

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

Delivered: 24/5/18

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

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**FAMILY DIVISION**

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**BETWEEN:**

**C**

**Petitioner;**

**and**

**C**

**(Valuation Hearing)**

**Respondent.**

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**Master Bell**

**INTRODUCTION**

[1] In this judgment I shall, for ease of reference, refer to the petitioner and the respondent as “the wife” and “the husband”. In her application the wife seeks Ancillary Relief pursuant to a summons issued on 3 June 2016.

[2] The parties are requested to consider the terms of this judgment and to inform the Matrimonial Office in writing within two weeks as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be published in its present form.

[3] The parties sought a valuation hearing in relation to a dwelling and lands near Dungannon. Both parties were represented by counsel, Mr Devlin on behalf of the wife and Miss Cunningham for the husband. Each party

called one witness at the valuation hearing. The wife called Mr Mallon of Best Property Services and the husband called Mr Quinn of Quinn Estate Agents.

#### **MR MALLON'S EVIDENCE**

[4] Mr Mallon gave evidence that he has been employed by Best Property Services (NI) Ltd for 32 years. He has experience of valuation and sales in Co Tyrone. Although the main office for Best Property Services (NI) Ltd is in Newry Mr Mallon stated that he was based in Dungannon four days a week. His report indicates that he is a member of the Royal Institute of Chartered Surveyors and a member of the Chartered Institute of Arbitrators. He provided a written report dated 13 November 2017. This report consisted of six pages of findings; a two page schedule of comparables which he had used in his valuation; two pages of photographs; two pages of maps; and four pages setting out the firm's conditions of engagement for valuations.

[5] In his written report Mr Mallon's valuation of the property had been broken down into three elements:

(i)	Former matrimonial house	£122,000
(ii)	11.78 acres of land	£77,000
(iii)	Site on 5.03 acres	£36,000

In total therefore his report provides for a valuation of the property at £235,000.

[6] In terms of the use of comparables Mr Mallon gave evidence that there were no properties that could be used as direct comparables. By this he meant that there were no properties which had exactly the same features as the subject property. He gave evidence that each property was to a degree unique and had its own circumstances. However in reaching a valuation he had had regard to sales of similar type properties in the locality and wider afield. Mr Mallon believed that these indirect comparables were reliable. Quite a few of the properties concerned were properties in respect of which he had been involved in the sale. In considering whether a property might be useful for valuation purposes in terms of being a comparable, Best Property Services (NI) Ltd maintained a databank of sold properties. In addition he had telephoned other agents and, if permitted, sought to be informed of what sales prices were. He noted that he had not seen any comparables offered by Mr Quinn to support Mr Quinn's valuation.

[7] In respect of the dwelling house, Mr Mallon gave evidence that it was an older house with a newer extension. The extension had not, however, been completed. It was not plastered and is not currently in use. He gave evidence that this was an unusual property in that part was finished and part was not. So his valuation was based on a sum of £85 per foot for the finished part of the dwelling and a sum of £24,000 for the unfinished part. However he

assessed that some £50,000 may have been spent to construct the unfinished part of the dwelling.

[8] In respect of the subject land, Mr Mallon did not accept that it was of limited agricultural value. He conceded that it was some distance down a shared laneway. However not that many parcels of land come up for sale and so there would be a certain amount of local demand for it. He also gave evidence that the land was of better quality than most of the neighbouring farms. He considered that approximately 80% of the interest in such a property would be likely to come from persons who were local potential purchasers. 20% of interest would come from outside the local area, including perhaps potential bidders returning to the country after time away.

[9] In respect of the site, Mr Mallon noted that the site was on a shared laneway. He had not dealt with a property involving a shared laneway for two to three years. However he had allowed for the fact of the shared laneway in his valuation. It might be more realistic to describe the laneway as a "track". In assessing it he had walked the laneway. In his oral evidence Mr Mallon said that on the morning of the hearing he had been shown photographs of a recent addition to an adjoining property. Since his inspection of the property a piggery had been built by a neighbour approximately 100 yards from the site for a future dwelling which he had previously valued at £36,000. Because of the piggery there would be a reduced pool of purchasers and account needed to be taken of this. As a result Mr Mallon now considered that he ought to reduce the value of the site from £36,000 to £32,000. In general terms, however, Mr Mallon saw no reason to change the figures in his written report. Although the market was slightly improving he considered that it had not improved enough to increase his valuations.

[10] Mr Devlin specifically asked Mr Mallon whether his report contained a signed expert declaration in the usual terms and Mr Mallon stated that it did.

### **MR QUINN'S EVIDENCE**

[11] Mr Quinn stated that he left school at the age of 16 and started working for his father who was an estate agent. Although his father died in 2005, Mr Quinn said that he had been running the business since 2000. He carried out valuations, property sales and farm sales. He operated mainly in the Clogher Valley area to the other side of Dungannon. Mr Quinn stated that he was born and reared in Ballygawley and has knowledge of sales in that area, both working alongside his father and on his own behalf, for the past 43 years.

[12] Mr Quinn's written evidence was a one page letter consisting of eight lines of text. It was essentially a bare valuation without supporting reasoning.

