inadvertent) exclusion (from the 2015 will) of Kevin;
- (e) The provision of what amounts to a discretionary trust over one eighth of the residuary estate in the 2018 Will with powers over it being vested solely in Patrick;
- (f) The various discrepancies between the attendance notes which were the subject of cross-examination of Patrick by the defendant's counsel in relation to the preparation of the subsequent related wills; and
- (g) The disinheritance of Oliver Roche based on the litigation between he and Patrick Roche.

[18] Reliance was also placed on what could best be described (in this context) as "similar fact evidence." The court in essence was asked to look at the transfer by Father O'Doherty to the deceased at a point when, according to the medical evidence adduced, Father O'Doherty was already in residential care suffering from dementia and reach a conclusion that Patrick Roche would have/did adopt the same approach in having the deceased execute the three wills under challenge.

[19] Whilst all of this is interesting in itself, it is not probative, in my view, of establishing that there was actual undue influence on the facts or that the deceased failed to understand what she was signing. The evidence relied upon by the defendant is at best circumstantial and requires a good deal of conjecture on the part of the court - an exercise for which I see no basis in law. In addition, I found the testimony of the defendant in the witness box at best partisan - focusing more on the surrounding history between the Roche siblings and the contentious issues which existed as between them, than upon the direct question of whether actual undue influence was exerted in this particular case. He did not enlighten on that core point simply because in my view he had nothing to say on it.

[20] As I have said I was also invited to look at the "similar fact evidence" in relation to the transfer of his share in the property by Father O'Doherty. The suggestions were that Patrick Roche also procured this deed in dubious circumstances.

[21] In my view, those allegations were not made out on the evidence and seen in context was little more than the transfer of a donated half share back to his sister at a point when Father O'Doherty was already in secure residential accommodation.

[22] The transfer should also be considered in the context of preparation for the onward transfer made by the deceased to a class of beneficiaries who, in the main, reflected the residuary beneficiaries under the deceased's then existing (2015) will.

[23] In the court's view there was nothing of substance which confirms that Patrick Roche exerted actual undue influence and, indeed, focusing on the series of wills in chronological order:

- (a) One can see a logical pattern;
- (b) The amendments, I find, are consistent with life changes experienced by the deceased contemporaneously - such as the death of siblings and/or variously the provision of a life interest for her sister and then brother which she then subsequently reflected in actual transfers of property interests which themselves, in due course, became obsolete either through death (Kathleen) or their entry to residential care (her brother);
- (c) Provides a sequence whereby gifts to Patrick Roche (upon whose focus the defence case largely rests) were variously:
 - (i) subject to a condition precedent (and so not absolute gifts to him); and/or
 - (ii) were reduced - for example the introduction of the discretionary trust over one eighth and (in the 2020) by the addition of a pecuniary legacy of £10,000 to Cormac.

[24] I do not consider that the evidence advanced is sufficient to support the allegations made by the defendant that Patrick Roche was exercising undue influence upon the testamentary wishes of the deceased. Indeed, if he were to have done so, looking at it cynically, he probably could have secured greater benefit for himself.

[25] In terms of the exclusions of certain beneficiaries, one can also see a logic in that (a) Donard is a self-confessed alcoholic and, on his own evidence, had no contact with the deceased post his mother's death in 2013; (b) his sister Marie was also under a disability and any direct gift to her would have interrupted the provision of state benefits which she enjoyed whilst in residential care; (c) the attendance notes adduced while not perfect do evidence the evolution of the wills as the Appendixed document confirms. Patrick Roche's oral evidence in reviewing the interplay between the attendance notes and the executed wills did confirm that evolution and the logic behind it. I also am entirely satisfied that the deceased had both knowledge of and approved each of her wills in chronological sequence.

[26] Taking all of those factors into account the court finds for the plaintiff.

[27] As to the outworkings of that, if invited to do so, the court will therefore admit to probate the 2018 will of the deceased (as varied by the 2020 handwritten codicil) on the basis that given the court's conclusion there is no extant valid challenge to that will or any intervening one and chronologically it is the last in time.

[27] If required to do so, the court will hear the parties on the matter of costs although the court observes that the defendant is legally aided.

