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*Judgment: approved by the Court for handing down* | *Delivered:* **8/09/2009**
*(subject to editorial corrections)*

**2007 No 108841**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**CHANCERY DIVISION**

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**BETWEEN:**

**ANNE MULHOLLAND**

**Plaintiff;**

**and**

**MAUREEN KANE AND JOHN KANE AS PERSONAL REPRESENTATIVES OF THE ESTATE OF SEAMUS KANE, DECEASED**

**Respondents.**

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**DEENY J**

[1] The plaintiff in this action was one of eight children of a small farmer living near Ballycastle, County Antrim. She was born in 1960. At the age of 15 she began helping Seamus Kane at the lambing season. His circumstances were rather different, although some of his land marched with her father's land. He was then 42 years of age, unmarried and the owner of some 490 acres of land used for sheep farming, including a share of mountain grazing.

[2] The plaintiff left school at the age of 16. At about that time a sexual relationship was commenced between her and Seamus Kane. This was to continue, it appears, for the rest of his life. Neither married nor formed any other similar relationship nor had children. But it was an unusual relationship. The plaintiff is a hardworking and industrious woman. She left school without any qualifications at all and smiled, when giving evidence, at the idea that she might have passed the 11 plus examination. She worked for many years in a factory in Ballycastle until its closure. But when she came home in the evenings and at the weekends she would help Seamus Kane on the farm. This would involve not only help with the lambing season but dosing sheep, dipping them and helping with clipping and other tasks. It is

clear that this assistance on the farm continued for some 30 years. Independent evidence shows the duration of that work and, in particular, her performing tasks of assistance to Seamus Kane at times when he was unwell. After such tasks on the farm, and after the death of his mother, she would return to his house.

[3] Seamus Kane died on 19 March 2004 without making a Will. Letters of Administration were granted to the two defendants, his unmarried sister and married brother, on 21 March 2005. By operation of law they were the sole beneficiaries as his only siblings. By Writ of Summons of 8 October 2007 the plaintiff issued proceedings relying on the doctrine of proprietary estoppel. Initially the claim was for the entirety of the estate of the deceased but Mr Craig Dunford, who appeared for the plaintiff, opened the action by conceding that the claim was for the dwelling house of the deceased and some land only. There was some reference in the evidence to a promise of "a lock of sheep", meaning a few or some but that was not pleaded in the Statement of Claim nor in the Replies to a Notice for Particulars. It overlapped to some degree with the fact that the deceased did give the plaintiff sheep from time to time which were subsequently sold with her keeping the money. I am satisfied that it does not properly make up part of the claim of the plaintiff before the court. That might be summarised by the Reply to the effect that the plaintiff was promised she would always have a roof over her head and a bit of ground. That is indeed what the plaintiff said in her evidence in chief.

[4] I considered her an honest witness. She was the subject of a thoroughly professional cross examination from Mr Kevin Denvir for the defendant but while noting the points he made, to some of which I will refer shortly, my initial impression of the honesty of the witness was not shaken.

[5] She said that early on in the relationship, when she was still just a teenage girl, Seamus Kane had asked her would she always be there to look after him and she said she would. As part of the same conversation he assured her that she would always have a roof over her head and some land. When she was cross examined about this she was asked where this conversation took place and she said that the first, of several times, when such a promise was made, was in the first defendant's motor car. This seemed a little surprising at the time but subsequently that lady, whom I also consider an honest witness, confirmed that in those days her brother did indeed borrow her motor car from time to time, which was more suitable for a leisure drive than the more agricultural vehicle which he himself then owned.

[6] The plaintiff said in evidence that she thought he meant "the home place" but she acknowledged that he never expressly said that nor said which bit of land was intended. While I am satisfied that he was making and did make a promise to her I am not satisfied that he meant the home place. I

believe that would have been clear if that was his intention. It would also have been logical then to identify some of the neighbouring fields to the home place if that was to be her share after his time but this was not done.

[7] I am satisfied that she did do considerable work about the place with the deceased and that she was not adequately paid for that work. I accept her testimony that the deceased would give her £20 or £30 from time to time and larger sums occasionally e.g. to pay for the insurance on her car. Although her work was part time it was also regular but there was no suggestion that at any time were National Insurance contributions made, or a direct debit set up, or anything of a similar and consistent nature. Given in particular the disparity in ages between them and her role at the commencement of the relationship I find her testimony in this regard persuasive.