[13] Mr Quinn gave evidence that there was some demand for property in that area. He regarded it as a “feeder parish” for Belfast. Families located to this area who work in Belfast. He stated that the subject property was between Quinn’s Corner and the Ballygawley roundabout. In the Quinn’s Corner area Mr Quinn stated that such was the demand one could sell anything. In the area of the Ballygawley roundabout towards Enniskillen, property was less valuable. However the subject property was about 1 to 1.5 miles off the main road.

[14] In respect of the former matrimonial home, Mr Quinn stated that access to it was via a lane. He considered that the shared laneway had an impact on the property’s valuation making it less attractive. It also made it more difficult to obtain a mortgage. The home had been renovated in 1989. It was a typical farmhouse in good condition inside. The new build portion had had no inside works done. It was not currently being used. Mr Quinn gave evidence that he had never seen a house in this condition before. It would be an “acquired taste” because buyers want the “finished article”. He considered that there would be limited demand for this house because the fact that it was partly constructed would have a negative impact on a potential sale. As a result a value of £90,000 was as accurate as Mr Quinn considered it could be.

[15] In respect of the land, Mr Quinn considered that all the land was equal in terms of quality. It was all disadvantaged. It was steep and hard to manage. He would therefore value it at £5,000 per acre. He had inspected the outlying parcel of land. Access was difficult. It had shared access with five agricultural rights of way and three domestic rights of way. There needed to be a lot of money spent on it to improve access.

[16] In respect of the site, Mr Quinn noted that a piggery had recently been constructed there. There had been a local petition against it. The impact of this was that, in his opinion, the site was not sellable. He had tried to sell it some ten or eleven years ago and had had no offers on it. So he therefore placed no value on it at all (in terms of building a house on it). It does, however, have agricultural value. He therefore valued it as similar to the other land at £5,000 per acre and hence having a value of £20,000.

[17] Mr Devlin cross-examined Mr Quinn, who confirmed that he had not signed an expert witness declaration in connection with his written report. He stated that he would, however, be happy to sign it.

[18] Mr Quinn stated that he had known Mr C all his life. However he felt himself free from friendship and influence. He stated that he would not have come into contact with him a lot, although Mr C would generally be a customer in Mr Quinn’s restaurant business once a month.

[19] Mr Devlin quite properly criticised Mr Quinn's evidence on the basis that he had not provided comparables, despite approximately 43 years in practice. Mr Quinn denied that he was simply going on "gut feeling" in his valuation. It was only during his oral evidence that any reasoning behind his opinion emerged in respect of the value he placed upon the dwelling house, namely that his valuation was affected by the fact that the new portion which had been built on was not complete and that there would be problems obtaining a mortgage because of the shared access.

## CONCLUSION

[20] To term Mr Quinn's written submission a "report" would be over generous. It was merely a description of the property concerned together with a recording of the value he placed on it. However, to be entirely fair between the expert witnesses, Mr Mallon's report, while longer and more professional looking, was mainly taken up with description rather than reasoning. As Jacob LJ said in *Schlumberger Holdings Ltd (a company incorporated in the British Virgin Islands) v Electromagnetic Geoservices AS* [2010] EWCA Civ 819

"What really matters in most cases are the reasons given for the opinion. As a practical matter a well-constructed expert's report containing opinion evidence sets out the opinion and the reasons for it. If the reasons stand up the opinion does, if not, not. "

[21] Mr Quinn's opinion lacked a clearly explained reasoning which lay behind it. That does not of course make it incorrect but it does mean that I should be cautious in relying upon it.

[22] Mr Quinn does not come before the court with a professionally produced *curriculum vitae* and an attractive report compiled using the latest software. Nor was he familiar with the court environment. He had given evidence only once before in a 43 year career. Mr Quinn's lack of experience in the courtroom environment led to him defining comparable in a much narrower way than would usually be the position. Hence, because he could not produce an *exact* comparable, he did not produce any comparables at all. Yet he maintained that he knew the area intimately and that severely disadvantaged land was worth £5,000 per acre. Despite his denials, however, I was not persuaded that his opinion was much more sophisticated than gut reaction, albeit guided somewhat by a feel for what could be achieved in current market conditions. Yet valuations are not an exact science. Much of it will come down to an intuitive sense, taking into account all the available data of recent sales, of what buyers might be prepared to offer should a property come on the market. Moreover it must not be forgotten in the assessment of

Mr Quinn's evidence that he has previous experience of attempting to sell the site element of the property under consideration.

[23] In the absence of clear reasoning I have perhaps had to depend more on the photographic evidence than a court perhaps normally does. Firstly, I value the house at £105,000. Secondly, having seen the photographic evidence and heard the oral evidence from the two valuers, I am not satisfied that the site has value as a site upon which a dwelling could be built. I consider that the establishment of the nearby piggery has had the effect of making the site somewhere where no one would wish to build a dwelling. I conclude therefore that it has to be valued on the basis of its use as agricultural land alone. Thirdly, in terms of the land I consider that it has a value of some £90,000.

[24] In total therefore I consider that the three elements of the property should be valued at £195,000.