ANNEX A: FAMILY TREE

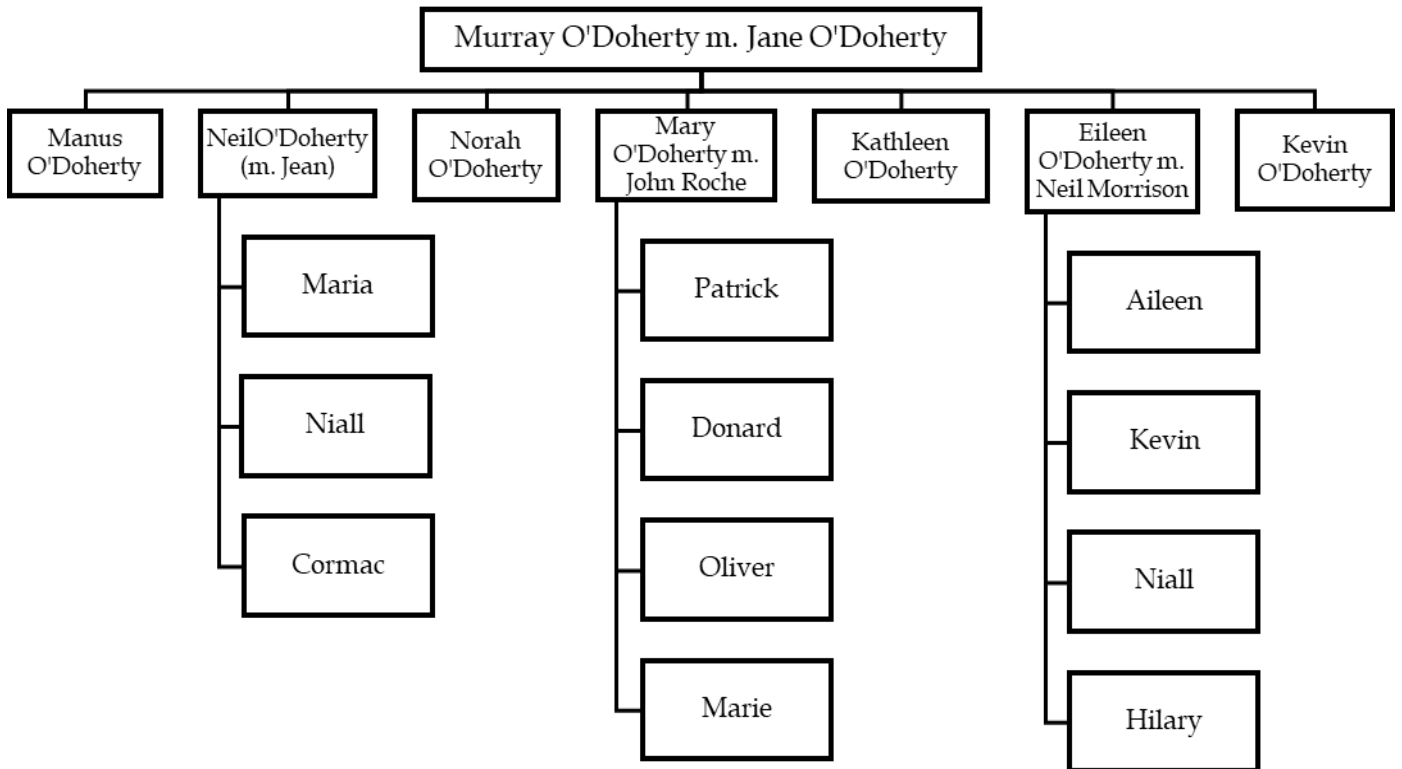


TABLE A:
Gifts provided under the 1974-1994 wills

	Jane O'D	Kathleen O'D	Kevin O'D	Manus O'D	Mary Roche	Eileen Morrison	Neil O'Doherty
11.07.74	RoR	100%	RoR	RoR			
19.09.89		100%	RoR	RoR			
9.02.94			1/8	1/8	3/8	3/8	

TABLE B:

Gifts provided under the 2013-2018 wills (assuming the primary beneficiaries survived Norah O'Doherty/and as actually occurred)

	Paddy Roche	Donard Roche	Oliver Roche	Marie Roche	Eileen Morrison	Neil O'Doherty
25.06.13	3/32	3/32	3/32	3/32	3/8	1 / 4
10.02.15					100%	
6.04.17					100%	
						Maria Niall Cormac
07.06.18	2/8 (3/8 – 1/8 gift)	1/8 to be distributed to whichever sibling Patrick Roche shall deem appropriate			3/8	1/4
Expression of wishes						£10,000

TABLE C:

Gifts provided under the 2013-2018 wills (had the primary beneficiaries predeceased Norah O'Doherty)

	Paddy Roche	Donard Roche	Oliver Roche	Marie Roche	Hilary Friel	Aideen Morrison	Niall Morrison	Kevin Morrison	Niall O'Doherty	Maria O'Doherty	Cormac O'Doherty
25.06.13	3/32	3/32	3/32	3/32	3/32	3/32	3/32	3/32	1/12	1/12	1/12
10.02.15	3/8 (via Briege)				1/8	1/8	1/8	1/ 4 share held in joint trust			
6.04.17	3/8 (via Briege)				3/32	3/32	3/32	3/32	1/ 4 share in trust		
07.06.18	2/8 (3/8 – 1/8 gift)	1/8 to be distributed to whichever sibling Patrick Roche shall deem appropriate			3/32	3/32	3/32	3/32	1/ 4 share in trust		
Expression of wishes											£10,000