[8] I also accept from her evidence and that of the other witnesses that he was very much the principal centre of her social life. Inevitably that meant that she was not making herself available for other friendships with men which might have led to relationships and marriage. I will advert to the evidence of other witnesses in due course.

[9] There were, in fact, remarkably few disagreements on issues of fact between the plaintiff and the first defendant. Mostly there was a difference in emphasis with each understandably viewing her own role in the life of the deceased through her own eyes and tending to place more importance on that role than on the role of the other. It is certainly clear that at no stage did this long affair become a relationship which was discussed with the first defendant or admitted to her. That would inevitably have been true in the lifetime of the mother of deceased but continued to be the case thereafter. Mr Denvir put it to her in cross examination that if she had admitted to moving in and sleeping with the deceased they would have been "living in sin" and she agreed with that. I am sure that is how it would have been regarded in the milieu in which they lived and accept that as a result the relationship was never publicly acknowledged. Therefore, when there were family weddings Seamus went with his sister, in a suit bought for him by her, rather than with the plaintiff who shared his bed. The first defendant contended that the plaintiff had told her, after the death of her brother, that she had been paid £150 per week by the deceased but the plaintiff said no to that but that that was the sum which the first defendant did pay her for continuing to work on the farm. There is room for misunderstanding between the two witnesses as to how the sum of £150 was arrived at and more than one explanation for that and I do not hold it against the plaintiff. Indeed it was put to her at one point on behalf of the first defendant that she had an accident in August of 2004 and not in May but it transpired that the plaintiff was right and the first defendant's recollection was incorrect in that regard.

[10] Vincent John McHenry gave evidence for the plaintiff. He was a long standing friend of the deceased. He would often be up at his house for a drink or a game of cards and, he said, "Anne would always be there, even when I left in the early hours of the morning." The deceased, he said, was a big rough looking man who was used to getting his own way but was a decent man "a lot of the time". If the two of them went to a sheep sale together, as they did, and came back at midnight or one in the morning Anne would be there with the fire going.

[11] His evidence was important in one particular respect. The deceased was not in great health in his own lifetime and as he got older his friend told him to "catch himself on and go and make a Will." He urged the deceased to sort his affairs out in case he should die suddenly. Mr McHenry knew both of the defendants although it seems to be common case that the relationship between the deceased and his brother was for much of their lives not a close one. In answer to these urgings from Mr McHenry the deceased said: "Anne Mulholland will be looked after". He would sort out the matter next week. This was said more than once to the witness. Her evidence confirmed what he believed to be the nature of the relationship between them. He believed that is what people in the district thought also. Although he would not discuss it, someone in the pub would say from time to time that Seamus Kane was lying with Anne Mulholland.

[12] In cross examination Mr McHenry denied that he was owed any money by the deceased but would always have been a good friend of his. He was cross examined about a rather nefarious transaction which he and the deceased had been involved in but I found his evidence about that to be convincing. He confirmed the plaintiff's testimony that the question of a roof over her head was not discussed by the deceased in front of third parties. He was not saying how Seamus Kane would have or should have left his estate but he reiterated, in a convincing fashion, that the deceased had said that he would look after Anne. He was not friendly with his brother and not particularly close to any of his nephews.

[13] Patrick McCarry was a fresh looking man aged 77. He had shared a desk with the deceased at school and they had remained good friends for the rest of their lives. He considered the deceased and his family to be very good people. He had known Anne for about 20 years. He had met her at the house of the deceased and knew she was helping him out, particularly after his hip operation. On one occasion when he was not well she put the sheep in a lorry for the deceased which Patrick McCarry then drove to market. He was not there as often as Mr McHenry but did go to sheep sales with the deceased from time to time and was at the house for card games on other occasions. Most times Anne was there. She provided the supper and the drinks and they seemed friendly. He was reluctant to say anything about his dead friend which was adverse to him but when pressed he said that there was a lot of

people around the parish who were talking about the relationship between the deceased and Anne. The deceased spoke of Anne's working capacities with praise saying that she was "as good as any two men". He would have guessed that there was a relationship between them. Seamus would have been careful with his money. He thought he had heard on occasions that the deceased had promised Anne that there would be a roof over her head. He had said that he would "see Anne alright" He too was cross examined but did not alter his recollection. He was a friend of a Mr Lawrence Smyth who was assisting the plaintiff in her litigation. He apparently had been a sort of shop steward for small farmers and that is how he would have been known to the plaintiff and to the witness. Anne had looked after Seamus pretty well for 30 years. "We thought she deserved some recompense." On a couple of occasions the deceased had said that Anne would be catered for. It may be that that came out when he had a drop of drink on him but I did not understand the witness to dismiss the remark for that reason.

[14] The first defendant, Miss Maureen Kane, gave evidence after the conclusion of the plaintiff's case. She had been an executive officer in the civil service retiring in 1982. I accept her evidence that she had a good relationship with her brother and that even after her mother's death in the 1980's she came to him in his house twice a week. Despite owning 490 acres he did not own a washing machine and she would wash and mend his clothes in her own home. It is common case that she did not find the personal effects of the plaintiff about the house. On the intestacy she and her brother John Alphonsus Kane had divided the estate between them. Their solicitors had written on a number of occasions to the plaintiff's solicitors urging them to get on with any claim. The court was told that there was delay on the part of counsel previously instructed on behalf of the plaintiff. The net effect of that was that the farm had been divided with this defendant receiving the dwelling house at 70 Ballyvennaught Road and part of the lands.

[15] The first defendant is now 79 years of age and her recollection therefore stretched back quite far. She gave evidence that her grandfather had been in No 70 and thought that he had inherited it himself. Her brother had renovated the house in the 1980s. A sale of lands had been frustrated by the inhibition placed on the lands by the plaintiff's solicitors. In cross examination she acknowledged that the difference in age between the parties would, in the past anyway, have made a significant difference. Her brother had never discussed any promises to the plaintiff with her. She had never suggested to her brother that he make a Will and believed that if she had he would not have answered her. The reference to nephews by the other witness should have been a reference to cousins as the second defendant had three daughters but no sons.

**Proprietary Estoppel**

[16] I had occasion to address the law on this topic in In the matter of the estate of Harry Murphy, Deceased [2007] NICH 5. My views then do not require any amendment following the learned discussion of this topic in the House of Lords in Yeoman's Row Management Limited and Another v. Cobb [2008] 4 All ER 713; [2008] UKHL 55. For convenience I quote from my earlier decision –

> "[19] Counsel for the second defendant relied on the following passage from Halsbury's Laws of England, volume 16(2) at paragraph 1089 as a general statement of the law.
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> > "This fivefold test has, however, now largely been abandoned in favour of a threefold enquiry based not on B's mistake but on an agreement between A and B or in A's encouragement of B's expectation. The court will enquire:
> >
> > (a) whether an equity in favour of B arises out of the conduct in relationship for the parties;
> >
> > (b) what is the extent of equity, if one is established; and
> >
> > (c) what is the relief appropriate to satisfy the equity?
> >
> > The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine of proprietary estoppel; in the end the court must look at the matter in the round. Whether the principle is called proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is said to be really immaterial. Unlike other kinds of estoppel, proprietary estoppel may be a cause of action but only where it involves the promise of an interest in land."

> [20] Mr Orr cited the section of Snell's Equity, 31st Edition, 10-15 following, including the well know dictum of Oliver J in Taylor Fashions Limited v. Liverpool Victoria Trustee Company Limited [1982] QB 133N which inspires Halsbury's modern statement to a significant degree i.e. -
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> > "If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of equity will compel B to give effect to such expectation."
>
> [21] It is obvious that dictum applies to the estate of B as much as to B himself. It is also clear in the modern authorities that the relief granted by the court must be proportionate to the detriment suffered. It is accepted that the representation is not confined to existing facts but extends to future conduct. See Lowry v Reid 1927 N.I. 142, C.A."

[17] Lord Walker of Gestingthorpe in a judgment of great assistance and erudition points out that in his clarification of the law Oliver J was assisted by two Chancery silks who subsequently became Law Lords. Perhaps I might be permitted to observe that the formulation of the law set out above is a quote by Oliver J from a submission of the third silk, Mr Michael Essayan QC, who remained at the Bar.

[18] Mr Dunford quoted an earlier judgment of Robert Walker LJ in Gillett v. Holt [2000] 2 All ER 289 at 301 –

> "[I]t is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as sub-divided into three or four watertight compartments. Both sides are agreed on that…. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all elements of the doctrine. In the end the court must look at the matter in the round."

One should also bear in mind the observations of Lord Walker at the commencement of his judgment at paragraph 46 in Yeoman's Row recently quoted by me in Northern Bank Ltd v Rush and Davidson [2009] NI Ch 6.

**Applying the Law**

[19] I am satisfied that the deceased created and encouraged an expectation by the plaintiff that she would have a house and a few acres of land in return for her care of, work for and relationship with him. It cannot be disputed that she acted to her detriment on foot of such expectation. I find that she worked for less than proper wages. I find that she cared for him without remuneration. I find that he enjoyed a long relationship, beneficial to him of both a physical and social kind with a youthful and devoted companion for approaching 30 years. In committing herself to that relationship she effectively debarred herself from prospects of marriage or lifelong partnership with other men in the district to her own detriment. I consider that if Seamus Kane in his own lifetime had cast her out in her forties without honouring the promises he had made that would have been an unconscionable act condemned by all right thinking persons. I consider that would be the case whether they were judging the matter by contemporary or more traditional moral values. As stated above the estate of the deceased is bound by the acts and omissions of Seamus Kane. I do not find that he did act unconscionably here in that there is no evidence that he made a deliberate decision to deprive her of her expectation but that the effect of his inertia and failure to make some post testamentary disposition for her is unconscionable.

[20] What entitlement does the plaintiff now have? My finding, at para.[6], is that there was no express promise by Seamus Kane to convey his own dwelling house at 70 Ballyvennaught Road to the plaintiff but in any event for the reasons set out at paragraphs {14] and [15] above it would be inequitable to order the transfer of that house to her as the burden of meeting the claim would then fall on the first defendant only in a way which would be quite unfair. It follows that the award of the court should be a monetary award out of the estate as a whole to be borne equally by the two defendants. It will be recalled that they are the beneficiaries as well as the personal representatives.

[21] I remind myself that a court of equity should do just enough to redress the detriment and injustice suffered by the plaintiff but should not be extravagant on her behalf. Mr Denvir was critical of the absence of evidence from the plaintiff on issues of valuation. Apparently this issue had been discussed in correspondence but the plaintiff had not brought it to fruition. His first submission was that it was now too late to allow such valuation evidence. However, the court has some evidence with which to address this matter. The gross probate value of the estate was £856,780. The net valuation was £839,567. The land was valued at approximately £725,000 which would include the dwelling house previously referred to. Apparently there is a ruined cottage on the lands in addition but it was not separately valued. I would also point out that in this electronic age the prices sought for a house and a few acres of land in North Antrim can be ascertained on line. One would have to exercise a

degree of caution in that regard as the prices sought may not, of course, be the prices achieved. In all the circumstances I do not accede to Mr Denvir's first submission while acknowledging that more evidence from the plaintiff should have been provided but I propose to proceed in this way. It seems to me that it would be just and equitable to award the plaintiff the sum of £250,000 to purchase a house with a few acres of land in North Antrim. However, if the defendants object to that valuation, as clearly excessive, I will permit them to call valuation evidence on notice to the plaintiff. In that event only she may call valuation evidence also. The costs of that further hearing are likely to be determined by the ultimate outcome i.e. if I remain of the opinion that this is the correct figure the defendants would have to bear the costs of the further hearing. If they persuade me that a lower figure is sufficient and appropriate they would recover their costs of that hearing, as the plaintiff is at liberty to agree a variation of the court's order in this respect. I would observe, however, that in arriving at that figure I am taking into account the need to act proportionately between the parties in the light of all the circumstances including the valuation of the estate. The fact, if it were established, that one or two properties might be available for a little less than that would not mean that it was an inequitable figure.